



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: H. 3420 Signed by Governor on April 26, 2019
Author: Bernstein
Subject: Youth Access to Tobacco Prevention
Requestor: House of Representatives
RFA Analyst(s): Wren, Gardner, Griffith, and Mitchell
Impact Date: July 23, 2019

Fiscal Impact Summary

This bill will have no expenditure impact on the Department of Health and Environmental Control (DHEC), the State Department of Education (SDE), and the Judicial Department since any expenses resulting from the requirements of the bill can be managed within the agencies' current appropriations. Also, this bill will have no expenditure impact on the Department of Alcohol and Other Drug Abuse Services (DAODAS), the Commission on Prosecution Coordination, and the Commission on Indigent Defense since the bill requires the agencies to perform activities that will be conducted within the normal course of agency business.

The expenditure impact on local school districts is undetermined since some school districts will need to post signs regarding the prohibited use of tobacco products and alternative nicotine products. The number of signs and expenses will vary by school district.

This bill will have an undetermined revenue and expenditure impact on local governments since historical data is not available to estimate the number of convictions that may occur as a result of the new offense pertaining to the sale or distribution of e-liquid containers.

Explanation of Fiscal Impact

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State Expenditure

This bill requires retailers of tobacco products to post a sign that displays a toll free number for assistance to callers in quitting smoking. The toll free number must be determined by DHEC. Also, this bill includes vaping products and electronic smoking devices in the definition of alternative nicotine product. Additionally, this bill requires local school districts to collaborate with DHEC, DAODAS, and SDE to implement a written policy prohibiting the use of any tobacco product or alternative nicotine product in school buildings, in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit.

This bill also changes the fines for individuals who violate the provisions of Section 16-17-500 (A), (B), (C), (D), and (J). For a first offense, the minimum fine changes from \$100 to \$200, and the maximum fine changes from \$200 to \$300. The minimum fine for second and subsequent offenses changes from \$200 to \$400, and the maximum fine changes from \$300 to \$500. Second and subsequent offenses could also result in imprisonment up to thirty days.

This bill further removes the definition of electronic cigarette and adds definitions for electronic smoking device, e-liquid, and vapor product. Additionally, the bill deems that a person who sells, holds for sale, or distributes e-liquid containers in violation of the provisions of the bill is guilty of a misdemeanor and, upon conviction, must be imprisoned for no more than three years, fined no more than \$1,000, or both.

Department of Health and Environmental Control. The agency indicates that if it is required to produce the signage, the expenses can be managed within its existing appropriations. Therefore, this bill will have no expenditure impact on DHEC.

State Department of Education. SDE indicates that any expenses associated with the implementation of a written policy prohibiting the use of tobacco and alternative nicotine products in school buildings, in school facilities, on school campuses, and in or on any other school property can be managed within current appropriations. Therefore, this bill will have no expenditure impact on SDE.

Department of Alcohol and Other Drug Abuse Services. DAODAS indicates that this bill requires the agency to perform activities that will be conducted in the normal course of agency business. Therefore, this bill will have no expenditure impact on the agency.

Commission on Prosecution Coordination. The commission indicates that the bill will not require the agency to modify its current procedures. Therefore, the bill will have no expenditure impact on the commission.

Commission on Indigent Defense. The commission indicates that the bill will not require the agency to modify its current procedures. Therefore, the bill will have no expenditure impact on the commission.

Judicial Department. This legislation revises a number of definitions in the statutes regulating tobacco and nicotine purchase, possession, and use by minors; amends the prohibited acts related to tobacco and other similar products and the penalties in Section 16-17-500; requires local school boards adopt a no tobacco/nicotine policy; and regulates e-liquid containers.

The bill amends Section 16-17-500 by adding requirements to the remote sale of tobacco products, adding to the prohibited conduct by minors in relation to retail establishments specializing in tobacco or related products sales, and adding a subsection directly regulating those retail establishments. Violations of the remote sales provisions or violations committed by a retail establishment would be heard in municipal and magistrate courts. The bill also creates a new statute, Section 16-17-506, which establishes a new offense related to e-liquid containers. This offense would be heard in general sessions courts.

There is no data with which to estimate any increase in caseloads in general sessions courts or in municipal and magistrate courts. The department expects to manage any costs associated with an increase in general sessions court caseloads using existing General Fund resources. Therefore, this bill is not expected to impact expenses of the Judicial Department.

Department of Corrections. This bill modifies penalties for violations related to the sale of tobacco, nicotine, and alternative nicotine products to underage persons. A conviction for a first offense is punishable by a fine of not less than \$200 nor more than \$300. A conviction for a second or subsequent offense is punishable by a fine of not less than \$400 nor more than \$500, imprisonment for not more than 30 days, or both. The bill also establishes a penalty for the offense of the unlawful sale, holding for sale, or distribution of e-liquid containers. This misdemeanor offense is punishable by a fine of not more than \$1,000, imprisonment for not more than 3 years, or both.

The department does not expect the bill to significantly increase the inmate population. However, due to the lack of empirical data related to the prevalence of these offenses, as well as the patterns of arrest, conviction and sentencing, the department cannot estimate the expenditure impact of the bill.

State Revenue

N/A

Local Expenditure

This bill requires local school districts to collaborate with DHEC, DAODAS, and SDE to implement a written policy prohibiting the use of any tobacco product or alternative nicotine product in school buildings, in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit.

SDE indicates that this bill will increase expenses of school districts by an undetermined amount in FY 2019-20 since school districts will need to post signs regarding the prohibited use of tobacco products and alternative nicotine products. The number of signs and expenses will vary by school district.

Further, data from DHEC's Division of Tobacco Prevention and Control indicates that fifty-one school districts in the state have adopted a 100 percent comprehensive tobacco-free policy. This policy prohibits the use of tobacco on school property at all times by all people, offers education on tobacco prevention, provides referrals to cessation programs, prohibits advertising and sponsorship of the tobacco industry, prohibits the use of alternative nicotine products, and includes procedures for the enforcement of the policy.

This bill also changes the fines for individuals who violate the provisions of Section 16-17-500 (A), (B), (C), (D), and (J). For a first offense, the minimum fine changes from \$100 to \$200, and the maximum fine changes from \$200 to \$300. The minimum fine for second and subsequent offenses changes from \$200 to \$400, and the maximum fine changes from \$300 to \$500. Second and subsequent offenses could also result in imprisonment up to thirty days. Of the counties surveyed, only Florence and Lancaster Counties provided responses on the expected expenditure impact of the bill. Both localities indicate that the bill is unlikely to generate a significant number of violations. As such, this portion of the bill is expected to have no expenditure impact on local governments.

Additionally, the bill creates a new offense for individuals who sell, hold for sale, or distribute e-liquid containers. Upon conviction, an individual violating these provisions is deemed guilty of a misdemeanor and must be imprisoned for no more than three years or fined no more than \$1,000, or both. Since this is a new offense, there is no historical data to estimate the number of convictions that may result from this section of the bill. Therefore, the expenditure impact on local governments from this section of the bill is undetermined.

Local Revenue

This bill also changes the fines for individuals who violate the provisions of Section 16-17-500 (A), (B), (C), (D), and (J). For a first offense, the minimum fine changes from \$100 to \$200, and the maximum fine changes from \$200 to \$300. The minimum fine for second and subsequent offenses changes from \$200 to \$400, and the maximum fine changes from \$300 to \$500. Second and subsequent offenses could also result in imprisonment up to thirty days. Of the counties surveyed, only Florence and Lancaster Counties provided responses on the expected expenditure impact of the bill. Both localities indicate that the bill is unlikely to generate a significant number of violations. As such, this section of the bill is expected to have no revenue impact on local governments.

Additionally, the bill creates a new offense for individuals who violate the provisions on the sale or distribution of e-liquid containers. Upon conviction, an individual violating these provisions is deemed guilty of a misdemeanor and must be imprisoned for no more than three years or fined no more than \$1,000, or both. Since this is a new offense, there is no historical data to estimate the number of convictions that may result from this section of the bill. Therefore, the revenue impact on local governments from this section of the bill is undetermined.



Frank A. Rainwater, Executive Director