HB 1158

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1158 (Delegate Rosenberg)
Economic Matters

Tobacco Products - Unpackaged Cigars and Flavored Other Tobacco Products - Restrictions

This bill prohibits the purchase, sale, and distribution of "unpackaged cigars" and the sale and distribution of "flavored other tobacco products" in Maryland. The Comptroller must enforce the bill, including employing inspectors and other necessary personnel, and adopt regulations to implement and enforce the bill.

The bill does not preempt any more stringent ordinance, resolution, law, or rule regulating the sale, marketing, and advertising of tobacco products, including the regulation of the packaging and flavoring of tobacco products. The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before October 1, 2014.

Fiscal Summary

State Effect: General fund revenues decrease by $2.9 million in FY 2015 from lost tax revenue as a result of prohibiting the purchase, sale, and distribution of unpackaged cigars and the sale and distribution of flavored other tobacco products. Future years reflect annualization and revenue projections. General fund revenues increase from criminal and civil penalties assessed under the bill to offset these revenue losses by a minimal amount. Enforcement can be handled with existing resources.

($ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	($2.9)	($4.0)	($4.1)	($4.2)	($4.3)
Expenditure	0	0	0	0	0
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill's criminal penalty provisions are not expected to materially affect local government expenditures.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Unpackaged Cigars

"Unpackaged cigar" means a little cigar that is not contained within a sealed package of at least 20 little cigars or any other cigar that is not contained within a sealed package of at least 5 cigars. "Unpackaged cigar" does not include a premium cigar. "Little cigar" means a roll of any size or shape for smoking that (1) is made of tobacco or tobacco mixed with another ingredient and (2) *either* is wrapped in paper or in any other material, including paper containing tobacco and, with the wrapper, weighs less than three pounds per 1,000 units *or* contains tobacco, in any form, that is functional in the product and may be offered to or purchased by a consumer as a cigarette based on size, diameter, appearance, packaging, or the type of tobacco used in the filler.

A retailer may not purchase from a tobacco manufacturer or a wholesaler, sell or distribute, hold for sale, offer to sell, or sell to an individual in the State an unpackaged cigar. A wholesaler may not hold for sale or distribution, sell or distribute, or offer to sell or distribute to an individual in the State an unpackaged cigar.

In addition to any other established penalties, a person that violates the prohibition against the purchase, sale, and distribution of unpackaged cigars is guilty of a misdemeanor and on conviction is subject to a fine of up to $500, imprisonment for up to three months, or both.

The bill expresses the intent of the General Assembly that this bill abrogate the holding of the Court of Appeals in *Altadis U.S.A., Inc., et al. v. Prince George's County, Maryland*, 431 Md. 507 (2013).

Sales of Flavored Other Tobacco Products

"Flavored other tobacco product" means an other tobacco product (OTP) that contains a constituent or component part that imparts a "characterizing flavor" to the OTP or the smoke of the OTP. "Characterizing flavor" means a distinguishable taste or aroma imparted to the tobacco or smoke of an OTP before or during consumption and includes a taste or an aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, coffee, alcoholic beverage, herb, or spice flavoring. It does not include tobacco, menthol, mint, or wintergreen.

A manufacturer, a wholesaler, a retailer, or any other person may not hold for sale or distribution, sell or distribute, or offer to sell or distribute a flavored OTP to a person in the State. This prohibition does not apply to (1) specified premium cigars; (2) pipe tobacco that is at least 20 cuts per inch and has a moisture content of at least 15%; or (3) OTPs sold or offered for sale and distributed by a licensed tobacconist establishment that prohibits an individual younger than 18 from entering the establishment.

A public statement or claim that an OTP possesses or produces a distinguishable taste or aroma that is made or disseminated by the manufacturer of an OTP, or by a person authorized by the manufacturer, constitutes presumptive evidence that the tobacco product is a flavored OTP.

A violator is guilty of a misdemeanor and, on conviction, subject to a fine of up to $100 per flavored cigar or sealed package of cigars or per sealed package of any OTP, imprisonment for up to three months, or both.

A manufacturer, wholesaler, or retailer is also subject to a civil penalty of up to $5,000 for each brand or style of flavored OTP or its constituent that is found to have been sold or offered for sale for each day the brand or style is sold or available for sale. A manufacturer of a flavored OTP has an affirmative defense if the sale or offer of sale of the flavored OTP occurred without the knowledge, consent, authorization, and involvement of the manufacturer of the product or its authorized agents.

Current Law: OTPs are taxed at 30% of the wholesale price for all products, except cigars. The tax rate for cigars that are classified as premium cigars equals 15% of the wholesale price; all other cigars are taxed at 70% of the wholesale price. Cigarette and OTP tax revenues accrue to the general fund. In addition, the State sales tax rate of 6% is imposed on the final retail price of cigarettes and OTPs.

In 2009, the federal Family Smoking Prevention and Tobacco Control Act prohibited the manufacturing, marketing, and sale of cigarettes containing “characterizing flavors,” such as vanilla, chocolate, cherry, and coffee. Federal law prohibits the sale, distribution and manufacture of flavored *cigarettes* and flavored *cigarette* “component parts,” such as their tobacco, filter, or paper. Despite this restriction, however, many other flavored tobacco products remain on the market, including cigars, smokeless tobacco, hookah tobacco (“shisha”), little cigars, and dissolvable tobacco products, as well as flavored component parts (*e.g.,* blunt wraps). Although federal law does not regulate flavored noncigarette tobacco products, it does not prevent state and local governments from regulating the sale of these products or their component parts.

Background: In fiscal 2010, of the total amount of OTPs reported sold by wholesalers, 63% were cigars, followed by moist snuff (25%), chewing tobacco (7%), roll-your-own tobacco (4%), and pipe tobacco (1%).

According to the U.S. Centers for Disease Control and Prevention (CDC), despite a federal ban on the manufacture or sale of flavored cigarettes, flavored little cigars are still manufactured and sold with candy and fruit flavorings. Many appear virtually indistinguishable from cigarettes with similar sizes, shapes, filters, and packaging. Sales of little cigars increased 240% from 1997 to 2007. Flavored brands make up almost 80% of market share. According to the 2011 National Youth Tobacco Study, more than 40% of middle and high school students who smoke prefer flavored little cigars and flavored cigarettes. Among youth cigar smokers, almost 60% of those who smoke flavored little cigars are not thinking about quitting tobacco use. According to CDC, little cigars – flavored or not – contain the same toxic and cancer-causing ingredients found in cigarettes. They may also cause heart disease, lung disease, and many other health problems.

In *Altadis U.S.A., Inc., et al. v. Prince George's County, Maryland,* 431 Md. 507 (2013), the Maryland Court of Appeals held that State law occupies the field of regulating the packaging and sale of tobacco products, including cigars, and thus preempts two ordinances enacted by the County Council of Prince George's County. The ordinances (CB-47-2008 and CB-6-2009) prohibit the purchase, sale, distribution, or gift, by a retailer, wholesaler, or their agent or employee, of individual or "unpackaged" cigars. The term "unpackaged cigars" is defined as "any cigar or cigar product not contained within a sealed original package of at least five (5) cigars or cigar products."

Maine prohibits the sale or distribution of flavored cigars (excluding premium cigars). Violation is a civil offense subject to a fine of up to $1,000 for the first offense and $5,000 for subsequent offenses.

New York City prohibits the sale of any flavored tobacco product except in a tobacco bar. A violator is subject to a civil penalty of up to $500 for the first violation (and each additional violation on the same day), up to $1,000 for the second violation at the same place of business within a two-year period (and each additional violation found on that day); and up to $2,000 for the third and all subsequent violations at the same place of business within a two-year period. For a third violation occurring on a different day and all subsequent violations occurring on different days at the same place of business within a two-year period, a retailer is subject to the mandatory suspension of his or her cigarette license for up to one year.

State Revenues: General fund revenues decline by a total of $2.9 million in fiscal 2015, which reflects the bill's October 1, 2014 effective date. This estimate reflects a reduction in sales and excise tax revenues resulting from prohibiting the sale of unpackaged cigars and flavored OTPs. In fiscal 2013, nonpremium cigar excise tax revenues totaled $28.6 million and OTP excise tax revenues, excluding premium cigars, totaled $24.9 million. As there is no available breakout of these figures between packaged and unpackaged cigars or flavored and unflavored OTPs, this estimate assumes that:

- 7.5% of nonpremium cigars will be prohibited under the bill;
- 5% of pipe tobacco will be prohibited under the bill;
- 10% of chewing tobacco will be prohibited under the bill;
- 5% of snuff will be prohibited under the bill; and
- 2.5% of OTPs will be prohibited under the bill.

The estimated tax revenue losses are illustrated in **Exhibit 1**.

Exhibit 1
Estimated Revenue Losses
($ in Millions)

Type of Tax	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Sales	$2.5	$3.4	$3.5	$3.6	$3.7
Excise	0.4	0.6	0.6	0.6	0.6
Total	**$2.9**	**$4.0**	**$4.1**	**$4.2**	**$4.3**

Source: Office of the Comptroller

This foregone revenue increases in fiscal 2016 through 2019 due to annualization.

General fund revenues may increase from criminal and civil penalties assessed under the bill to offset these revenue losses. Savings from health improvements are likely not significant in fiscal 2015 or the next four fiscal years.

Small Business Effect: Sales of unpackaged cigars and flavored OTPs decrease as a result of the bill. Further, the bill, which takes effect October 1, 2014, does not allow for any phasing out of existing stock beyond the effective date.

Additional Information

Prior Introductions: None.

Cross File: SB 898 (Senator Ramirez) - Finance.

Information Source(s): U.S. Centers for Disease Control and Prevention, Office of the Comptroller, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

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mc/ljm

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