

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Third Reader

Senate Bill 310

(Senator Hayes, *et al.*)

Finance

Economic Matters

Baltimore City - Unpackaged Cigarettes - Prohibition on Sale

This bill prohibits a person licensed to sell cigarettes at retail in Baltimore City from selling an “unpackaged cigarette.” An enforcement officer of the Tobacco Use Prevention and Cessation Program in the Baltimore City Health Department is expressly authorized to enter and inspect a licensed premises (at a reasonable time) to enforce the prohibition. Any violation discovered must be reported to a State’s Attorney. Any citation issued by the Comptroller for accepting delivery of unstamped cigarettes precludes a prosecution for a violation of the prohibition established by the bill arising out of the same incident. A person who violates the bill’s prohibition is subject to existing State penalties.

Fiscal Summary

State Effect: The bill primarily affects local government operations and does not materially affect State finances. The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations.

Local Effect: Expenditures for the Baltimore City Health Department increase to hire staff to inspect cigarette retailers in the city beginning in FY 2020. Local revenues are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary: “Unpackaged cigarette” means any cigarette not contained in a sealed package of 20 or more cigarettes that are designed and intended to be sold as a unit.

Current Law:

Cigarette Retailer License

The Comptroller issues cigarette retailer licenses through the local clerks of the court. To obtain a license to sell cigarettes at retail, a person must (1) obtain a county license; (2) file an application with the clerk; and (3) pay the clerk a fee of \$30, which is distributed to the Comptroller. A county license costs an additional \$25 in all counties except Cecil and Montgomery counties. In Cecil County, the cost is \$50. Chapter 732 of 2016 increased the county license fee in Montgomery County from \$25 to \$125. Licenses expire on the first April 30 after the effective date, but they are renewable for an additional year. To renew a cigarette retailer license, licensees must pay the aforementioned fees.

The Comptroller may deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee (1) fraudulently or deceptively obtains or attempts to obtain a license for another person; (2) fraudulently or deceptively uses a license; (3) fails to comply with the Maryland Cigarette Sales Below Cost Act; (4) sells cigarettes in less than 20 per package; (5) illegally buys cigarettes for resale; (6) is convicted of a felony or misdemeanor that is a crime of moral turpitude directly related to the fitness or qualification of the licensee or applicant; or (7) fails to pay a tax due.

Except in the case of selling tobacco products to a minor in violation of State law, a licensee whose license is suspended or revoked may petition the Comptroller for permission to make an offer of compromise (in which the licensee pays a sum of money in lieu of serving the suspension or revocation).

A person who violates statutory provisions under Title 16, Subtitle 3 of the Business Regulations Article is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$100.

Unstamped Cigarette Prohibition

The mechanism for taxing the sale of cigarettes is cigarette tax stamps. Wholesalers buy the stamps from the Comptroller and affix the stamps to individual packs before sale to retailers. There are two different stamps, one for packs of 20, and another for packs of 25. Unless authorized to do so by a license, a person may not accept delivery of unstamped cigarettes. When a package of cigarettes is received, a retailer, subwholesaler, or vending machine operator must immediately examine the package to determine whether tobacco tax stamps are properly affixed to the package and reject any unstamped or improperly stamped cigarettes in a specified manner.

Prohibitions Against the Sale of Unpackaged Cigarettes

Federal Prohibition: The federal Family Smoking Prevention and Tobacco Control Act, enacted in 2009, among other things, prohibited the sale of packages of fewer than 20 cigarettes as part of the Act's efforts to restrict tobacco sales to youth.

State Prohibition: Retailers and vending machine operators are prohibited from purchasing from a tobacco product manufacturer or selling, reselling, distributing, dispensing, or giving away an unpackaged cigarette to any person. Similarly, a wholesaler is prohibited from selling, reselling, distributing, dispensing, or giving away an unpackaged cigarette to any person in the State. A person who violates these prohibitions is guilty of a misdemeanor and, on conviction, is subject to maximum penalties of a \$500 fine and/or imprisonment for three months. The Comptroller is responsible for enforcing this prohibition.

Local Prohibition: The Health Code of Baltimore City prohibits a person from selling or otherwise transferring for consideration unpackaged cigarettes to any other person. The prohibition can be enforced by an environmental citation or a civil citation. A person who violates this prohibition is guilty of a misdemeanor and, on conviction, is subject to a maximum fine of \$1,000 per offense.

Background: According to the U.S. Centers for Disease Control and Prevention, single cigarettes, sometimes called "loosies," were inexpensive and enticed children and adolescents to try smoking. To comply with federal law, retailers may not sell single cigarettes or break open packages of cigarettes to sell or distribute unpackaged cigarettes.

Tobacco Use Prevention and Cessation Program

The Tobacco Use Prevention and Cessation Program is funded through the Cigarette Restitution Fund (CRF). CRF was established by Chapters 172 and 173 of 1999 and is supported by payments made under the Master Settlement Agreement (MSA). Through MSA, settling tobacco manufacturers pay the litigating parties – 46 states, five territories, and the District of Columbia – substantial annual payments in perpetuity. The use of CRF is restricted by statute. In addition to the Tobacco Use Prevention and Cessation Program, activities funded through CRF also include the Cancer Prevention, Education, Screening, and Treatment Program; Medicaid; tobacco production alternatives; legal activities; and nonpublic school support.

The Tobacco Use Prevention and Cessation Program aims to reduce the use of tobacco products and to reduce the burden of tobacco-related morbidity and mortality in the State. Over the past several years, the State's fiscal difficulties have prompted reductions to the mandated funding levels for various programs funded by CRF. The Budget Reconciliation and Financing Act of 2010 (Chapter 484) reduced annual appropriations for tobacco use

prevention and cessation activities to \$6.0 million in each of fiscal 2011 and 2012 and \$10.0 million annually beginning in fiscal 2013. Prior to these reductions, \$21.0 million was mandated for these activities annually.

Local Expenditures: The bill establishes a new local prohibition and expressly authorizes the Baltimore City Health Department to enforce the prohibition. Thus, local expenditures increase by \$35,256 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date, increasing to \$49,638 by fiscal 2023, to hire one enforcement officer to inspect Baltimore City cigarette retailer license holders to determine compliance with the prohibition against selling unpackaged cigarettes.

As unpackaged cigarettes may not lawfully be sold or otherwise distributed under current law, any impact on revenues from citations issued is assumed to be minimal and attributable only to enhanced enforcement.

Additional Information

Prior Introductions: None.

Cross File: HB 1351 (Delegate Bridges) - Rules and Executive Nominations.

Information Source(s): U.S. Centers for Disease Control and Prevention; Maryland Association of County Health Officers; Baltimore City; Comptroller's Office; Maryland State's Attorneys' Association; Department of Legislative Services

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