

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 937
Finance

(Senators Hayes and McCray)

**Baltimore City - Cigarettes, Other Tobacco Products, and Electronic Smoking
Devices - Local Laws Authorization**

This bill expressly authorizes the Baltimore City Council to enact and the Mayor of Baltimore City to enforce local laws that are at least as stringent as State laws that regulate the sale and distribution of cigarettes, other tobacco products (OTPs), and electronic smoking devices (ESDs), except for the issuance of cigarette, OTP, and ESD licenses and the taxation of cigarettes and OTPs.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: Baltimore City revenues and expenditures may increase, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: Titles 16, 16.5, and 16.7 of the Business Regulation Article govern tobacco licensing and the sale and distribution of cigarettes, OTPs, and ESDs. ESD is defined as a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device, including (1) an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen and vaping liquid and (2) any component, part, or accessory of such a device regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device. OTP is defined as any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco or any other tobacco or product made

primarily from tobacco, other than a cigarette, that is intended by smoking or chewing or as a snuff.

The Comptroller's Office is generally responsible for monitoring and enforcement activity related to tobacco and other business licenses. The Field Enforcement Division within the Comptroller's Office enforces State revenue and licensing laws pertaining to alcohol, tobacco, trader's, and transient vendor's licenses, the sales and use tax, and motor fuel, among others. Chapter 12 of 2019, which takes effect June 1, 2020, establishes the Alcohol and Tobacco Commission (ATC) and transfers duties of the Field Enforcement Division pertaining to alcohol and tobacco enforcement to ATC. The Comptroller's Office, however, retains duties related to enforcement of alcohol and tobacco taxes.

Tobacco Product Taxes

Cigarettes are taxed at a rate of \$2.00 per pack. Generally, the tax rate for OTPs is 30% of the wholesale price, which is the price for which a wholesaler buys OTPs, exclusive of any discount, trade allowance, rebate, or other reduction. The tax rate for cigars is 70% of the wholesale price of the cigars. The tax rate for premium cigars is 15% of the wholesale price of the premium cigars.

Cigarette and OTP tax revenues accrue to the general fund. In fiscal 2021, cigarette tax revenues are projected to total \$299.0 million, and OTP tax revenues are projected to total \$42.6 million. In addition, the State sales and use tax rate of 6% is imposed on the final retail price of cigarettes and OTPs.

ESDs and their components are subject to the State sales and use tax but are not subject to a State excise tax. Montgomery County imposes a 30% tax on the wholesale value of vaping products. Montgomery County estimates that the tax generated \$1.3 million in fiscal 2019 and projects that revenues will total \$1.9 million in fiscal 2020.

Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland

In *Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland* 431 Md. 307 (2013), the petitioners challenged the validity of two Prince George's County ordinances regulating the packaging, sale, or other distribution of cigars, contending that the ordinances conflicted with State statutes regulating the packaging and sale of cigars. The Court of Appeals held that State law occupied the field of regulating the packaging and sale of tobacco products, including cigars, and so preempted the two ordinances. Thus, the Prince George's County ordinances were invalid.

Local/Small Business Effect: The bill expressly authorizes Baltimore City to enact and enforce local laws regulating the sale and distribution of tobacco products, as specified.

Baltimore City has considered and adopted local legislation relating to the sale and distribution of tobacco products. The bill's impact depends on the extent to which the city enacts local laws that are more stringent than State law and the extent to which such laws are successfully implemented as a result of the bill (or the extent to which such laws would be successfully *challenged* in the *absence of the bill*). As discussed above, in *Altadis* (2013), the Court of Appeals struck down two Prince George's County ordinances governing the distribution of cigars, holding that the ordinances were impliedly preempted by State law.

Thus, to the extent that the city successfully enacts and enforces local laws that are more stringent than State law as a result of the bill, city revenues and expenditures may increase. Similarly, small businesses that sell tobacco products in Baltimore City are potentially affected to the extent they are subject to additional local regulation as a result of the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Comptroller's Office; Maryland Association of County Health Officers; Baltimore City; *Baltimore Sun*; Department of Legislative Services

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