SB 228

Department of Legislative Services

Maryland General Assembly
2001 Session

FISCAL NOTE

Senate Bill 228 (Senator Ruben, *et al.*)
Finance

Cigarettes - Direct Sales and Shipping

This bill prohibits a person engaged in the business of selling or distributing cigarettes in another state from selling or shipping cigarettes directly to a consumer or other unlicensed recipient in Maryland, including cigarettes ordered or purchased through a computer, telephone, or other electronic network.

Violators are subject to license revocation, guilty of a felony, and subject to a fine of up to $50 for each carton of cigarettes and/or imprisonment for up to two years.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provision.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provision.

Small Business Effect: Minimal.

Analysis

Current Law: Cigarettes may be purchased by Maryland residents via computer, telephone, or other electronic network.

Background: There are numerous companies that sell cigarettes and other tobacco products over the Internet. Many of these online cigarette sellers, which charge no taxes, are based on Native American reservations where states have limited authority to enforce collection of their cigarette taxes. However, the purchasers of these cigarettes are supposed to remit sales taxes to their state government on these purchases.

In 2000 the New York State Legislature adopted a law that prohibited the sale of cigarettes directly to consumers over the Internet, by telephone, or by mail-order catalog. It is the first law of its kind enacted by any state. Brown and Williamson Tobacco Corporation sued New York arguing that the law unlawfully restricts interstate commerce. In addition, many Native American online cigarette dealers argued that the bill violated the 1842 sovereignty treaty between the United States and the Seneca Indians of New York. Traditionally, Native Americans have been able to sell products such as cigarettes and alcohol without having to pay federal excise taxes and state sales taxes.

In November 2000, the U. S. District Court for the Southern District of New York ruled New York's law unconstitutional on the basis that it violated the Commerce Clause of the U.S. Constitution. A temporary restraining order was issued that has prevented New York from enforcing the law.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2002 are estimated to range from $9 to $52 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at $1,700 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is $288 per month.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from $17 to $77 per inmate in fiscal 2002.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller of the Treasury (Alcohol and Tobacco Tax Division), Department of Legislative Services

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jm/cr

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