

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 554  
Finance

(Senator Ruben, *et al.*)

---

Tobacco Products - Prohibitions on Delivery

---

This bill prohibits the sale of tobacco products for personal consumption when the sale is by means other than a face-to-face transaction. The bill also prohibits the delivery of tobacco products to a minor or residence. Various criminal penalties are established for violations of the bill's provisions.

---

Fiscal Summary

**State Effect:** The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations. Enforcement provisions could be handled with existing resources.

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

**Small Business Effect:** Potential minimal negative impact on businesses that ship cigarettes in the State for delivery to a residence or minor.

---

Analysis

**Bill Summary:** The delivery of tobacco products by a manufacturer, distributor, or retailer must be a face-to-face transaction unless the container is visibly marked with the words "Tobacco Products" and delivered to a licensed wholesaler, retailer, or specified others for purposes other than personal consumption. A manufacturer, distributor, or retailer may not deliver any tobacco products to a minor or residence. The restrictions apply to purchases through a computer or other electronic network.

The Comptroller must accurately maintain a public directory of all persons licensed as a wholesaler or retailer and notify each person that their name appears in the directory.

Any person in violation of the bill's provisions is guilty of a misdemeanor and subject to a fine of up to \$5,000 or 500% of the value of the tobacco products in violation, imprisonment for up to one year, or both. Each subsequent violation is subject to a fine of up to \$10,000 or 1,000% of the value of the tobacco products in violation, imprisonment for up to five years, or both. The violator forfeits all tobacco licenses and is ineligible for licensure for up to five years. The violator must reimburse the State and local governments for any unpaid tobacco taxes plus interest. A common carrier is not subject to the penalties unless the carrier had knowledge or reasonably should have had knowledge that delivery was a violation. Any cigarettes sold in violation are contraband and subject to seizure.

The Attorney General (AG) and the Comptroller may adopt regulations as necessary to carry out the bill's provisions. The AG must make public a list of all actions taken to enforce the provisions and a list of all persons with related convictions.

In an action brought by the State, the State is entitled to recover the costs of investigations, costs of actions, and reasonable attorney's fees. In addition, 50% of fines recovered must be remitted to the Comptroller and other State agencies, in proportion to their participation in the enforcement and related investigation. If a court determines that a person violated the bill's provisions, the court must order any profits, gain, gross receipts, or other benefit to be deposited to the Cigarette Restitution Fund.

The remedies or penalties under the bill are cumulative to each other and to those available under all State laws, unless otherwise expressly provided.

**Current Law:** A person may not ship, import, or sell into or within the State any brand of cigarette unless that person is the owner of the brand, is the United States importer for the brand, or is a designated agent in the State and holds the required license.

**Background:** This bill closely resembles model legislation proposed by the Campaign for Tobacco-Free Kids to prohibit all Internet or mail-order sales of tobacco products. This model legislation is aimed at eliminating Internet sales to minors and the evasion of state and local tobacco taxes. The model is based on existing law in New York State (Public Health Article 13F, Section 1399-II) which was challenged by cigarette companies and upheld by the U.S. Court of Appeals for the Second Circuit.

Numerous companies 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 prevented New York from enforcing the law. However, on February 13, 2003, the U.S. Court of Appeals for the Second Circuit reversed the lower court's decision.

**State Effect:** While the number of cases that would result from the bill's provisions cannot be reliably estimated at this time, based on discussions with the Comptroller's Division of Enforcement, it is assumed that the number would be minimal. The Division of Enforcement indicates that the bill's provision would be difficult to enforce unless it was notified that such transactions were occurring.

While the AG asserts that the office require 25% of an Assistant Attorney General position to draft regulations and gather and compile information, the Department of Legislative Services advises that these activities could be handled with existing resources.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Comptroller's Office, Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2005  
mam/ljm

---

Analysis by: Karen S. Benton

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510