

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

House Bill 1573  
Economic Matters

(Delegate Kipke, *et al.*)

Finance

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**Business Regulation - Soda Fountain License - Repeal**

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This bill repeals the requirement that businesses in the State be licensed if they operate a soda fountain machine.

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**Fiscal Summary**

**State Effect:** Minimal foregone general fund revenue to the extent that the Comptroller's new interpretation of current law requires more businesses to obtain soda fountain licenses. No effect on expenditures.

**Local Effect:** Foregone revenue for counties to the extent that the Comptroller's new interpretation of current law requires more businesses to obtain soda fountain licenses.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** A business must have a soda fountain license if it operates a soda fountain in the State. Licenses are issued by each county's circuit court clerk. An applicant for a soda fountain license must pay a fee of:

- \$10 for each soda fountain in a municipal corporation or unincorporated place with a population of less than 1,000;
- \$25 for each soda fountain elsewhere in the State, except Baltimore City; or
- \$60 for each soda fountain in Baltimore City.

This requirement is in addition to the requirement that businesses obtain a trader's license, or other license applicable to the type of goods and services sold by the business. Licenses are valid for one year, and expire on April 30 of each year.

The Comptroller's Office enforces compliances with licensing requirements, and may perform investigations under that authority. Each county's circuit court clerk must submit to the Comptroller a list of all licenses issued.

Circuit court clerks distribute 8% of the collected fees to the State's general fund to defray the Comptroller's administration and enforcement costs. The remaining 92% of fee revenue is distributed to the county or municipal corporation where the businesses are located.

**Background:** The Comptroller's Office recently issued two memoranda to circuit court clerks in the State to clarify that the statutory provisions related to the licensure of soda fountains includes establishments that operate soft drink dispensers. The initial memorandum issued by the Comptroller's Office indicates that a business must have a license if it operates a soda fountain, and pay an additional fee for each device it operates. A subsequent memorandum limited the requirement to one license per location, regardless of the number of soda fountains operated by the business.

Although thousands of businesses in the State operate soft drink dispensers, there were only 76 soda fountain licenses issued in 2008 throughout the State. According to the Restaurant Association of Maryland, the businesses that hold these licenses are some of the oldest restaurants in the State and have continued to renew these licenses for decades.

The Restaurant Association of Maryland advises that most of the over 9,600 restaurants in the State operate a soda fountain, under the Comptroller's new interpretation. Moreover, many other businesses, such as convenience stores, movie theatres, and bowling alleys, dispense soda for sale through these machines.

The Comptroller's Office conducts about 14,000 license inspections per year. However, the agency advises that it only issues citations for improper licensure in the most egregious cases, such as when a business operates with no licenses at all. According to the Comptroller's Office, no citations have been issued related to soda fountain licenses in at least the last 10 years.

**State/Local Fiscal Effect:** The bill does not have a meaningful impact on State or local government finances because of the small number of soda fountain licenses currently issued in the State, but State and local government finances and operations are affected by the Comptroller's new interpretation of current law. It is unclear how many businesses in the State operate a soda fountain under the new interpretation, but

considering there are almost 10,000 restaurants, there would be an increase in fees distributed to local governments by the circuit court clerks. Additionally, 8% of the revenue would be allocated to the State's general fund. Legislative Services estimates that foregone general fund revenues may be approximately \$20,000; total foregone revenue for counties may be approximately \$230,000.

**Additional Comments:** The recent memoranda from the Comptroller instructed the circuit court clerks to inform businesses of their immediate need to comply with this law. Although the Comptroller's Office may allow for a grace period for enforcement, the circuit court clerks advise that the process of issuing renewal licenses for businesses in the State is well underway. The circuit court clerk of Calvert County advises that she has licensed some businesses according to the Comptroller's new interpretation, but some businesses paid multiple fees per location (based on the initial memorandum) and some renewed before the memoranda were received and have not paid the fee. As the Chair of the State Conference of Circuit Court Clerks, she also advises that other clerks in the State have had similar difficulty in issuing the soda fountain licenses. Because of the confusion surrounding the new interpretation, compliance may vary among and within local jurisdictions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Restaurant Association of Maryland; Anne Arundel, Calvert, Charles, Montgomery, and Somerset counties; State Department of Assessments and Taxation; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - April 1, 2009  
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