

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 957 (Delegate Tarrant, *et al.*)
 Economic Matters

Tobacco-Related Products - Definitions and Distribution to Minors

This bill alters the definition of “cigarette” to include (1) any specified tobacco product that is wrapped in paper containing tobacco and weighs less than three pounds per 1,000 cigarettes; or (2) is likely to be purchased by consumers due to its resemblance to a cigarette.

The bill also repeals provisions that apply in four counties and instead authorizes county health officers and their designees, on a statewide basis, to issue civil citations to persons who distribute any tobacco products, rolling papers, and coupons to minors.

Fiscal Summary

State Effect: General fund revenues increase by \$450,000 in FY 2011 and by about \$600,000 annually beginning in FY 2012 due to increased net taxes on specified tobacco products. Transportation Trust Fund (TTF) revenues may decrease minimally due to decreased sales tax revenues assessed on tobacco products. General fund revenues may decrease, depending on the extent to which counties choose civil enforcement over criminal enforcement, in which case civil citations are paid to the county rather than contested in District Court. No effect on expenditures, assuming funding for enforcement of the sale of tobacco products to minors remains the same.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	\$450,000	\$600,000	\$600,000	\$600,000	\$600,000
SF Revenue	(-)	(-)	(-)	(-)	(-)
Expenditure	0	0	0	0	0
Net Effect	\$450,000	\$600,000	\$600,000	\$600,000	\$600,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Any civil fines from citations for counties that choose the civil enforcement option accrue to that county. Significant operational impact for counties that shift resources and responsibilities from criminal enforcement to civil enforcement.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Redefining Cigarettes

The bill alters the definition of a cigarette to include any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and either (1) is wrapped in paper containing tobacco and, with the wrapper, weighs less than three pounds per 1,000 cigarettes; or (2) contains tobacco, in any form, that is functional in the product and is likely to be purchased or offered as a cigarette because of its appearance, the type of tobacco used in the filler, or its packaging.

The bill subjects these tobacco products to any statute governing the manufacture, distribution, sale, or fire safety performance standards of cigarettes.

Penalties for Sale of Tobacco Products to or by Minors

Persons who distribute tobacco products, rolling papers, or coupons to minors are subject to civil penalties of \$300 for the first offense and \$500 for any subsequent offense within a 24-month period from the previous citation. The bill does not preempt any county or municipal law that regulates tobacco products.

Minors may not purchase tobacco products or cigarette rolling papers or purchase or attempt to obtain these items using a form of identification that belongs to another person or is falsified. Minors who violate these provisions are subject to a civil penalty of \$50 and may be referred to a smoking cessation program if one is offered through a local health department (LHD).

Current Law:

Tobacco Tax Rates Differ Based on Product Type

Cigars, pipe tobacco, chewing tobacco, and snuff (other tobacco products or OTPs) are taxed at 15% of their wholesale price. Cigarettes are taxed at a rate of \$2.00 per pack.

The discount rate on the purchase price of tobacco tax stamps offered by the State Comptroller to cigarette wholesalers is 0.82%. The State sales tax of 6% is imposed on the final retail price of OTPs and cigarettes.

Federal law provides for four classifications related to cigarettes and cigars, with each classification having a specified tax rate. The federal Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) was signed into law on February 4, 2009, and contains several provisions related to federal tobacco taxes and regulation. As a result of CHIPRA, small cigars and small cigarettes (standard-sized cigarettes) are taxed equally as shown in **Exhibit 1**.

Exhibit 1
Federal Tobacco Product Taxation

<u>Product</u>	<u>Definition</u>	<u>Tax Rate</u>
Small Cigarette	Weighs 3 lbs. or less per 1,000	\$50.33 per carton / \$1.0066 per pack
Large Cigarette	More than 3 lbs. per 1,000	\$105.69 per 1,000
Small Cigar	Weighs 3 lbs. or less per 1,000	\$50.33 per 1,000
Large Cigar	More than 3 lbs. per 1,000	52.75% of sales price, not to exceed \$0.4026 per cigar

Source: Children’s Health Insurance Program Reauthorization Act of 2009

CHIPRA increased tobacco taxes effective April 1, 2009. Little cigar sales decreased by about three quarters from April 2009 to December 2009, compared with sales over the same period in 2008. Large cigars sales increased by roughly the same amount as the decrease in little cigar sales.

Exhibit 2 illustrates an example of the difference in the retail price and taxes collected from a pack of 20 little cigars, based on whether the State classifies the pack as cigarettes or cigars. Although cigarettes and little cigars are not perfect substitutes and CHIPRA equalized the federal tax treatment of the two products, the State tax differential provides an incentive for consumers to purchase little cigars relative to cigarettes. In this example, the final retail price of a pack of little cigars is about 25% less than the price of a pack of cigarettes with the same pretax retail price.

Exhibit 2
Effects of Imposing the OTP Tax and Cigarette Tax on a Pack of 20 Little Cigars

	State Tax Applied	
	<u>Cigarette</u>	<u>OTP</u>
Wholesale Price	\$2.85	\$2.85
Markups	0.71	0.71
Federal Excise Tax	1.01	1.01
State Excise Tax	2.00	0.43
State Sales Tax	0.39	0.30
Final Retail Price	\$6.97	\$5.30

Source: Department of Legislative Services

Distribution of Tobacco Products to Minors

A person licensed in the State to distribute cigarettes or OTPs may not distribute to a minor a tobacco product, tobacco paraphernalia, or a coupon redeemable for a tobacco product. Other persons may not purchase for or sell a tobacco product to a minor or distribute tobacco paraphernalia to a minor.

These prohibitions do not apply to the distribution of a tobacco product to a minor who is acting solely as the agent of the minor's employer if the employer distributes tobacco products for commercial purposes.

A violator is guilty of a misdemeanor and subject to the following penalties: \$300 for a first offense; \$1,000 for a second offense occurring within two years after the first offense; and \$3,000 for each subsequent violation occurring within two years after the preceding offense. Alleged violations are tried in the District Court.

In a prosecution for a violation, it is a defense that the defendant examined the purchaser's or recipient's driver's license or other valid identification issued by an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least age 18. Additionally, it is a civil offense for a minor to be in possession of a tobacco product or use false identification to obtain one.

St. Mary's, Garrett, Carroll, and Cecil counties subject persons who distribute tobacco products, cigarette rolling papers, and tobacco-related coupons to minors to civil penalties. Six additional jurisdictions have similar civil enforcement powers through enactment of local ordinances.

Background: Money from the Cigarette Restitution Fund (CRF) is used in part for enforcement of tobacco control laws in each county. The Governor's proposed fiscal 2011 budget includes \$3.7 million in local public health programs funded by CRF that must be targeted toward community outreach and education, school-based activities, cessation, and enforcement. County sheriff's offices use the enforcement funds to perform compliance checks on tobacco retailers.

State Revenues: The bill taxes specified tobacco products as cigarettes beginning October 1, 2010. As a result, general fund revenues increase \$450,000 in fiscal 2011 and by about \$600,000 annually beginning in fiscal 2012. TTF revenues may decrease minimally due to decreased sales tax revenues assessed on tobacco products. This estimate is based on the following facts and assumptions:

- an estimated 58% of the OTP tax was collected from cigars in fiscal 2008;
- 11% of all cigars sold nationwide in April 2009 through December 2009 were little cigars; and
- the elasticity of tax-paid little cigars is estimated to be -0.8.

Legislative Services advises that the final determination of which tobacco products will be classified as cigarettes under the bill may substantially alter the estimated fiscal impact of the bill.

Local Revenues: Any civil fines from citations for counties that choose the civil enforcement option accrue to that county.

Local Expenditures: Significant operational impact for counties that choose to shift resources and responsibilities from criminal enforcement to civil enforcement. Currently, most counties appropriate money to local law enforcement agencies to criminally enforce the sale of tobacco products, rolling papers, and coupons to minors. In counties where LHD chooses to civilly enforce such violations, funding to law enforcement agencies for this purpose may be redirected to LHDs for civil enforcement. It is expected that LHDs that offer smoking cessation programs can accommodate minors referred to these programs with existing resources. The amount of funding for enforcement varies from county to county, so any funding shift also varies.

St. Mary's, Garrett, and Carroll counties are not affected since they already civilly enforce violations involving the distribution of tobacco to minors. Garrett County, however, can collect a higher civil fine for subsequent violations under the bill. The bill removes the language in statute that addresses these counties specifically. The other six counties that have civil enforcement powers may be minimally affected.

Additional Information

Prior Introductions: This bill merges similar provisions that were introduced in separate bills in the 2008 and 2009 legislative sessions. SB 80 of 2009 passed the Senate as amended and received a hearing in the House Economic Matters Committee, but no further action was taken. HB 617 of 2008 received an unfavorable report from the House Economic Matters Committee.

Cross File: SB 703 (Senator Garagiola, *et al.*) - Finance.

Information Source(s): Calvert, Caroline, Howard, and Prince Georges counties; Baltimore City; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Department of Legislative Services

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