HB 1558

Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1558 (Delegate Benson)
Economic Matters Finance

Commercial Law - Sales of Unpackaged Cigarettes - Prohibitions and Penalties

This bill specifies that a retailer, wholesaler, or vending machine operator may not sell or distribute "unpackaged cigarettes." Any cigarette not contained in a sealed package of 20 or more cigarettes is considered an unpackaged cigarette.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions and expanded applicability of current provisions regarding the possession of unstamped cigarettes. Enforcement of the bill's provisions can likely be handled with existing resources.

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provision. Local fine revenues may decrease to the extent that enforcement of the bill displaces Baltimore City's enforcement of its local law. Any effect on the finances of Baltimore City is expected to be minimal.

Small Business Effect: Minimal.

Analysis

Bill Summary: A person may not sell or otherwise distribute as part of a commercial transaction an unpackaged cigarette produced by a "tobacco product rolling machine." Further, a person may not make a tobacco product rolling machine available for use for the purpose of producing an unpackaged cigarette. The bill clarifies that cigarettes produced by a tobacco product rolling machine for sale in the State must be packaged and must carry the appropriate tax stamps.

Violators are guilty of a misdemeanor and are subject to a maximum $500 fine and/or imprisonment for up to three months.

Current Law: Tobacco product wholesalers, retailers, or vending machine operators may not sell or distribute packages of cigarettes that contain fewer than 20 cigarettes. There is no penalty provision in statute regarding these sales. However, violations of these provisions may be grounds for the denial of a cigarette business license.

Within 72 hours of receiving cigarettes in the State and before selling or attempting to sell the cigarettes, a licensed cigarette wholesaler who first possesses the cigarettes must affix, to the smallest cigarette package, tax stamps (1) in a total amount that at least equals the tobacco tax due on the number of cigarettes in the package; and (2) in the manner that the Comptroller requires, including placing the tax stamps on the cigarette package so that the stamps are visible to a buyer. The willful possession or sale of unstamped cigarettes is a misdemeanor. Violators found to be in possession of less than 30 cartons of unstamped cigarettes are subject to a maximum $500 fine and/or imprisonment for up to three months. Violators in possession of more than 30 cartons of unstamped may be fined up to $1,000 and/or imprisoned for up to one year.

Cigars, roll-your-own tobacco, 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 State sales tax of 6% is imposed on the final retail price of OTPs and cigarettes.

A person may not sell or dispense tobacco products through a vending machine unless the machine is located in an establishment (1) that is a bona fide fraternal or veterans organization; or (2) where minors are prohibited by law from entering. Sale of tobacco through vending machines is only allowed if the machine is operated with a token, card, or similar device that an individual obtains from the owner or the owner's employee.

Background: The Field Enforcement Division (FED) of the Comptroller's Office enforces the sale of tobacco products in the State by manufacturers, wholesalers, and retailers. The Comptroller's Office advises that FED investigators impose sanctions under the bill that are prosecuted in District Court. FED has 9 inspectors and 16 agents who routinely inspect cigarette retailers; during fiscal 2009, the division conducted about 4,100 such inspections.

According to the Comptroller's Office, some retailers have on-site rolling machines that customers may use to produce a cigarette using roll-your-own tobacco. The bill requires cigarettes produced by a rolling machine to be in a package of 20 cigarettes; the package must have a tax stamp affixed to it as required for cigarettes sold in the State.

Baltimore City prohibits the sale or distribution of unpackaged cigarettes. Violators in Baltimore City are subject to a fine of $150.

State Revenues: General fund revenues increase minimally from cases heard in the District Court as a result of (1) the bill's monetary penalty provision; and (2) greater application of current penalty provisions.

The Comptroller's Office advises that a retailer who sells unpackaged cigarettes produced in a tobacco rolling machine may be paying the OTP tax on these cigarettes instead of the cigarette tax, which typically is higher. The bill clarifies that the cigarette tax is imposed in these instances. Legislative Services advises that any impact on State finances due to this change is expected to be minimal.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Baltimore City's revenues may decrease as enforcement by FED may uncover offenses in Baltimore City that would have been handled by local law enforcement; the effect on Baltimore City's finances is expected to be minimal.

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from $57 to $157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Department of Legislative Services

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