

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 1339 (Delegate Glenn)
 Economic Matters

Business Regulation - Restaurants - Prohibition on Automatic Gratuity

This bill prohibits a restaurant from adding an automatic gratuity to the invoice of a party that includes fewer than 10 guests.

Fiscal Summary

State Effect: General fund expenditures increase by \$67,500 in FY 2011 for investigation and enforcement by the Division of Consumer Protection of the Office of the Attorney General (OAG). Out-years reflect annualization and inflation. General fund revenues increase minimally beginning in FY 2011 due to fines assessed against restaurants that do not comply with the bill’s provisions.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
GF Expenditure	\$67,500	\$80,500	\$84,100	\$88,000	\$92,000
Net Effect	(\$67,500)	(\$80,500)	(\$84,100)	(\$88,000)	(\$92,000)

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

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: Restaurants that are found to have added an automatic gratuity to an invoice receive a warning for a first offense, are subject to a civil penalty of up to \$500 for a second offense, and are subject to a civil penalty of up to \$5,000 for subsequent offenses. Each invoice on which a restaurant includes an automatic gratuity

is considered a separate offense. The Division of Consumer Protection within OAG is responsible for enforcement of the bill's provisions.

Current Law/Background: Restaurants in the State are not currently restricted from including an automatic gratuity on customer invoices. State law does require restaurants to pay sales tax on automatic gratuities collected from parties with 10 or more guests.

The Restaurant Association of Maryland advises that many restaurants in the State have policies whereby an automatic gratuity is added to a restaurant invoice for certain types of parties, particularly larger parties. Such a policy is usually determined by the size of a restaurant and how much business it conducts. Many restaurants establish such a policy for parties with six or more guests because a party of this size requires more coordination among the staff members of a restaurant.

State Expenditures: The Restaurant Association of Maryland advises that there are over 9,600 restaurants in the State. It is unknown how many of these are full-service restaurants or fast food, carry-out, or cafeteria-style restaurants. Legislative Services assumes that there may be as many as 5,000 full-service restaurants in the State. It is assumed that the majority of these restaurants have established automatic gratuity policies for parties of fewer than 10 guests.

The number of violations of the bill cannot be reliably estimated and depends on the level of compliance among restaurants and consumer awareness of the bill's provisions. However, OAG advises that it likely receives more than 50 complaints annually due to the bill and must file for the penalty. The division cannot handle this workload with existing resources and requires an additional half-time fraud investigator and a half-time assistant Attorney General to investigate complaints, mediate disputes, and petition the courts to obtain fines against noncompliant restaurants. Therefore, general fund expenditures increase by \$67,523 in fiscal 2011 for the additional staff and operating expenses; this estimate reflects the bill's October 1, 2010 effective date.

Positions	1.0
Salary and Fringe Benefits	\$54,004
Operating Expenses	<u>13,519</u>
Total FY 2011 State Expenditures	\$67,523

Future year expenditures reflect full-year part-time salaries with 4.4% annual increases, 3% employee turnover, and 1% increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Restaurant Association of Maryland, Baltimore City, Montgomery County, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2010
ncs/mcr

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