Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 82 (Chair, Finance Committee)(By Request - Departmental - Comptroller)

Finance Economic Matters

Commercial Law - Sales of Unpackaged Cigarettes - Prohibitions and Penalties

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This departmental 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. Violators are guilty of a misdemeanor and are subject to a maximum $500 fine and/or imprisonment for up to three months. The bill does not apply to an individual who produces unpackaged cigarettes for his or her own consumption by using a mechanical rolling machine or a hand rolling device or procedure.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and potential minimal increase in general fund expenditures due to the bill's penalty provisions. 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 in Baltimore City 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: The Comptroller's Office has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

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.

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 investigating cigarette smuggling, enforcing trader's license violations, collecting delinquent sales and use taxes, and conducting routine inspections of licensed tobacco establishments (*i.e.*, manufacturers, wholesalers, and retailers). The Comptroller's Office advises that FED investigators impose sanctions under the bill that are prosecuted in District Court. FED's enforcement unit includes 21 sworn police officers, 18 field agents, and 3 agent supervisors. FED conducted about 4,200 inspections of cigarette retailers in the State in fiscal 2010 and confiscated roughly 141,000 packs of untaxed or contraband cigarettes.

The bill's penalty provisions are consistent with the penalty established for individuals found to be in possession of less than 30 cartons of unstamped cigarettes. Baltimore City prohibits the sale or distribution of unpackaged cigarettes. Violators in Baltimore City are subject to a fine of $500.

State Revenues: General fund revenues increase minimally, as a result of the bill's monetary penalty provision from cases heard in the District Court. *For illustrative purposes only*, the Comptroller's Office advises that FED may successfully prosecute 50 violations per year as a result of the bill. Thus, general fund revenues may increase by $25,000 annually, assuming the imposition of a maximum monetary fine in each case.

State Expenditures: General fund expenditures may 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 may 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 have ranged from $57 to $157 per inmate in recent years.

Additional Information

Prior Introductions: HB 1558 of 2010, which included similar provisions, passed the House but received an unfavorable report from the Senate Finance Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 1, 2011
ncs/ljm Revised - Senate Third Reader - March 21, 2011

Analysis by: Michael T. Vorgetts

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Commercial Law – Sales of Unpackaged Cigarettes – Prohibitions and Penalties

BILL NUMBER: SB 82

PREPARED BY: Comptroller

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.