

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 632 (Senator Montgomery, *et al.*)
Finance and Judicial Proceedings

Criminal Law - Flavored Cigars - Prohibition on Sale

This bill prohibits a person from selling, distributing, or offering to sell or distribute a flavored cigar. This prohibition does not apply to (1) a cigarette; or (2) a premium cigar that sells at retail for at least \$2 and is sold by a retail tobacco business in which the primary activity is the sale of tobacco products and accessories and the sale of other products is incidental. A violator is guilty of a misdemeanor and on conviction is subject to a fine of \$500. Furthermore, the Comptroller may deny a cigarette business license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee sells or distributes cigars in violation of the bill.

The bill takes effect July 1, 2012. However, cigars for which the tobacco tax has been paid on or before June 30, 2012, may continue to be sold until December 31, 2012.

Fiscal Summary

State Effect: Because the Comptroller's Office advises that first-time violators are typically issued a letter of reprimand rather than a fine and that licenses are rarely suspended or revoked, the bill's penalty provisions are not expected to materially affect governmental finances or operations. Enforcement can be handled with existing resources.

Local Effect: The bill's penalty provisions are not expected to materially affect governmental finances or operations.

Small Business Effect: Because the bill provides for phasing out of existing stock, any decrease in small business revenues is expected to be minimal.

Analysis

Bill Summary: A “flavored cigar” is defined as any cigar or component part of a cigar that contains a constituent or component part that imparts a characterizing flavor, taste, or aroma – not including menthol, mint, or wintergreen – to the tobacco or the smoke of the cigar. Under the bill, “flavored cigar” includes a cigar that is advertised, labeled, packaged, or promoted to distinguish the flavor, taste, or aroma of the cigar from other tobacco products of the same type (other than by distinguishing physical characteristics of the cigar).

The bill may not be construed to preempt a county or municipal government from enacting and enforcing more stringent measures restricting the sale of flavored cigars.

Current Law: In general, a person may not act or offer to act as a manufacturer, retailer, storage warehouse, or wholesaler of cigarettes or other tobacco products in the State without an appropriate license. The Comptroller is authorized to deny a license to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another person;
- fraudulently or deceptively uses a license;
- fails to comply with the Maryland Cigarette Sales Below Cost Act;
- violates prohibitions against sales of fewer than 20 cigarettes per package;
- illegally buys cigarettes for resale;
- is convicted of a felony or misdemeanor that is a crime of moral turpitude directly related to the licensee or applicant’s fitness or qualification; or
- fails to pay a tax due.

The federal Family Smoking Prevention and Tobacco Control Act (FSPTCA) of 2009 prohibits the sale of cigarettes and their component parts that contain, as a constituent or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice that is a characterizing flavor of the tobacco product or tobacco smoke.

The definition of a cigarette, as established by FSPTCA, applies to tobacco products that are likely to be offered to or purchased by consumers as a cigarette (or as roll-your-own tobacco) based on appearance, packaging, or the type of tobacco used in the filler. This definition has resulted in some tobacco products being considered cigarettes even if they are labeled as cigars.

A person who violates FSPTCA by selling flavored cigarettes may be fined up to \$15,000 per violation, but not more than \$1,000,000 for all such violations adjudicated in a single proceeding.

Additional Information

Prior Introductions: SB 973 of 2010, a similar bill, was heard in the Senate Judicial Proceedings Committee but received no further action. HB1558 of 2008, another similar bill, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Baltimore City, Montgomery and Worcester counties, Department of Health and Mental Hygiene, Comptroller's Office, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Department of Legislative Services

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