

Department of Legislative Services
 Maryland General Assembly
 2014 Session

FISCAL AND POLICY NOTE

House Bill 405 (Delegate Cardin, *et al.*)
 Economic Matters

Environment - Sales of Nonbiodegradable Cigarettes - Prohibited

This bill prohibits a person from offering for sale or selling a cigarette in Maryland unless the cigarette, including the filter, is biodegradable. The bill establishes civil penalties for violations and authorizes the Attorney General to bring an action to enjoin an act in violation of the bill’s prohibition and to recover civil penalties.

The bill takes effect January 1, 2015.

Fiscal Summary

State Effect: General fund revenues decrease significantly (by *as much as* \$219.4 million in FY 2015 and approximately \$435.0 million annually thereafter) due to a significant reduction in the sale of cigarettes. General fund expenditures increase by \$1.4 million in FY 2015 for the Maryland Department of the Environment (MDE) to enforce the bill and for the Comptroller’s Office to address anticipated increases in cigarette smuggling. Future years reflect annualization and inflation.

(\$ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$1.4	\$1.3	\$1.3	\$1.4	\$1.4
Net Effect	(\$1.4)	(\$1.3)	(\$1.3)	(\$1.4)	(\$1.4)

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

Local Effect: The bill is not anticipated to significantly affect local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A person who violates the bill's prohibition is subject to a civil penalty of up to \$200 for each package of cigarettes sold or offered for sale in violation of the bill's prohibition.

Current Law/Background:

Tobacco Taxes in Maryland

Cigarettes are taxed at a rate of \$2.00 per pack. Other tobacco products (OTP) are taxed at 30% of the wholesale price for all products, except cigars. The tax rate for cigars that are classified as premium cigars equals 15% of the wholesale price; all other cigars are taxed at 70% of the wholesale price. Cigarette and OTP tax revenues accrue to the general fund. In addition, the State sales tax rate of 6% is imposed on the final retail price of cigarettes and other tobacco products.

The tobacco tax does not apply to tobacco products or cigarettes brought into the State by a *nonresident* consumer traveling through the State if the quantity of cigarettes does not exceed one carton or the retail value of other tobacco products does not exceed \$25. For any other consumer to be exempt from the tobacco tax, the quantity of cigarettes must not exceed two packages and the retail value of other tobacco products must not exceed \$5.

Additionally, the tobacco tax does not apply to cigarettes or other tobacco products brought into the State from a U.S. Armed Forces installation or reservation by a consumer member who is a member of the U.S. Armed Forces (and is entitled by law to make a purchase at a U.S. Armed Forces exchange) if the quantity of cigarettes does not exceed two cartons and the retail value of other tobacco products does not exceed \$50. For any other consumer to be exempt from the tobacco tax on products bought at a U.S. Armed Forces exchange or commissary, the quantity of cigarettes must not exceed two packages and the retail value of other tobacco products must not exceed \$5.

In fiscal 2015, tobacco tax revenues are projected to total \$371.5 million, and OTP tax revenues are anticipated to total \$40.5 million.

Further, current law specifies that an individual who willfully ships, imports, sells into or within, or transports within the State cigarettes or OTPs on which the tobacco tax has not been paid in violation of specified laws is guilty of a felony and, on conviction, is subject to a fine of up to \$50 for each carton of cigarettes or each package of OTPs transported, or imprisonment for up to two years, or both.

The Comptroller enforces all of these provisions and pays any fines collected into the general fund.

Under the Business Regulation Article, a license is required whenever a person acts as a manufacturer, retailer, storage warehouse, subwholesaler, vending machine operator, or wholesaler in the State, unless the person acts as a retailer at a vending stand operated under a trader's license issued to Blind Industries and Services of Maryland.

Background: Cigarette filters are almost exclusively made from cellulose acetate, which is plastic. The tobacco leaves and the paper binding the cigarette are generally biodegradable, but the filters, which are discarded with the rest of the "butt" are not. According to *Webster's Dictionary*, "biodegradable" means something that is capable of being readily decomposed by the action of microbes, like bacteria. "Biodegradable" is not defined in the Environment Article.

According to "Cigarette Butts and the Case for an Environmental Policy on Hazardous Cigarette Waste," an article published in the *International Journal of Environmental Research and Public Health*, cigarette filters were introduced in the 1950s with the intent to reduce the amount of tar and nicotine inhaled while smoking cigarettes. Today, nearly all (99%) smokers use filtered cigarettes. This accounts for an estimated 1.69 billion pounds (845,000 tons) of cigarette butt litter worldwide.

The National Cancer Institute reports that evidence shows no indication that filters have benefitted public health since they were introduced 50 years ago. Further, there is no evidence that switching to light or ultra-light cigarettes actually assists smokers in quitting. Instead, smokers who use light or ultra-light cigarettes compensate by covering vent holes that dilute smoke in some light cigarettes; by inhaling more deeply; taking larger, more rapid, or more frequent puffs; or by smoking more cigarettes each day.

To date, no state has enacted a ban on nonbiodegradable cigarettes. Legislation has been introduced in California during the 2013-2014 legislative session that would prohibit the sale, gifting, or transfer of any kind of a cigarette with a single-use filter made of any material, whether biodegradable or not.

State Revenues: If manufacturers are unable to produce or market biodegradable cigarettes for Maryland consumers by January 1, 2015, the bill has the *potential* to reduce general fund revenues by as much as \$219.4 million in fiscal 2015 from lost sales and excise taxes on cigarette sales. This foregone revenue increases in fiscal 2016 through 2019 due to annualization. The possible tax revenue losses are illustrated in **Exhibit 1**.

Exhibit 1
Maximum Possible Revenue Losses
(\$ in Millions)

<u>Type of Tax</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Sales	\$36.4	\$73.9	\$75.0	\$76.1	\$77.2
Excise	183.0	363.3	361.2	359.1	357.0
Total	\$219.4	\$437.2	\$436.2	\$435.2	\$434.2

General fund revenues may increase minimally from enforcement of current law provisions related to smuggling and from any penalties assessed under the bill; however, any fine revenue likely only slightly offsets the anticipated tax revenue losses.

State Expenditures: General fund expenditures increase by a total of approximately \$1.4 million in fiscal 2015 for MDE to enforce the bill's prohibition and for the Comptroller to address an anticipated increase in cigarette smuggling as a result of the bill, as described below. Future year estimates are annualized and adjusted for inflation.

Maryland Department of the Environment

Under current law, the Secretary of the Environment is required to carry out and enforce all of the provisions of the Environment Article. Thus, MDE is required to enforce the bill's prohibition. As a result, general fund expenditures increase by \$273,419 in fiscal 2015. This estimate reflects the cost of hiring three environmental compliance officers, one office secretary, and a part-time assistant Attorney General. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate assumes an October 1, 2014 hiring date so that the enforcement program is in place prior to the January 1, 2015 effective date of the bill's prohibition.

Positions	4.5
Salaries and Fringe Benefits	\$201,660
Automobile/Equipment Purchase	59,234
Operating Expenses	<u>12,525</u>
Total FY 2015 MDE Expenditures	\$273,419

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Comptroller's Office

General fund expenditures for the Comptroller's Office increase by \$1.1 million in fiscal 2015. This estimate reflects the cost of hiring 12 field enforcement agents to address the significant increase in cigarette smuggling that is anticipated as a result of the bill's prohibition. It includes salaries, fringe benefits, one-time start-up costs (including the purchase of automobiles), and ongoing operating expenses. The estimate assumes an October 1, 2014 hiring date so that the additional field enforcement agents are in place prior to the January 1, 2015 effective date of the bill's prohibition.

Positions	12
Salaries and Fringe Benefits	\$693,423
Automobile/Equipment Purchase	328,440
Operating Expenses	<u>59,220</u>
Total FY 2015 Comptroller Expenditures	\$1,081,083

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Future year estimates do not include any costs for ongoing automobile operations and maintenance; thus, costs are likely higher.

Other

It is assumed that the bill does not materially affect the Office of the Attorney General or the Judiciary.

Small Business Effect: Although cigarette manufacturers may develop biodegradable cigarettes as a result of the bill, it is not clear when or if that may happen. Thus, cigarette sales decrease as a result of the bill. Further, although the bill does not take effect until January 1, 2015, it does not allow for any phasing out of existing stock beyond the delayed effective date.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment; Department of Health and Mental Hygiene; Comptroller's Office; Maryland Association of Counties; The Tobacco Control Legal Consortium; U.S. National Library of Medicine, National Institutes of Health, *Cigarette Butts and the Case for an Environmental Policy on Hazardous Cigarette Waste*; California Legislature; Department of Legislative Services
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