

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1159
Economic Matters

(Delegate Vitale, *et al.*)

Finance

Cigarettes - County Retail License Holder - Prohibited Sales

This bill prohibits a person who holds a county license to sell cigarettes at retail from selling herbal incense or potpourri that includes a noncontrolled substance with a chemical structure that is substantially similar to a controlled dangerous substance (*i.e.*, synthetic marijuana products). A violator is guilty of a misdemeanor and on conviction subject to a fine of up to \$300 for a first violation, \$1,000 for a second violation within two years, and \$3,000 for a third or subsequent violation within two years of a preceding violation. The bill authorizes the Office of the Comptroller's Field Enforcement Division to enforce the bill.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's penalty provisions for those cases heard in the District Court. Any additional inspections of county license holders and enforcement can be handled by the Office of the Comptroller within existing budgeted resources.

Local Effect: Potential minimal increase in revenues due to the bill's penalty provisions for those cases heard in the circuit courts. No effect on expenditures.

Small Business Effect: Potential meaningful. Small businesses holding a county license to sell cigarettes at retail may be subject to additional penalties (including loss of their license); moreover, the bill does not allow for any phasing out of existing stock.

Analysis

Current Law: To sell cigarettes at retail in a county, a person must have a county license for each place of business and each vending machine, if applicable. For each county license, an applicant must submit an application to the clerk and pay a fee of \$25 (\$50 in Cecil County). A license is valid for one year.

Subject to hearing provisions, the Comptroller may deny a county license to an applicant, reprimand a county licensee, or suspend or revoke a county licensee if the applicant or licensee (1) fraudulently or deceptively obtains or attempts to obtain a license for the applicant or another person; (2) fraudulently or deceptively uses a license; or (3) fails to comply with the Maryland Cigarette Sales Below Cost Act and related regulations. A person who violates these provisions is guilty of a misdemeanor and on conviction is subject to a fine of \$100.

Controlled dangerous substances are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. A noncontrolled substance is a substance not classified as a controlled dangerous substance under the State's schedules.

A person may not distribute, attempt to distribute, or possess with intent to distribute a noncontrolled substance (1) that the person represents as a controlled dangerous substance; (2) that the person intends for use or distribution as a controlled dangerous substance; or (3) under circumstances where one reasonably should know that the noncontrolled substance will be used or distributed for use as a controlled dangerous substance. A violator is guilty of a felony, punishable by imprisonment for up to five years and/or a fine of up to \$15,000.

Under federal law, a "controlled substance analogue" means a substance (1) with a chemical structure that is substantially similar to the chemical structure of a controlled substance in Schedule I or II; (2) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or (3) that is represented by or intended by a person to have a stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II. A controlled substance analogue must be treated for the purposes of any federal law as a Schedule I controlled substance if the substance is intended for human consumption. Common criticisms of the Federal Analogue Act are that its "substantially similar" standard is vague and that the requirement that the substance be intended for human consumption can be easily countered by a person facing prosecution, since substances like bath salts are often packaged and marketed as beauty products.

Under the State's Schedule I statute, a "controlled dangerous substance analogue" means a substance (1) that has a chemical structure substantially similar to the chemical structure of a controlled dangerous substance listed in Schedule I or Schedule II and (2) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled dangerous substance listed in Schedule I or Schedule II. "Controlled dangerous substance analogue" does not include (1) a controlled dangerous substance; (2) a substance for which there is an approved new drug application; or (3) a substance exempted for investigational use under § 506 of the Federal Food, Drug, and Cosmetic Act. To the extent intended for human consumption, each controlled dangerous substance analogue is a substance listed in Schedule I.

Background: In recent years, the public has seen the proliferation of new synthetic, designer drugs, with innocent names like "bath salts," "spice," and "smiles," that until recently could be found at local convenience stores or smoke shops and remain widely available over the Internet. The popularity and availability of these substances has grown, and criminal enforcement of the sale and possession of these substances has been challenging, since manufacturers can elude legal bans on products by making slight changes to their chemical structures.

On July 9, 2012, President Obama signed the Synthetic Drug Abuse Prevention Act of 2012. This legislation bans compounds found in synthetic stimulants, synthetic marijuana, and synthetic hallucinogens. These designer drugs are now on the U.S. Drug Enforcement Agency's list of Schedule I controlled dangerous substances, making it a federal crime to manufacture, possess, distribute, import, or export these chemicals or products containing them. In announcing the signing of the Act, the Office of National Drug Control Policy encouraged states that have not already done so to incorporate these substances into their state drug schedules "to ensure that state law enforcement agencies have full authority to act against these substances."

In 2012, Maryland enacted Chapter 384, adding the chemical compounds in "bath salts" to the State's Schedule I. Additionally, under Maryland law, if the federal government places a substance on Schedule I, it is automatically considered a Schedule I substance in the State unless the Department of Health and Mental Hygiene (DHMH) objects to the designation. Since DHMH has not raised an objection, the synthetic cannabinoids and hallucinogens designated by federal law as Schedule I substances are illegal in Maryland.

In 2013, Maryland enacted Chapter 442 of 2013, adding "cannabimimetic agents," also referred to as "spice" or "K2," to the State's list of Schedule I controlled dangerous substances. A product must be intended for human consumption to be considered part of Schedule I.

However, manufacturers of herbal incense or potpourri containing cannabimimetic agents have been able to continue selling such products by labeling the packages as “not for human consumption.” The bill is intended to require a person who holds a county license to sell cigarettes at retail to choose between selling tobacco products or synthetic marijuana products.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Comptroller’s Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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