

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1103
Economic Matters

(Delegates Rosenberg and Feldman)

Business Regulation - Storage and Display of Tobacco-Related Products

This bill requires businesses that sell “tobacco-related products” to store or display these items so that they are only accessible to the business owner or an employee and not accessible to customers. Persons who violate the bill’s provisions are subject to a civil penalty of \$300 for a first offense, and \$500 for any subsequent offense that occurs within 24 months.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues due to the repeal of a penalty provision related to tobacco vending machines operations; because the application of the penalty occurs so rarely, the effect on State finances is negligible. Any increase in the workload of the District Court is expected to be minimal and can likely be handled with existing resources.

Local Effect: Potential minimal increase in revenues due to the bill’s penalty provisions for most jurisdictions. Potential minimal decrease in revenues in Carroll, Cecil, Garrett, and St. Mary’s counties due to repealed civil penalty provisions. Local government expenditures are not materially affected by the bill.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: County health officers may issue a civil citation to enforce the bill. A citation must include specified information, including (1) that the cited person has a right to contest the matter in District Court; and (2) a warning that failure to pay the civil

penalty may result in a default judgment that may include the civil penalty, court costs, and administrative expenses. The bill establishes a procedure to allow for persons to contest a citation in District Court. All penalties or forfeitures collected by the District Court are remitted to the county in which the violation occurred.

The bill does not apply to displays, or tobacco-product vending machines, located in specified businesses where no one younger than age 18 is allowed. The bill does not preempt county or municipal laws that are more stringent than the provisions included in the bill. The provisions of the bill are intended to be consistent with the federal Smoking Prevention and Control Act and any resulting regulations.

The bill repeals provisions of law that apply in Carroll and Garrett counties relating to the display of tobacco products in retail locations. The bill also repeals provisions unrelated to the display of tobacco products that apply in Carroll, Cecil, Garrett, and St. Mary's counties whereby persons who distribute tobacco products, cigarette rolling papers, and tobacco-related coupons to minors are subject to civil penalties. Finally, the bill repeals provisions related to the operation of tobacco vending machines.

Current Law: In Carroll and Garrett counties businesses may not store or display tobacco products unless they are not immediately accessible to customers and only accessible to business owners or employees. These provisions do not apply to (1) the sale of tobacco products from vending machines that comply with State law; (2) tobacconist establishments that engage primarily in the sale of tobacco products other than cigarettes; and (3) businesses that primarily engage in the sale of beer, wine, and liquor. Persons who violate these provisions are guilty of a civil infraction and are subject to a civil penalty of \$100 for a first offense and \$300 for subsequent violations. An additional citation may be issued for each day that the violation continues after the second citation.

In general, persons who distribute tobacco products, cigarette rolling papers, and tobacco-related coupons to minors in Carroll, Cecil, Garrett, and St. Mary's counties are subject to civil penalties ranging between \$300 and \$750 for first and subsequent offenses.

Tobacco product placement laws have been enacted in many jurisdictions, including Howard, Montgomery, and Prince George's counties and Baltimore City.

A vending machine operator may not dispense tobacco products from a vending machine unless the vending machine is in an establishment (1) that minors are prohibited by law from entering; or (2) an establishment that is a fraternal or veterans' organization. Vending machines may only be operated with a card, token, or similar device. Persons who violate provisions related to the operation of tobacco vending machines are guilty of a misdemeanor and subject to a fine of \$100.

Background: Money from the Cigarette Restitution Fund (CRF) is used in part for enforcement of tobacco control laws in each county. The Governor's proposed fiscal 2011 budget includes \$3.7 million in local public health programs funded by CRF that must be targeted toward community outreach and education, school-based activities, cessation, and enforcement. County sheriff's offices use the enforcement funds to perform compliance checks on tobacco retailers.

The Family Smoking Prevention and Tobacco Control Act of 2009 gives the U.S. Food and Drug Administration the power to regulate the tobacco industry. One element of the law imposes new warnings and labels on tobacco packaging, with the goal of discouraging minors and young adults from smoking.

State Fiscal Effect: The Judiciary advises its expenditures increase due to the costs of printing revised civil citations for distribution to local agencies with enforcement authority. Legislative Services assumes that any increase in related expenditures is minimal and can be handled with existing resources. The Department of Health and Mental Hygiene (DHMH) advises that enforcement of the bill will be done based on complaints of possible violations. Moreover, because several major jurisdictions in the State have similar or more stringent regulations in place, the number of additional cases received by the District Court due to the bill is expected to be minimal.

The Comptroller's Office advises that there have been few, if any, penalties issued related to the operation of tobacco vending machines in recent years. Given the rarity of the violations, and the minimal amount of the fine, any effect on State revenues is expected to be negligible.

Local Fiscal Effect: Revenues in some jurisdictions may increase minimally under the bill's monetary penalty provisions. However, fine revenues may decrease in Carroll, Cecil, Garrett, and St. Mary's counties as the bill repeals penalty provisions for persons who distribute tobacco products to minors.

DHMH advises that existing local health department (LHD) enforcement activities already target retail locations encompassed by the bill; the bill merely requires an additional inspection item. Thus, the bill does not affect the operations or finances of LHDs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, Montgomery, and Somerset counties; Comptroller's Office; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - March 16, 2010
mpc/ljm

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