

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 973

(Senator Madaleno)

Judicial Proceedings

Criminal Law - Flavored Cigars - Prohibition on Sale

This bill prohibits the sale of flavored cigars and flavored components of cigars. This prohibition does not apply to tobacco or menthol flavoring imparted prior to or during consumption. Any person who distributes or sells flavored cigars is guilty of a misdemeanor and subject to a fine of \$500.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's penalty provision and potential minimal decrease in tobacco tax revenues. The Comptroller's Office advises that any additional enforcement resulting from the bill is expected to be minimal and can be handled with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill prohibits the sale or distribution of a cigar or cigar component that contains a natural or artificial "constituent" that imparts a flavor to the tobacco or the smoke of a cigar. The bill prohibits any ingredient or substance that imparts a distinguishable taste or aroma other than tobacco or menthol. A "constituent" is defined as any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to the tobacco, paper, or

filter of a cigar during the processing, manufacture, or packing of the cigar and includes a smoke constituent.

The Comptroller may deny a cigarette business license to an applicant or reprimand, suspend, or revoke a license of a licensee who sells or distributes flavored cigars. Any cigar for which the tobacco tax has been paid before June 30, 2010, may be sold until December 31, 2010, without respect to the provisions of the bill.

Current Law: In general, a person may not act or offer to act as a cigarette manufacturer, retailer, storage warehouse, subwholesaler, vending machine operator, or wholesaler in the State unless the individual has an appropriate license. The Comptroller can deny a license to an applicant, reprimand a licensee, or suspend or revoke a license for:

- fraudulently or deceptively obtaining or attempting to obtain a license for another person;
- fraudulently or deceptively using a license;
- failing to comply with the Maryland Cigarette Sales Below Cost Act;
- violation of cigarette sales of less than 20 per package;
- illegally buying cigarettes for resale;
- a felony conviction or a misdemeanor that is a crime of moral turpitude directly related to the fitness or qualification of the licensee or applicant; or
- failing 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 – including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee – 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 their appearance, packaging, or the type of tobacco used in the filler. Such a wide definition results in some tobacco products being considered cigarettes even if they are labeled as cigars.

Persons who violate 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 Comments: Businesses in the State that exclusively sell cigars, or any tobacco products other than cigarettes, may operate in the State without a cigarette business license. Thus, the disciplinary action that may be taken by the Comptroller against a person's cigarette business license if the person violates the bill only applies if the person sells cigarettes and has a cigarette business license; such action cannot be applied to persons, such as a specialty cigar store, that only sell other tobacco products. The Comptroller's Office advises that it is unlikely that the agency would be able to take any regulatory action against a person who violates the bill if the person only sells other tobacco products.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): *U.S. News and World Report*, U.S. Food and Drug Administration, Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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