

Department of Planning and Budget 2009 Fiscal Impact Statement

1. Bill Number: SB 1302

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☒ Substitute ☐ Enrolled

2. Patron: Senator R. Hurt

3. Committee: House Courts of Justice

4. Title: Master Settlement Agreement; makes several changes to enhance criminal enforcement activities

5. Summary:

SB 1302 makes several changes to enhance criminal enforcement activities. The bill provides that any tobacco product manufacturer, stamping agent, or importer of cigarettes, or any officer, employee, or agent of any such entity, who knowingly makes any materially false statement in reports, documents, and tax returns required for the Cigarette Tax or Tobacco Products Tax, or to be filed or kept under the Master Tobacco Settlement Agreement, shall be guilty of a Class 6 felony under §18.2-498.3 of the *Code of Virginia*. The Attorney General is authorized to prosecute such cases.

The bill also requires persons to file cigarette delivery sales information with the Attorney General in addition to the current requirement that such information be filed with the Virginia Alcoholic Beverage Control Board. The bill adds criminal penalties for failure to file the required information; under current law all penalties are civil. The Attorney General is authorized to assess the civil penalties and prosecute criminal violations.

In addition, the bill includes within the definition of "racketeering activity" the filing of false reports under the Tobacco Product Manufacturers Act, of false reports of cigarette delivery sales, and of false tobacco tax reports.

6. Fiscal Impact Estimates: Final, see Item 8.

7. Budget Amendment Necessary: No

The additional revenue from this bill is deposited into the Health Care Fund, which supports the Commonwealth's Medicaid program. If the additional revenue exceeds the appropriation, general fund dollars would be freed up. However, the revenue needs to be collected before the Department of Planning and Budget can make this determination.

8. Fiscal Implications:

Expenditure Implications: this bill has a potential for an expenditure impact in at least four areas of the Commonwealth:

Office of the Attorney General (OAG).

The OAG reports there is no additional need for staff or resources to implement this bill.

Alcoholic Beverage Control Board (ABC).

The ABC reports that it does not anticipate any additional workload and therefore, expenditure impact from this bill at this time. Their position is that any budget impact is contingent on the level of activity that results from implementation of this bill. The ABC has no ability to absorb any costs.

Department of Taxation (Tax).

Tax reports that based on their understanding of the bill, they won't need any additional staff to carryout their responsibilities.

Expenditure Impact on Correctional System

Because the proposed legislation would establish a crime punishable with a sentence of up to five years in prison, it could result in additional inmates in the state's prisons. The bill also establishes a misdemeanor. The Code of Virginia states that any unclassified misdemeanor shall be punished as a Class 1 misdemeanor. Anyone convicted of a Class 1 misdemeanor may be sentenced to up to 12 months in jail.

Due to the lack of data, the Virginia Criminal Sentencing Commission has determined, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. A more detailed report is posted to the bill in the Legislative Information System.

Revenue Implications:

The purpose of the proposal is to retain and revenues paid to the Commonwealth under the Master Tobacco Settlement Agreement (MSA) and increase revenues generated by the cigarette excise tax. The following agencies and political subdivisions would benefit from any increase in revenues, and correspondingly be impacted by any decreases: Department of Medical Assistance Services, because 40 percent of the allocation from the MSA goes to support Medicaid, the Tobacco Foundation, which receives 10 percent of the MSA allocation for reduced smoking grant programs, and the Tobacco Indemnification and Recovery Commission (TICR), which receives 50 percent. However, the TICR funds have been securitized so any additional funding goes to the bond holders.

Non-participating Manufacturer Adjustment: Currently the Commonwealth receives approximately 2.044 percent of the MSA, or \$134 million per year. According to the OAG, if the market share of a participating manufacturer drops to a certain point, MSA payments to the Commonwealth could be reduced in the range of approximately \$3.2 million per year to as much as the full \$134.0 million annual payment. Virginia could be in this position without more effective enforcement.

Cigarette Tax Fraud: According to the OAG, the Commonwealth loses money to fraudulent activities in the industry including misuse of the tax stamp and unreported internet sales. The OAG believes that when these practices are corrected by the proposal, the revenues from the cigarette tax will increase.

According to the Department of Taxation, their Tobacco Enforcement Unit activities have been focused on ensuring voluntary compliance by established cigarette stamping agents. Inspections of cigarette stamping agents and cigarette retailers have indicated strong taxpayer compliance with stamping requirements. Enhanced criminal enforcement efforts by the OAG that identify illegal activities and unreported cigarette sales would likely result in an increase in tax revenues. The extent of the increase however, cannot be projected.

Health Care Fund: According to Tax, the additional, taxes, penalties, and interest, the revenues would be deposited into the Health Care Fund, which supports the Medicaid program. To the extent the additional revenue offsets the necessary appropriation, general fund dollars would become available. However, the Department of Planning and Budget needs to see the level of revenue before the determination can be made.

9. Specific Agency or Political Subdivisions Affected:

Office of the Attorney General
Alcoholic Beverage Control Board
Department of Taxation
Department of Medical Assistance Services
Tobacco Settlement Foundation
Tobacco Indemnification and Recovery Commission
Court System

10. Technical Amendment Necessary: No

11. Other Comments: While the impact on the correctional system is estimated by the Criminal Sentencing Commission to be zero due to a lack of data, any references in the bill to the impact required by §30-19.1:4 appear to be missing.

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