



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2056 (Patron – Herring)

LD#: 13102142

Date: 12/21/2012

Topic: Counterfeit cigarettes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal amends several sections in the *Code of Virginia* relating to Cigarette Delivery Sale Requirements (Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2). First, the proposal creates criminal penalties under § 18.2-246.14 for distributing or possessing counterfeit cigarettes. Under the proposal, a person who knowingly distributes or possesses with intent to distribute less than 10 cartons of counterfeit cigarettes would be guilty of a Class 1 misdemeanor for the first offense and a Class 6 felony for a second or subsequent violation. If a person knowingly distributes or possesses with intent to distribute 10 or more cartons of counterfeit cigarettes, he would be guilty of a Class 6 felony. This statute currently prescribes only civil penalties; the proposal modifies § 18.2-246.13 to specify that the existing civil penalties would apply in addition to any criminal penalties for violations of this article. Modifications to §§ 18.2-246.15 and 19.2-245.01 reaffirm that the Attorney General may prosecute criminal violations under this article and such prosecutions may take place in the City of Richmond.

Analysis:

According to data from the General District Court Automated Information System (CAIS) for fiscal year (FY) 2010 through FY2012, there were no convictions for misdemeanor violations of § 18.2-246.13 (first offense fail to register before delivery of cigarettes or fail to report cigarette delivery). According to FY2010 through FY2012 Circuit Court CAIS data, there were also no convictions for felony violations of § 18.2-246.13 (second or subsequent delivery violations, false statement filed).

Impact of Proposed Legislation:

State adult correctional facilities. By defining new Class 6 felony offenses, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Data are not available to

estimate the number of additional felony convictions that would result from the proposal; therefore, the magnitude of the impact on prison beds cannot be determined.

Local adult correctional facilities. By defining a new Class 1 misdemeanor, the proposal may have an impact on local-responsible (jail) bed space needs, but the magnitude of the impact cannot be determined.

Adult community corrections programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be estimated, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. Convictions under the proposed § 18.2-246.14 would not be covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision can augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that the proposal may have an impact on juvenile correctional center bed space needs. However, the actual impact cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that, while the proposal may have an impact on juvenile detention bed space needs, the actual impact cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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