Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1230

Amendment in the Nature of a Substitute

(*Patron Prior to Substitute – Reeves)*

LD#: 15104773 **Date:** 2/5/2015

Topic: Tax-paid contraband cigarettes & fraudulent purchases

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**

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the 2014 Acts of Assembly, 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 numerous sections of the *Code of Virginia* relating to the distribution and sale of tobacco products. Specifically, the proposal makes several changes related to the licensing and regulation of tobacco product distributors and dealers and establishes misdemeanor penalties for violations of certain provisions. In addition, the proposed modifications to § 58.1-1017.1 decrease the number of cigarettes required for a felony conviction under the existing penalty structure. Currently, any person who possesses, with the intent to distribute, more than 5,000 (25 cartons) but less than 100,000 (500 cartons) tax-paid cigarettes is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense. A person who possesses, with intent to distribute, 500 or more cartons of cigarettes is currently guilty of a Class 6 felony for a first offense and a Class 5 felony for a second or subsequent offense.

Under the proposal, possession of more than 25 cartons but less than 200 cartons of tax-paid cigarettes with the intent to distribute would be a Class 1 misdemeanor for the first offense and a Class 6 felony for a second or subsequent offense. Any person who possesses, with intent to distribute, 200 or more cartons of tax-paid cigarettes would be guilty of a Class 6 felony for the first offense and a Class 5 felony for a second or subsequent offense.

The proposal also adds § 58.1-1017.3 to the *Code of Virginia*, related to the fraudulent purchase of cigarettes. Any person who purchases 5,000 (25 cartons) cigarettes or fewer using a forged business license, a forged or invalid tax exemption certificate, or a business license or tax exemption certificate that was obtained under false pretenses would be guilty of a Class 1 misdemeanor for the first offense and a Class 6 felony for a second or subsequent offense. The purchase of more than 25 cartons of cigarettes

in such a manner would be a Class 6 felony for the first offense and a Class 5 felony for a second or subsequent offense. In addition, the offender would be assessed a civil penalty ranging from $2.50 to $10.00 per pack, and prosecution under this statute would not preclude prosecution under any other statute.

Section 58.1-1017.1 was passed by the 2012 General Assembly and modified in 2013 to include Class 6 and Class 5 felony penalties. The felony amendments became effective on July 1, 2013.

Analysis:

Since the felony amendments to § 58.1-1017.1 became effective on July 1, 2013, the data available from the Circuit Court Case Management System (CMS) is only for fiscal year (FY) 2014. A felony conviction under § 58.1-1017.1 was the primary, or most serious, offense for three offenders in FY2014. While two of these offenders did not receive an active term of incarceration to serve after sentencing, the remaining offender was sentenced to a local-responsible (jail) term of four months.

Based on General District Court CMS data for FY2013 and FY2014, there were 149 Class 1 or Class 2 misdemeanor convictions under § 58.1-1017.1 for distribution of more than 25 cartons of tax-paid cigarettes. The vast majority (92.6%) did not receive an active term of incarceration to serve after sentencing. For the 7.4% who were given a local-responsible (jail) term, the median sentence was slightly more than one month.

Data from existing sources do not contain sufficient detail to determine the quantity of cigarettes involved. Sources are not available to identify the number of cigarette purchases involving the use of a forged business license, a forged or invalid tax exemption certificate, or a business license or tax exemption certificate that was obtained under false pretenses.

Impact of Proposed Legislation:

State adult correctional facilities. By adding new felony offenses relating to the fraudulent purchase of cigarettes under § 58.1-1017.3, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Also, by reducing the quantity of cigarettes needed for a felony conviction under § 58.1-1017.1, the proposal increases the penalty for distribution of 200 cartons to less than 500 cartons of tax-paid cigarettes from a Class 1 misdemeanor to a Class 6 felony. As a result, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. However, existing data sources do not contain sufficient detail to determine the number of cases that would be affected by the proposal. Therefore, the impact of the proposal on prison bed space needs cannot be quantified.

Local adult correctional facilities. The proposal may also increase local-responsible (jail) bed space needs; however, 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 additional offenders, the proposal may increase the need for adult community corrections resources. In addition, raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. The net impact on community corrections programs cannot be estimated.

Virginia's sentencing guidelines. Convictions under § 58.1-1017.1 are not covered by the sentencing guidelines as the primary (most serious) offense in a case. Similarly, convictions for the proposed felony offenses under § 58.1-1017.3 would not be covered by the sentencing guidelines. However, a conviction

under these provisions 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. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities 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 2 of the 2014 Acts of Assembly, 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.

cigarette06_4773