



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1390

Amendment in the Nature of a Substitute (Patrons Prior to Substitute – Howell and Norment)

LD#: 17104392 Revised

Date: 1/23/2017

Topic: Fraudulent purchase of 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 Direct Care:**
None (\$0) **
- **Juvenile Detention Facilities:**
None (\$0) **

** 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 780 of the 2016 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal adds § 58.1-623.2 to the *Code of Virginia* regarding the creation and issuance of cigarette exemption certificates. In addition to establishing policies and procedures governing the issuance of cigarette exemption certificates associated with the legal purchase of cigarettes for resale, the proposal also defines additional relevant terms.

The proposal also amends § 58.1-1017.3 regarding the fraudulent purchase of cigarettes. Currently, 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 is 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 is a Class 6 felony for the first offense and a Class 5 felony for a second or subsequent offense. The proposal specifies that these penalties would also apply to a person using a forged or invalid Virginia cigarette exemption certificate to purchase cigarettes. Section 58.1-1017.3 was passed by the 2015 General Assembly and its provisions became effective on July 1, 2015.

The proposal contains an enactment clause stating that the provisions of § 58.1-1017.3 as amended by the proposal would become effective on January 1, 2018.

Analysis:

Since the provisions of § 58.1-1017.3 became effective on July 1, 2015, the only relevant data available from the Circuit Court Case Management System (CMS) for convictions under this code section is for fiscal year (FY) 2016. There were no felony convictions under § 58.1-1017.3 in FY2016. Based on General District Court CMS data for FY2016, there were no misdemeanor convictions under § 58.1-1017.3 for the fraudulent purchase of 5,000 or fewer cigarettes.

Impact of Proposed Legislation:

State adult correctional facilities. By expanding the applicability of existing felony offenses, the proposal may increase the future 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. The net impact on community corrections programs cannot be estimated.

Virginia's sentencing guidelines. Convictions under § 58.1-1017.3 are not 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 direct care. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to have an impact on direct care (juvenile correctional center or alternative commitment placement) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to impact the bed space needs of juvenile detention facilities.

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 780 of the 2016 Acts of Assembly 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 is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.