

**Government of the District of Columbia  
Office of the Chief Financial Officer**



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Vincent C. Gray  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi  
Chief Financial Officer 

**DATE:** December 16, 2009

**SUBJECT:** Fiscal Impact Statement – “Prohibition Against Selling Tobacco Products to Minors Amendment Act of 2009”

**REFERENCE:** Bill Number 18-428, Draft Committee Print shared with OCFO on 11/24/09

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**Conclusion**

It cannot be determined at this time whether funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation. Under the proposed legislation the Mayor would be required to collect and maintain a publicly available record of at least three pieces of information<sup>1</sup> related to violations of providing cigarette to minors. While this data does exist, it resides in at least two different agencies, is not easily accessible, and is not all publicly available. Therefore, in order to satisfy this requirement, an agency would have to be responsible for collating this information. The proposed legislation does not specify such an agency.

Once an agency is specified by the legislators or by the Mayor, the OCFO would need to verify with the agency the potential costs of compiling and publicizing this information, and whether existing agency resources could absorb these costs. In order for the OCFO to do this, the legislation needs to clearly identify what agency would be responsible for collecting and maintaining this record.

**Background**

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<sup>1</sup> These include: 1) the name, address and phone number of the business where the violation occurred; 2) the date of the violation; and 3) the name, address and phone number of the licensee of the location.

The proposed legislation would amend current law with regards to the sale of cigarettes, the licensing of other tobacco products and definitions of tobacco products. Specifically it would:

- Provide a property owner the authority to post signs stating that cigarette smoking is not permitted within 25 feet of the building.
- Prohibit an individual from purchasing cigarettes or other tobacco products on behalf of any person under the age of 18.
- Require that any person who sells cigarettes or other tobacco products ask for identification if the purchaser appears to be under 27. Currently, the law states that the person only needs to look 18.<sup>2</sup>
- Amend the warning signs already required under current law to be posted by a business that sells cigarettes or other tobaccos by having them also include language stating that the sales clerk will ask for proof of age for those individuals who appear to be under 27 years of age; and deleting any reference to the maximum fine for selling cigarettes to minors.
- Require that the Mayor collect and maintain a publicly available record of violations relating to the sale of cigarettes or other tobacco products by businesses to minors.
- Prohibit persons under 18 from attempting to buy or possess or actually buying or possessing cigarettes or other tobacco products, as well as from falsely representing their age, *e.g.* by presenting a false identification, in order to buy these products. It also would establish penalties for violations of these new rules.
- Provide new definitions for the following terms: cigar, manufacturer, original package, other tobacco product, self-service display, smokeless tobacco, and tobacco specialty store.
- Expand licensing requirements so that a license is needed in order to sell other tobacco products and not just cigarettes, as is the case under current law.
- Require that a cigarette or tobacco product vending machine display a warning sign and prohibit such machines from selling any non-tobacco products.
- Expand the law regarding seizure and forfeiture of property concerning cigarettes to also include other tobacco products.
- Prohibit the sale or distribution of tobacco products, except cigars, through a self-service display.<sup>3</sup> This would not apply to vending machines or displays that are located in specialty tobacco stores.
- Prohibit the sale or distribution of a pack of cigarettes containing less than 20 cigarettes.
- Make it illegal to sell cigar wrappers, including blunt wrappers.<sup>4</sup> Currently cigar leaf wrappers can be sold by an establishment that meets certain requirements.
- Prohibit mobile vending motor vehicles that sell food from selling any tobacco products.
- Provide penalties for violations of this Act.

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<sup>2</sup> Since February 28, 1997, federal regulations have prohibited retailers from selling cigarettes, cigarette tobacco, or smokeless tobacco to any person under the age of 18, and have required retailers to check a photo identification of every person under the age of 27 who wishes to purchase such a product.

<sup>3</sup> Under the proposed bill, a "self-service display" means a display that contains tobacco products and is located in an area openly accessible to consumers, and from which such consumers can readily access the tobacco products without the assistance of an employee. According to testimony at the September 29, 2009 hearing, it was concluded that very little, if any, such self-service displays exist in places other than specialty tobacco shops.

<sup>4</sup> The proposed legislation provides a definition for what constitutes a "blunt wrap."

## Financial Plan Impact

It cannot be determined at this time whether funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the provisions of the proposed legislation. Under the proposed legislation the Mayor would be required to collect and maintain a publicly available record of at least three pieces of information related to violations of providing cigarette to minors: 1) contact information of the business where the violation occurred; 2) the date of the violation; and 3) contact information for the licensee of the location. While this data does exist, it resides in at least two different agencies, is not easily accessible, and is not all publicly available.

Data on the violations themselves is publicly available from the District of Columbia Courts; however this data is not categorized in any way<sup>5</sup>, the data may not contain information on the location where the violation occurred,<sup>6</sup> and the Courts are not under the Mayor. The Courts do, though, provide more complete violations information, including the location where the violation occurred, to the Criminal Justice Coordinating Council (CJCC), which is a D.C. government agency. However, CJCC's data is not publicly available and according to CJCC, there is no way for them to track these specific violations.<sup>7</sup> Licensee information is publicly available from the Department of Consumer and Regulatory Affairs (DCRA), but one would need to have the business' name or address in order to obtain it.

Therefore, in order to fully satisfy this requirement of the proposed legislation, an agency would have to be responsible for collating the necessary information and/or setting up the necessary infrastructure to obtain the detailed violation information. The OCFO would then need to verify the potential costs of this with the agency, as well as whether the agency could absorb the costs using existing resources. In order for the OCFO to do this, the legislation needs to clearly identify what agency would be responsible for collecting and maintaining this record.

In addition, the proposed bill could result in a small decrease in sales tax revenue from cigar wrappers that are currently sold in specialty tobacco stores since their sale would no longer be permitted. There could also be a decrease in the cigarette excise tax revenue if wholesalers who buy cigarettes to sell individually and/or street vendors reduce their purchases.<sup>8</sup> It is not possible, however, to reliably estimate the amount of this decrease in tax revenue, as there is no data available on such purchases. The bill could also result in increased revenue from the expanded licensing requirement and the higher fines. Again, it is not possible to reliably estimate this impact.

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<sup>5</sup> Instead it is simply a list of all violations.

<sup>6</sup> A violation is issued to an individual (*i.e.* the sales clerk) and not the business (the convenience store). The Courts database contains only information on this individual. Supporting documentation, such as the police reports, contains information on where the violation occurred.

<sup>7</sup> According to the Courts, there is a specific code in their database for providing cigarettes to minors. It is not clear why the data CJCC obtains no longer has this code.

<sup>8</sup> There would be no loss of sales tax revenue from cigarettes that are sold by vendors to customers. This is because street vendors are required to make a quarterly payment of \$375 in lieu of collecting and remitting sales tax (See D.C. Official Code § 47-2002.01).