

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1485
Economic Matters

(Delegate Waldstreicher, *et al.*)

Other Tobacco Products - Local Laws for Sale and Distribution - Intent of the
General Assembly

This bill expresses the intent of the General Assembly that, except for the issuance of licenses and the regulation of licensees under Title 16.5 of the Business Regulation Article or the imposition of taxes on other tobacco products (OTP) under Title 12 of the Tax-General Article, a county or municipal corporation may enact and enforce local laws relating to the sale and distribution of OTP if the local laws are *at least as stringent* as the provisions of Title 16.5 of the Business Regulation Article. The bill is intended to abrogate the holding of the Court of Appeals in *Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland*, 431 Md. 307 (2013).

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: To the extent local governments enact laws that are at least as stringent as specified State law for OTP, and to the extent these laws are enforced, revenues and associated expenditures for enforcement may increase.

Small Business Effect: Minimal. Small businesses that sell OTP may be subject to additional local regulation.

Analysis

Current Law/Background: Title 16.5 of the Business Regulation Article establishes licensing requirements for OTP manufacturers, retailers, storage warehouses, wholesalers, and tobacconists in the State.

OTP means (1) any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco or (2) any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff.

Additionally, § 16.5-217 of the Business Regulation Article regulates the sale or distribution of OTP by licensees. A person who is engaged in the business of selling or distributing OTP may not sell or ship, or cause to be shipped, OTP ordered or purchased by mail, computer network, telephonic network, or other electronic network to a consumer or other unlicensed recipient. A licensed OTP retailer or licensed tobacconist may deliver at most two packages of OTP directly to a consumer if the delivery is made by the licensed OTP retailer or licensed tobacconist or an employee. "Package" includes at most 10 cigars offered for sale, sold, or distributed as single cigars.

In *Altadis U.S.A., Inc. et al. v. Prince George's County, Maryland*, the petitioners challenged the validity of two Prince George's County ordinances regulating the packaging, sale, or other distribution of cigars, contending that the ordinances conflicted with State statutes regulating the packaging and sale of cigars. The ordinances prohibited the sale of single cigars except under limited circumstances; however, the court found that the authorization under Title 16.5 of the Business Regulation Article for a retailer or tobacconist to deliver up to two packages of OTP directly to a consumer, and the definition of "package," effectively authorized the sale or distribution to a consumer of up to 20 single cigars. The Court of Appeals held that State law occupied the field of regulating the packaging and sale of tobacco products, including cigars, and so preempted the two ordinances. Thus, the Prince George's County ordinances were invalid.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers, Baltimore City, Kent and Montgomery counties, City of Salisbury, towns of Bel Air and Leonardtown, Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

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kb/ljm

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