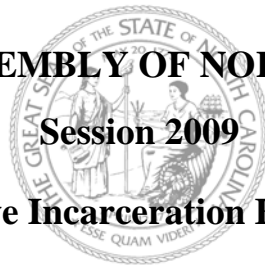


GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1487 (First Edition)
SHORT TITLE: Prohibit Self-Service Displays for Tobacco.
SPONSOR(S): Representatives Martin and Harrell

FISCAL IMPACT table with columns for Yes, No, and No Estimate Available across fiscal years 2009-10 to 2013-14. Includes categories for EXPENDITURES and GENERAL FUND.

BILL SUMMARY:

Amends GS 14-313 to prohibit tobacco products from being distributed in self-service displays (defined as a display that contains a tobacco product and is located in an area openly accessible to the ultimate consumer, and from which the consumer can readily access tobacco products without the assistance of the owner, licensee, or employee) unless the display is (1) located in a tobacco specialty store (a retail business that derives at least 75% of its revenue from tobacco products and cigarette wrapping papers) and does not contain cigarettes or smokeless tobacco or (2) is a vending machine permitted under subsection (b1) of the statute. Requires that all prohibited self-service displays be removed by December 1, 2009. Makes it a Class 2 misdemeanor for any person to distribute tobacco products through a prohibited self-service display. Also adds definitions for cigarette and smokeless tobacco.

Source: Bill Digest H.B. 1487 (04/13/0200)

ASSUMPTIONS AND METHODOLOGY:

General

This bill amends G.S. 14-313, Youth access to tobacco products, to add subsection (b2), Self-service displays. This subsection makes it a Class 2 misdemeanor offense for a person to distribute tobacco products through a self-service display. The subsection excludes displays located in a tobacco specialty store that do not contain cigarettes or smokeless tobacco, and vending machines. The bill also adds definitions for “Cigarette,” “Self-service display,” “Smokeless tobacco,” and “Tobacco specialty store.”

The North Carolina Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

Because the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed bill.* In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31st day at a rate of \$18 per day. Because the average active sentences for Class 1 and Class 2 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.

It is important to note that based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.* Therefore, any additional prison beds that may be required as a result of the implementation of this proposed legislation will place a further burden on the prison bed shortage.

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.¹

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to

¹ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Since this bill would create a new offense, AOC cannot project the number of charges that would result. For every new Class 2 misdemeanor charge resolved by plea, the cost to the courts is estimated to be \$83. For every new charge disposed by trial, the cost is estimated to be \$161. For every indigent defendant, indigent defense costs are estimated to be \$225 (\$75 per hour for three hours).

In FY 2007-08, a typical misdemeanor case took approximately 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

Department of Crime Control and Public Safety – Alcohol Law Enforcement Division

Alcohol Law Enforcement (ALE) staff reported to Fiscal Research that the division *does not expect to incur any fiscal impact as a result of this proposed bill.* ALE conducts training for sellers and servers of tobacco products and, if this bill becomes law, expects to incorporate the provisions of this bill into the existing training program. This is not anticipated to result in a significant cost to the division. ALE officers would check for compliance with the provisions of this bill during their routine visits to applicable establishments. Again, this addition of responsibility is not expected to result in a significant cost to the division.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

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