

January 26, 2012

LOOPHOLE COULD GO UP IN SMOKE

Free Lance Star [Fredericksburg, VA]

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By Chelyen Davis

--Commercial roll-your-own cigarette machines would be considered cigarette manufacturers--with the accompanying taxes and regulations--under a bill approved yesterday by the Senate Finance Committee. The machines are located in retail establishments--one company, RYO Machine Rental, has machines in Virginia.

Customers would go into the store, buy the tobacco--sold and taxed as pipe tobacco--and buy the papers, filters and carton. They then would put the tobacco and other items into the machine and start it themselves, and the machine creates the cigarettes. Those cigarettes sell for about half the price of a commercial carton of cigarettes.

But the stores that have such machines aren't registered as cigarette manufacturers--they argue that they are not manufacturers--and they pay taxes on the tobacco as pipe tobacco, which is a lower tax than that on cigarette packs.

The bill, sponsored on the Senate side by Sen. John Watkins, R-Powhatan, would change that, declaring the store owners to be manufacturers of cigarettes and regulated accordingly.

"The end product would be a cigarette," Watkins told the committee yesterday, passing out to senators sample packs of regular, commercial Marlboros and the RYO equivalent. "This legislation just tries to provide for a level playing field."

John Rainey, representing Altria (which owns cigarette manufacturer Philip Morris) said the common conception of roll-your-own cigarettes involves a person sitting in their own home, hand-rolling cigarettes--not those made by a machine that can spit out a 200-cigarette carton in less than 10 minutes.

The retailers using the RYO machines, he said, are avoiding state and local taxes on cigarettes, as well as payments under the Master Settlement Agreement.

Lobbyists for RYO Machine Rental showed a video clip that compared the rate at which the machines make cigarettes to the rate at which Philip Morris makes them--about 20,000 cigarettes a minute, said lobbyist Bea Gonzalez.

"It's a very stark difference," she said.

She said retailers are paying all currently applicable taxes, and that federal law doesn't allow them to register as manufacturers. She said the Master Settlement Agreement--which was begun in 1998--shouldn't apply to retailers who have the machines.

Two store owners who have the machines in their stores said they're not trying to compete with the big cigarette makers. They said Watkins' bill would put them out of business, costing jobs and revenue in their businesses and those they deal with.

"It's hard enough without big corporations getting involved and making it impossible to succeed," said Laneia Horton, of Virginia Beach. "I do not manufacture cigarettes and have no intention of doing so. If this bill would pass I would have to shut down my store. This is really about small businesses. We want the chance to compete."

Gonzalez said the roll-your-own machines aren't competition for Philip Morris and the other large companies, no matter what Philip Morris says.

"Time and time and time again, Altria uses legislation to eliminate competition," she said.

While Gonzalez and others supporting her position said the bill conflicts with federal law and a pending court case, former state Supreme Court justice John Charles Thomas disagreed.

"I don't see any constitutional problem," Thomas said. "Virginia is fully within its power to take this step. This is a taxing problem, this is a public [policy] problem, and you've got the power to deal with it."

In the end the Senate Finance committee approved the bill unanimously. A House version of the bill is due to be heard later in the week.

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