

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1040-01
Bill No.: HB 380
Subject: Business and Commerce; Children and Minors; Revenue Dept.; Tobacco Products
Type: Original
Date: February 12, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(\$996,840)	(\$804,281)	(\$825,139)
Total Estimated Net Effect on <u>All State Funds</u>*	(\$996,840)	(\$804,281)	(\$825,139)

* Does not include unknown savings for possible reduced foundation formula payments due to fine revenues.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None			
Total Estimated Net Effect on <u>All Federal Funds</u>	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would impose new restrictions on the sale of tobacco products to minors and create new fines and penalties. Depending on the degree of enforcement, there could be an increase in the number of cases filed, but CTS would not expect a significant impact on the workload of the courts.

Officials from the **Office of State Public Defender (SPD)** assume an additional 1,000 indigent persons will require representation in cases where they have been charged for possession of fake or altered identification cards. SPD assumes it will require 2 FTE Assistant Public Defenders, .75 FTE Paralegal Investigator, .50 FTE Legal Secretary, and the related equipment and expense for each position, to represent the indigent accused. SPD assumes existing staff could provide representation for those 1-5 cases arising where indigent persons were charged with fraudulent tax stamp utilization.

Officials from the **Department of Public Safety - Division of Liquor Control (DPS)** state the proposed legislation does not provide for a tobacco registration fee. DPS further assumes it will require 1 FTE Tobacco Program Manager (\$49,140); 6 FTE Agents (\$39,048); 3 FTE Clerk IV (\$25,956); and the related equipment and expense for each position, to enforce and administer the tobacco provisions provided by this act.

In response to a similar previous proposal, officials from the **Office of Attorney General (AGO)** assume the costs of the proposed legislation could be absorbed with existing resources.

Officials from the **Department of Revenue (DOR)** assume the proposed legislation will tighten restrictions on sales of tobacco products to minors. It provides for a misdemeanor punishable by a \$1000 fine for having a false drivers or chauffeurs license. It requires DOR to place a block on the sales tax return for businesses to indicate that they sell tobacco products. DOR is to register all who sell tobacco products. DOR is then to provide Liquor Control and the Department of Mental Health on or before July 1 each year a list of all businesses selling tobacco products.

If a business fails to register with DOR as a tobacco seller they can be subject to progressive fines and be banned from selling tobacco products. Legislation creates Internet registration of tobacco products.

DOR currently does not have field enforcement of tobacco laws. During the last session in response to Fiscal Note 3838-02 it was noted that other states have brought forward a very important point. That point is that for a state to fully participate in the Master Tobacco Settlement that state must use due diligence to enforce their law and all areas of the agreement. It should also be noted that gray market cigarettes will impact the cigarette sales and

ASSUMPTION (continued)

therefore will impact the state's "diligently enforce" of the Master Tobacco Settlement if enforcement is not funded in this legislation.

DOR assumes an entirely new sub-system would need to be developed within the sales tax system. Programming will be required to accomplish development of this system and it is estimated that this very large effort will require 4 programmers @ \$35.00 per hour 12 months to complete. In addition to developing the system to track every retailer in this state selling tobacco product, DOR will need to develop a system to record and provide an audit trail of all payments to the Tobacco Settlement Fund (Approximately \$200 million per year for 25 years) In addition DOR estimates that 2 Tax Processing Technicians and 1 Clerk I would be required to determine who to register, process their payments, maintain the system of new registrants and delete those go out of business, pass monthly and annual information on these registrants to Liquor control and Department of Mental Health, process correspondence and proper notifications to registrants, and properly bill and collect fines for violations. It is also projected that the Data Center will charge \$10,000 to test and implement this system.

In addition, DOR has become aware that for a state to fully participate in the tobacco settlement agreement they must use due diligence to enforce the agreement and their tobacco laws. At present Missouri does no field enforcement of the tobacco law. DOR feels that to ensure full participation in this agreement (get our fair share of the money) DOR will need to have a field enforcement presence as well as the ability to fully track all payments from both the participants and those who chose not to participate and to make payments to the escrow fund. DOR will also need to closely watch the grey market area of sales since it is quickly becoming a black market.

To properly enforce Missouri's tobacco laws with this agreement in place will require 4 field agents and 2 tax audit analysts. The field agents will be responsible for closely checking each retailer of tobacco products in this state, seize unlawful product, and require that all taxes that are due are paid. The two tax audit analysts would be responsible for coordination of field agent activity, and an audit process to be certain that both the participants and non-participants make proper payments.

Oversight assumes the changes to DOR's mainframe system to accommodate the provisions of this proposal will need to be complete by January 1, 2002. Therefore, five months of programming work (5 contract programmers x 865 hrs. x \$50 per hour = \$216,250) and \$10,000 in State Data Center charges have been included in the fiscal impact. Also, the original proposal included a subsection which would result in revenues from registration fees; however, this proposal does not include that \$25 registration fee. In addition, Oversight notes that increases in fines which would go to school districts would be offset by reduced payment to those districts through the State Foundation Formula.

ASSUMPTION (continued)

Oversight further assumes, field enforcement will be carried out by DPS, Division of Liquor Control with staff requested for that purpose. Oversight has not included the 6 FTE and related expenses requested by DOR for enforcement in the fiscal impact.

Officials from the **Department of Health (DOH)** assume the proposed legislation would have no fiscal impact on their agency.

In a similar previous proposal, officials from the **Office of Prosecution Services (OPS)** assumed the proposed legislation would have no fiscal impact on their agency.

Officials from the **Department of Mental Health (DMH)** state that two direct responsibilities for DMH are listed. Section 497.931.2 states that DMH, along with other agencies, is allowed to make a determination of noncompliance regarding tobacco related distribution. DMH currently has employees checking for compliance throughout the state. In additions, Section 407.931 indicates that an employee training program must be in place that meets the minimum training criteria established by DMH. This will be a training program created through the retail association and DMH will only determine whether it is adequate or not. Neither of these responsibilities will require additional staff, nor does any additional revenue flow to DMH.

<u>FISCAL IMPACT - State Government</u>	FY 2002	FY 2003	FY 2004
	(10 Mo.)		
GENERAL REVENUE			
<u>Costs - Office of State Public Defender</u>			
Salaries	(\$80,442)	(\$98,944)	(\$101,417)
Fringe Benefits	(\$26,811)	(\$32,978)	(\$33,802)
Equipment and Expense	<u>(\$31,942)</u>	<u>(\$13,056)</u>	<u>(\$13,446)</u>
Total Costs - SPD	(\$139,195)	(\$144,978)	(\$148,665)
<u>Costs - Department of Public Safety</u>			
Salaries	(\$308,607)	(\$379,587)	(\$389,076)
Fringe Benefits	(\$102,859)	(\$126,516)	(\$129,679)
Equipment and Expense	<u>(\$111,842)</u>	<u>(\$69,592)</u>	<u>(\$72,015)</u>
Total Costs - DPS	(\$523,308)	(\$575,695)	(\$590,770)
<u>Costs - Department of Revenue</u>			
Salaries	(\$50,390)	(\$61,980)	(\$63,530)
Fringe Benefits	(\$16,795)	(\$20,658)	(\$21,175)
Equipment and Expense	(\$40,902)	(\$970)	(\$999)
Programming Costs	<u>(\$226,250)</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
Total Costs - DOR	<u>(\$334,337)</u>	<u>(\$83,608)</u>	<u>(\$85,704)</u>
TOTAL ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*	<u>(\$996,840)</u>	<u>(\$804,281)</u>	<u>(\$825,139)</u>

*Does not include unknown savings for possible reduced foundation formula payments.

<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
SCHOOL DISTRICTS			
<u>Income -</u>			
Fines	Unknown	Unknown	Unknown
<u>Loss -</u>			
Reduction in state payments	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
TOTAL ESTIMATED NET EFFECT ON SCHOOL DISTRICTS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could impact sellers and distributors of tobacco products.

DESCRIPTION

This bill makes changes to statutes concerning the sale of tobacco products. The bill:

- (1) Prohibits any refund to a cigarette retailer of sales tax illegally or erroneously overcharged on the amount of any cigarette excise tax included in the retail price of cigarettes unless the overcharge is refunded to the person who paid the tax. If the illegal or erroneous overcharge on the amount of any cigarette excise tax is not refunded to the person who paid the tax, it will be retained by the Director of Revenue (Section 149.015, RSMo);
- (2) Bans the sale and distribution of "gray market cigarettes." Gray market cigarettes are cigarettes that are packaged for sale outside the United States and may not contain required health warnings. The bill requires monthly reporting to the Department of Revenue by persons licensed to affix the state cigarette tax stamp to legally imported cigarettes. Penalties are outlined for violations of the section (Section 149.071);

DESCRIPTION (continued)

- (3) Gives the Division of Liquor Control authority to enforce laws related to the control and sale of tobacco and requires the division to submit an annual report on the effectiveness of cigarette control laws to the General Assembly (Section 407.924);
- (4) Makes it illegal for a person under the age of 18 to purchase, attempt to purchase, or possess tobacco products. Persons under the age of 18 will have their tobacco products confiscated. For the first violation, the penalty is a class C misdemeanor. The penalty for a second or subsequent violation may include community service (Section 407.933);
- (5) Requires vendors of tobacco products to be registered to sell such products and gives the Department of Mental Health the authority to inspect stores for compliance with laws relating to the sale of tobacco products. Violations are referred to the Division of Liquor Control. Knowingly selling tobacco products to minors without registering is a class A misdemeanor (Section 407.934);
- (6) Requires vendors to deny the sale of tobacco products to persons believed to be less than 18 and makes individual packages of tobacco products inaccessible to all persons under 18, beginning January 1, 2002. The bill also adds a penalty for the Internet or mail sales of tobacco to anyone under the age of 18 (Sections 407.926 and 407.928);
- (7) Requires vendors to post a sign stating that it is a violation of state law for tobacco products to be provided to persons under 18, and it is a violation for persons under 18 to possess or purchase tobacco products. Currently, a sign is required stating only that it is illegal to sell tobacco products to persons under 18 (Section 407.927);
- (8) Bans the sale of individual packages of tobacco products unless they are sold through vending machines, behind a counter, or within the direct line of sight of the cashier. The bill requires that vending machines be equipped with a device that disables them until unlocked by a sales person. Vending machines located in areas where patrons must be over the age of 18 are exempted from this requirement (Sections 407.928 and 407.931);
- (9) Requires purchasers of tobacco products to present prescribed identification upon request to demonstrate age. The bill makes it a class A misdemeanor to reproduce, alter, modify, or misrepresent a driver's license or identification card (Section 407.929);
- (10) Imposes a fine of \$250 and five-day suspension of a store's license to sell tobacco products for the fourth or subsequent violation of the statutes banning the sale or distribution of tobacco products to persons under the age of 18. In addition, the store will be fined in the same amount as the individual wrongfully selling the tobacco products (Section 407.931); and

DESCRIPTION (continued)

(11) Imposes additional penalties on the owner or operator of the outlet selling tobacco products to persons under 18. For the first offense, the Division of Liquor Control will issue a reprimand; for a second offense, the division will prohibit the sale of tobacco products for one day; for a third offense, the division will prohibit the sale of tobacco products for 2 days; and for the fourth and subsequent offense, the division will prohibit the sale of tobacco products for 3 days. The penalties will not be imposed on the owner or operator if certain circumstances involving the training of employees in the sale of tobacco to minors can be shown (Section 407.931).

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Courts Administrator
Office of the State Public Defender
Department of Public Safety
Office of the Attorney General
Department of Revenue
Department of Health
Office of Prosecution Services
Department of Mental Health



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