

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4038-01
Bill No.: HB 1267
Subject: State Attorney General; Tobacco Products; Business and Commerce
Type: Original
Date: February 16, 2004

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Tobacco Control Special Fund*	Unknown	Unknown	Unknown
Total Estimated Net Effect on Other State Funds	UNKNOWN	UNKNOWN	UNKNOWN

*Costs of \$221,787 for FY05, \$235,556 for FY06 and \$241,677 for FY07 are expected to be paid with collection of disgorgements, penalties and fees to be deposited to the fund.

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Public Safety - Liquor Control, Office of Prosecution Services, Office of the State Public Defender, Office of Administration, Administrative Hearing Commission** and the **Office of the State Courts Administrator** each state this proposal would not fiscally impact their respective agencies.

Officials from the **Office of the Attorney General (AGO)** assume, based on discussions with DOR, that the primary administrative duties, as well as the enforcement provisions, rests with the AGO's office.

AGO assumes it would need 1 - ASST. ATTORNEY GENERAL 4, 2 - INVESTIGATORS and 1 - PARALEGAL to enforce the provisions of this bill in court. These employees would also investigate, monitor compliance, collect and maintain data and promulgate rules. AGO assumes these positions could be funded from the "Tobacco Control Special Fund" created in the bill. AGO believes that after start up, these positions would be self-sustaining through collection of disgorgements, penalties and fees to be deposited to the fund.

ASSUMPTION (continued)

Officials from the **Department of Revenue (DOR)** assume this legislation provides additional regulations for tobacco product manufacturers. There is no administrative impact to DOR.

Officials from the **Department of Corrections (DOC)** assume the bill, if passed into law, provides additional regulation of tobacco product manufactures. Penalty provisions for violations, the component of the bill to have potential fiscal impact for DOC, is for a class A misdemeanor.

DOC stated that currently, they cannot predict the number of new commitments which may result from the creation of the offenses outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost through supervision provided by the Board of Probation and Parole (FY03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender).

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Office of the Attorney General's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 10 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 15 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal are estimated to be \$615, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal; however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

ASSUMPTION (continued)

Office of the State Treasurer (STO) officials assume this proposal creates the "Tobacco Control Special Fund" (196.1025.5)

-subject to biennial transfer

-does not retain interest

STO assumes they are required by this proposal to make deposits to the "Tobacco Control Special Fund." STO currently doesn't make deposits for court fees; therefore, STO is requesting one FTE at the level of Accounting Analyst I and the corresponding expense and equipment.

In response to a similar proposal last year (SB 362), STO assumed no fiscal impact. Therefore, **Oversight** assumes STO can absorb the impact of this proposal with existing resources.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
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TOBACCO CONTROL SPECIAL FUND

<u>Income</u> - collection of disgorgements, penalties and fees	Unknown	Unknown	Unknown
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<u>Cost</u> - Attorney General			
Personal Service (4 FTE)	(\$108,906)	(\$133,955)	(\$137,304)
Fringe Benefits	(\$45,087)	(\$55,457)	(\$56,844)
Expense and Equipment	<u>(\$67,794)</u>	<u>(\$46,144)</u>	<u>(\$47,529)</u>
Total costs - AGO	<u>(\$221,787)</u>	<u>(\$235,556)</u>	<u>(\$241,677)</u>

ESTIMATED NET EFFECT ON THE TOBACCO CONTROL SPECIAL FUND*

<u>UNKNOWN</u>	<u>UNKNOWN</u>	<u>UNKNOWN</u>
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*The income from disgorgements, penalties and fees is expected to exceed the AGO costs.

<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may impact small businesses that sell tobacco products.

DESCRIPTION

This proposal requires all tobacco product manufacturers who sell cigarettes in this state to file an annual form with the Attorney General stating they are in compliance with the Master Settlement Agreement. Participating manufacturers must certify a list of its brand families. Nonparticipating manufacturers must provide additional information as indicated including a more detailed listing of brand families and units sold, and that the nonparticipating manufacturer is registered to do business in the state, maintains a qualified escrow fund (including specific information regarding the account), is in full compliance with the Master Settlement. Tobacco product manufacturers must maintain information used to compile the certification for five years.

By January 1, 2005, the Attorney General shall publish or make available on its website a list of all tobacco product manufacturers who have filed certifications. It shall be unlawful to any person to affix a stamp to a package of cigarettes of a tobacco product manufacturer or brand family that is not included in the directory or to offer those cigarettes for sale.

Foreign nonparticipating manufacturers who are not registered to do business in the state must designate an agent for service of process as a condition precedent to being listed in the directory.

Stamping agents are required to submit a quarterly report to the Attorney General the equivalent stick count for which the stamping agent affixed stamps or otherwise paid the tax due for the cigarettes. The stamping agent must maintain documentation used to compile the report for five years. The Director of Revenue and the Attorney General may share information for the purpose of enforcement of the provisions of this act.

The Attorney General may require nonparticipating manufacturers, stamping agents and tobacco product manufacturers to provide certain additional information necessary to determine compliance.

DESCRIPTION (continued)

Upon determination of a violation, the Director of the Department of Revenue may suspend the license of a stamping agent. Each stamp affixed and each sale or offer to sell cigarettes shall

constitute a separate violation. The Director of the Department of Revenue may also impose a civil penalty of the greater of 500% of the retail value of the cigarettes or \$5,000.

Cigarettes offered for sale or possessed for sale that are in violation are deemed contraband and subject to seizure and forfeiture. The Attorney General may seek an injunction for threatened or actual violations.

It is a Class A misdemeanor to sell or distribute cigarettes, or acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knew or should have known were intended for distribution in the state which are in violation of the stamping provisions. Violations of the stamping provisions shall also be deemed to be engaged in unfair merchandising practices pursuant to Chapter 407, RSMo.

Decisions regarding maintenance of the directory by the Attorney General shall be subject to review by the Administrative Hearings Commission. Effective dates for implementation of the provisions are provided. The Attorney General may promulgate necessary rules.

The state shall be entitled to recover costs of enforcement actions including reasonable attorneys fees. If a court determines that a violation has occurred, the court shall order any profits be disgorged and paid into the Tobacco Control Special Fund which is created.

The bill contains an emergency clause.

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

Department of Public Safety
Liquor Control

KS:LR:OD (12/02)

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Missouri Highway Patrol
Department of Revenue
Office of the State Courts Administrator
Office of the State Public Defender
Secretary of State
Office of Prosecution Services
Office of the Attorney General
State Treasurer
Department of Corrections
Office of Administration
Administrative Hearing Commission

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 16, 2004