

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4038-04  
Bill No.: HCS for HB 1267  
Subject: State Attorney General; Tobacco Products; Business and Commerce  
Type: Original  
Date: April 15, 2004

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**FISCAL SUMMARY**

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

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

\*Costs of \$394,925 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 8 pages.

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

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

### 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 the **Department of Revenue (DOR)**, that the primary administrative duties, as well as the enforcement provisions, rests with the DOR.

DOR officials would request 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 assumed, in response to an earlier version of the proposal, that 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. DOR officials would request General Revenue Funds for their personnel. **Oversight** is, for fiscal note purposes, showing costs the Tobacco Control Special Fund.

ASSUMPTION (continued)

DOR officials note that there would be additional postage and printing cost for notifications which would not be sent electronically. They also estimate programming costs of \$173,138 for 5,190 hours, to establish the directory and to enforce other provisions of the proposal.

DOR officials note that the Master Settlement Agreement (MSA) requires states to enforce provisions concerning non-participating manufacturers with "due diligence". If the Agreement is not so enforced, tobacco manufacturers may bring suit to reduce their MSA payments. Two of the Original Participating Manufacturers have asserted to the Independent Auditor for the MSA that several unnamed states are not diligently enforcing their non-participating manufacturer (NPM) statutes. If Missouri were found not to be diligent in enforcing its NPM statutes, its annual payments under the MSA could be reduced by up to twelve percent (12%). This would be about \$15,000,000 per year.

DOR officials state that their experience has been that sales of NPM products are increasing and that it is becoming increasingly difficult to locate and deal with foreign manufacturers. Changes in names of brands and names of corporations make tracking of both increasingly complex.

DOR officials would only request the abovementioned personnel at this time; however, they believe that properly enforcing the MSA would require that attorneys handle all legal issues involved, including review of certification and escrow agreements. Attorneys would investigate the true identities of manufacturers of brands to determine who would be responsible for escrow payments and would bring actions against parties that fail to comply. They note that some NPMs are located in foreign countries, which would require some expertise in international law. Also, serving papers in foreign countries is more expensive than serving papers within the United States.

Support staff requested would receive, record, monitor and compile reports of all cigarettes sold in Missouri and would maintain the directory of complying manufacturers.

Field investigators would inspect retailers as well as wholesalers. Investigators would be stationed at area offices and would have travel expenses.

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

ASSUMPTION (continued)

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 Director of Revenue's authority to promulgate rules, regulations, and forms. SOS estimates the proposal 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.

**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.

ASSUMPTION (continued)

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
<b>TOBACCO CONTROL SPECIAL FUND</b>			
<u>Income</u> - collection of disgorgements, penalties and fees	Unknown	Unknown	Unknown
<u>Cost</u> - Department of Revenue (DOR)			
Personal Service (4 FTE)	(\$108,906)	(\$133,955)	(\$137,304)
Fringe Benefits	(\$45,087)	(\$55,457)	(\$56,844)
Programming	(\$173,138)	\$0	\$0
Expense and Equipment	(\$67,794)	(\$46,144)	(\$47,529)
Administrative costs to DOR	(\$394,925)	(\$235,556)	(\$241,677)
<b>ESTIMATED NET EFFECT ON TOBACCO CONTROL SPECIAL FUND*</b>	<b><u>UNKNOWN</u></b>	<b><u>UNKNOWN</u></b>	<b><u>UNKNOWN</u></b>

\*The income from disgorgements, penalties and fees is expected to exceed the DOR costs.

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

FISCAL IMPACT - Small Business

This proposal may impact small businesses that sell tobacco products.

## DESCRIPTION

This proposal would require tobacco product manufacturers who sell cigarettes in this state to file by 30 April an annual form with the Director of the Department of Revenue stating they are in compliance with sections 196.1000 and 196.1003, RSMo, and installment payments required in this proposal.

Manufacturers would certify a list of its brand families and units sold in Missouri for each brand family during the preceding calendar year, provide a list of all brand families that have been sold in the state at any time in the current calendar year, reveal any brand families sold in the state during the preceding year that are no longer sold in Missouri, and identify any other manufacturer of listed brand families during the preceding or current calendar year. Manufacturers would update lists thirty (30) days prior to modifying brand families.

The certification would also aver that the is registered to do business in the state, maintains a qualified escrow fund (including specific information regarding the account), is in full compliance with this proposal and section 96.1003. The certification also would specify requirements for manufacturers to maintain escrow funds. Manufacturers would maintain information used to compile the certification for five years, unless required by law to maintain them for a greater period of time.

By January 1, 2005, the Director would publish or make available on its website a directory listing all tobacco product manufacturers who have filed current and accurate certifications.

It would be unlawful for 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 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 would submit a quarterly report to the Director. The report would contain information the Director needs to facilitate compliance with this proposal. Stamping agents would maintain documentation used to compile the report for five years. The Director could share information with federal, state or local agencies only for the purpose of enforcement of the provisions of this act., or corresponding laws of other states.

The Director could require stamping agents and tobacco product manufacturers to provide additional information necessary to determine compliance.

DESCRIPTION (continued)

Upon determination of a violation, the Director could revoke or suspend the license of a stamping agent. Each stamp affixed and each sale or offer to sell cigarettes would constitute a separate violation. The Director could 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 would be deemed contraband and be subject to seizure and forfeiture. The Director could seek an injunction for threatened or actual violations.

It would be 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 would be considered unfair merchandising practices pursuant to Chapter 407, RSMo.

Decisions regarding maintenance of the directory by the Director would be subject to review by the Administrative Hearings Commission. Effective dates for implementation of the provisions are provided. The Director could promulgate rules needed to carry out provisions of this proposal.

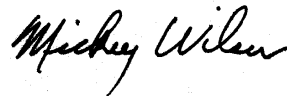
The state would be entitled to recover costs of enforcement actions including reasonable attorneys fees. If a court determined that a violation had occurred, the court would order any profits be disgorged and paid into the Tobacco Control Special Fund which would be created.

Manufacturers doing business in Missouri for the first time after the effective date of this proposal would file a bond with the Director. The Department of Revenue would release the manufacturer from the bonding requirement after two years.

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

SOURCES OF INFORMATION

Department of Public Safety  
Liquor Control  
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  
April 15, 2004