

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0770H.01I
Bill No.: HB 517
Subject: Tobacco Products; Department of Public Safety; Department of Health and Senior Services; Health, Public; Licenses - Miscellaneous; Business and Commerce; Children and Minors; Merchandising Practices
Type: Original
Date: March 27, 2023

Bill Summary: This proposal modifies provisions relating to the legal age to purchase tobacco products.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
General Revenue	\$175,000	\$364,105	\$367,746
Total Estimated Net Effect on General Revenue	\$175,000	\$364,105	\$367,746

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Division of Alcohol and Tobacco Control Fund (0544)	(\$438,699)	(\$265,308)	(\$272,384)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$438,699)	(\$265,308)	(\$272,384)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Division of Alcohol and Tobacco Control Fund (0544)	6 FTE	6 FTE	6 FTE
Total Estimated Net Effect on FTE	6 FTE	6 FTE	6 FTE

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☒ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Local Government	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown

FISCAL ANALYSIS

ASSUMPTION

§§407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 407.930, 407.931, 407.933, and 407.934 – Tobacco products

Officials from the **Department of Public Safety - Division of Alcohol and Tobacco Control (ATC)** state new section 407.930 requires tobacco retailers to apply for a license with the division. The license fee shall be \$100 and the license shall be renewed annually by May 1st of each calendar year. Based on the annual report that ATC requests from Department of Revenue (DOR) combined with the locations that the ATC agents have inspected, there are approximately 6,500 tobacco retailers in Missouri. ATC estimates there are as many as 500 additional tobacco retailers that the ATC is not aware of in Missouri. With an anticipated 7,000 retailers, ATC expects revenue of \$700,000 from license fees (7,000 x \$100). Late fees will apply to licenses that are renewed late as follows:

May 2-31 - \$50

June 1-30 - \$100

July 1-31 - \$150

In comparing average late fees for liquor licenses, the ATC estimates that roughly 3% of license renewal fees will generate late fees of \$21,000 ($\$700,000 \times 3\%$). This section also provides that 50% of collections will be deposited to ATC and 50% will be deposited to the Department of Health and Senior Services ($\$700,000 + \$21,000 / 2 = \$360,500$).

Section 407.931 is revised to establish expanded penalty provisions. ATC believes the civil penalties will be minimal so the ATC has not calculated an estimate. Any fines collected will be forwarded to the county where the violation occurred.

In order to manage the tobacco licensing processes and administrative disciplinary processes, ATC is asking for two (2) Administrative Support Assistants for the Jefferson City Central Office and four (4) Special Agents. The Administrative Support Assistants will be responsible for large amount of clerical work related to the implementation and ongoing licensing of all the tobacco retail stores, data entry, fielding phone calls, and corresponding with tobacco retailers. The Special Agents will each be assigned a specific territory to oversee licensing and regulation. Agents will be the key contact person for licensees to contact with questions and application problems. Agents will attend public hearings, perform inspections and do background checks.

ATC is currently building an online licensing system for liquor licensing with an outside vendor. ATC plans to incorporate tobacco licensing into the same system, which is not supported by

ITSD. It is estimated that adding tobacco licenses to this system will cost approximately \$40,000.

Oversight notes the ATC anticipates a one percent growth in the number of licenses issued annually. Therefore, Oversight will reflect an estimated annual revenue impact of \$364,105 for FY2025 and \$367,746 for FY2026 to General Revenue and the Division of Alcohol and Tobacco Control Fund.

Oversight note that the balance in the Division of Alcohol and Tobacco Control Fund as of December 30, 2022, was \$7,864,236.07.

Oversight notes the provisions of section 407.930 state in addition to the retail sales tax license, any person or entity selling, providing, or distributing tobacco products, alternative nicotine products, or vapor products on or before January 1, 2024, has 45 days to apply with the ATC for a license to sell these products at a cost of \$100. One-half of the license fee and associated late charges will be allocated to the ATC and one-half to the Department of Health and Senior Services. Oversight notes per Section 33.543, because this bill does not provide a specifically-named fund within DHSS, all moneys received will be deposited into the General Revenue Fund.

Officials from the **Department of Health and Senior Services** defer to the **Department of Public Safety - Division of Alcohol and Tobacco Control** for the potential fiscal impact of this proposal.

Officials from the **Office of Administration - Budget and Planning (B&P)** state sections 407.925 and 407.926 of this proposal change the definition of tobacco products and requires alternative nicotine products and vapor products to be regulated as tobacco products. For the purpose of this fiscal note, B&P assumes that alternative nicotine products and vapor products would not be taxed as tobacco products, as the Department of Revenue (DOR) taxes products under the authority of Chapter 149, RSMo. B&P defers to the Division of Alcohol and Tobacco for administrative costs due to the regulation of vapor products. B&P defers to DOR for the administrative costs of the OTP tax on vapor products.

Section 407.929 provides that any person or entity may now be charged and penalized with more than one violation per day within subsections 2 and 3 of Section 407.931. This could result in a greater number of violations overall resulting in an increase to TSR.

Section 407.930 would create an annual \$100 registration fee for all tobacco retailers in the state, with 50% each going to DPS-Alcohol and Tobacco Control and DHSS. For the purpose of this fiscal note, B&P assumes that there are 7,003 locations selling tobacco products. Therefore, this change will increase TSR by more than \$700,300.

Section 407.931 provides that any establishment owner who fails to register with ATC as an individual or entity and who distributes tobacco products in a given twelve-month period will be subject to the following penalties:

- First offense – Entity is given a written warning with ways to rectify the failure within seven days and assessed a \$500 fine.
- Second offense – Entity is prohibited from distributing tobacco products for a ten-day period. If they continue selling these products during this period, they will be assessed a \$500 fine for each day these sales occur. Due to the prohibition on sales, TSR may decrease as a result of a reduction in sales tax.
- Third offense – Entity is prohibited from distributing tobacco products for a 60 day period. If they continue selling these products during this period, they will be assessed a \$500 fine for each day these sales occur. Due to the prohibition on sales, TSR may decrease as a result of a reduction in sales tax.
- Fourth offense – Entity is permanently prohibited from distributing tobacco products at any point in the future. If they continue selling these products during this period, they will be assessed a \$500 fine for each day these sales occur. Due to the prohibition on sales, TSR may decrease as a result of a reduction in sales tax.

In summary, B&P estimates that this proposal may increase TSR by more than \$700,300 and GR by more than \$700,300 in FY24 and in subsequent years.

Officials from the **Department of Revenue (DOR)** state this proposal raises the age of selling smoking, tobacco or vapor products from 18 to 21. The Federal Budget signed on December 20, 2019, included a provision that raised the smoking, tobacco or vapor products age from 18 to 21. The federal law went into effect immediately. The changes in this proposal are to bring Missouri statutes into alignment with federal law. The DOR assumes no impact from these changes.

Section 407.925 makes changes to the definition of tobacco products. Changing the definition under Chapter 407 would change the definition in regards to enforcement of the access to products by minors. However, that definition would now conflict with Chapter 149 regarding which products are taxed and, therefore, may lead to confusion on the part of taxpayers as to which law applies when. However, DOR assumes no impact from this change as DOR taxes products under Chapter 149 not 407.

Section 407.926.3 will require alternative nicotine products and vapor products to be regulated as tobacco products. Additionally, it adds tighter financial penalties for failure to comply with the law DOR assumes ATC would be responsible for that regulation. Therefore, DOR will not have an impact from this provision.

Sections 407.927 to 407.929 update provisions relating to the prohibition of selling any type of tobacco products to minors. These sections will not have a fiscal impact on DOR.

Section 407.930.1 will require that entities that sell tobacco products, alternative nicotine products and/or vapor products have a retail sales tax license. It should be noted that should a business sell any other product at the same time as their current tobacco products, they already have a sales tax license.

DOR's records indicate there are 1,796 entities that sell tobacco products at 7,003 locations per. However, DOR is unable to determine how many of those 1,796 do not currently have a sales tax license. The DOR assumes should any of these entities need to register with the DOR, they can handle the registration with existing resources.

Section 407.930.2 requires that entities that sell tobacco products, alternative nicotine products and/or vapor products must apply and receive a distribution license from the ATC. All current sellers of these products must apply with ATC within 45 days of January 1, 2024. The application for the license must be accompanied with a \$100 fee per location. The license is good for one year. The renewal fee is also \$100 per location.

Based on the number of locations currently selling tobacco products, the DOR estimates that this would increase revenue to ATC by over \$700,300 (7,003 locations * \$100) annually. The license fee and renewal fee are to be allocated:

- 50% to ATC for administration and
- 50% to the Department of Health and Senior Services for tobacco prevention/cessation programs

DOR defers to ATC for an estimate of the amount of fees received.

Oversight does not have any information contrary to that provided by DOR. Therefore, Oversight will reflect DOR's no impact for fiscal note purposes.

Oversight notes that violations of sections 407.926 and 407.931 could result in fines or penalties. Oversight also notes per Article IX Section 7 of the Missouri Constitution fines and penalties collected by counties are distributed to school districts. Fine varies widely from year to year and are distributed to the school district where the violation occurred. Oversight will reflect a positive fiscal impact of \$0 to Unknown to local school districts. For simplicity, Oversight will not reflect the possibility that fine revenue paid to school districts may act as a subtraction in the foundation formula.

Officials from the **Department of Mental Health (DMH)** assume the proposal will have no fiscal impact on their organization. DMH states the proposed legislation modifies language in Chapter 407 related to the law to sell or distribute tobacco products to a minor. It would change the laws that make it unlawful to sell or distribute tobacco products to any individual under twenty-one years of age.

This legislation would benefit the Division of Behavioral Health (DBH) in complying with the Synar amendment. The federal law requires individuals to be at least 21 years of age to purchase any tobacco products-including cigarettes, cigars, and e-cigarettes. Whereas, Missouri's law requires individuals to be at least 18 years of age to purchase tobacco, alternative nicotine products, or vapor products. The DMH currently utilizes youth 16-20 years of age for the Synar surveys. States must have a non-compliance rate of 20% or lower. Currently Missouri's rate is 8.2%. From June 2020 to June 2023, the Substance Abuse and Mental Health Services Administration (SAMHSA) has granted a waiver of the penalties for being over 20%.

Passing this bill will bring Missouri law into compliance with Federal law which would increase the likelihood that DBH remains compliant and would avoid penalties and loss of funding. If DMH fails to comply with the Synar Amendment and the non-compliance rate goes above 20%, DMH risks losing 10% of their Federal Substance Abuse Prevention and Treatment (SAPT) block grant funding totaling \$2,671,401, or have an option to negotiate for and complete a Corrective Action Plan.

Officials from the **Department of Elementary and Secondary Education**, the **Department of Natural Resources**, the **Missouri Department of Conservation**, the **Missouri Office of Prosecution Services**, the **Office of the State Courts Administrator**, the **City of Kansas City**, the **City of Springfield**, the **Branson Police Department**, the **Kansas City Police Department**, the **St. Joseph Police Department**, the **St. Louis County Police Department**, and the **Phelps County Sheriff's Department** assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, and local law enforcement were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

This proposal has a delayed implementation date of January 1, 2024.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (6 Mo.)	FY 2025	FY 2026
GENERAL REVENUE			
<u>Revenue</u> – DHSS (\$407.930) License fees	<u>\$175,000</u>	<u>\$364,105</u>	<u>\$367,746</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$175,000</u>	<u>\$364,105</u>	<u>\$367,746</u>

<u>FISCAL IMPACT – State Government</u> <u>(continued)</u>	FY 2024 (6 Mo.)	FY 2025	FY 2026
DIVISION OF ALCOHOL AND TOBACCO CONTROL FUND (0544)			
<u>Revenue</u> – ATC (§407.930) License fees	\$175,000	\$364,105	\$367,746
<u>Cost</u> – ATC (§407.930)			
Personal services	(\$143,840)	(\$293,434)	(\$299,302)
Fringe benefits	(\$100,569)	(\$203,290)	(\$205,485)
Equipment and expense	(\$329,290)	(\$132,689)	(\$135,343)
<u>Total cost - ATC</u>	<u>(\$573,699)</u>	<u>(\$629,413)</u>	<u>(\$640,130)</u>
FTE Change - ATC	6 FTE	6 FTE	6 FTE
<u>Cost</u> – OA, ITSD/ATC (§407.930) System modifications	<u>(\$40,000)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT TO THE DIVISION OF ALCOHOL AND TOBACCO CONTROL FUND	(\$438,699)	(\$265,308)	(\$272,384)
Estimated Net FTE Change to the Division of Alcohol and Tobacco Control Fund	6 FTE	6 FTE	6 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (6 Mo.)	FY 2025	FY 2026
POLITICAL SUBDIVISIONS			
<u>Revenue</u> - School districts (§§407.926 and 407.931) Fines from violations	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

FISCAL IMPACT – Small Business

Certain small businesses that sell tobacco products and/or vapor products could be impacted by this proposal.

FISCAL DESCRIPTION

This bill modifies provisions of the law relating to tobacco products.

This bill updates references to the Division of Liquor Control to the Division of Alcohol and Tobacco Control within the Department of Public Safety, requires that proof of age must be verified through government-issued identification and proof of age must be requested at sale for any purchaser who appears to be under the age of 30, and amends certain definitions relating to regulation of tobacco products.

The bill raises the age for the purchase of tobacco products, alternative nicotine products, and vapor products from 18 to 21 years of age. In addition to individual packs of cigarettes or smokeless tobacco products, no tobacco products, alternative nicotine products, or vapor products may be sold except through a vending machine located in an establishment not accessible to persons under 21 years of age or unless displayed behind a checkout counter. It shall be unlawful to sell individual cigarettes to any person in the state.

Currently, no person or entity may sell cigarettes, tobacco products, alternative nicotine products, or vapor products without a retail sales tax license. This bill requires an additional license for selling, providing, or distributing tobacco products issued by the Division of Alcohol and Tobacco Control. A person or entity shall apply for such a license, and any renewal, from the Division in a manner and form as described in the bill. The Division shall conduct inspections of all licensees to ensure compliance the law.

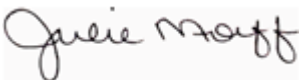
This bill removes civil fines for individual sales clerks or operators for the sale of tobacco products to an individual under 21 years of age and removes certain liability protections for owners of the establishment where such tobacco products were sold in violation of this bill.

This bill has a delayed effective date of January 1, 2024.

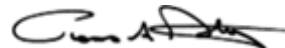
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Administration - Budget and Planning
Department of Elementary and Secondary Education
Department of Health and Senior Services
Department of Mental Health
Department of Natural Resources
Department of Revenue
Department of Public Safety - Division of Alcohol and Tobacco Control
Missouri Department of Conservation
Missouri Office of Prosecution Services
Office of the State Courts Administrator
City of Kansas City
City of Springfield
Branson Police Department
Kansas City Police Department
St. Joseph Police Department
St. Louis County Police Department
Phelps County Sheriff's Department



Julie Morff
Director
March 27, 2023



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