

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4854-02
Bill No.: Perfected SCS for SB 1266
Subject: Tobacco and Tobacco Products; Crimes and Punishment; Attorney General
Type: Original
Date: May 1, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> State Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 5 pages.

FISCAL ANALYSIS

ASSUMPTION

In a similar proposal, officials of the **Department of Revenue (DOR)** state this legislation as written would create a felony for the sale or distribution of gray market cigarettes. DOR is to revoke or suspend the license of any wholesaler in violation of the legislation.

DOR has become aware that for a state to fully participate in the tobacco settlement agreement that state must use due diligence to enforce the agreement and the state's tobacco laws. At present Missouri has no field enforcement of the tobacco law. DOR feels that to ensure that DOR does fully participate in this agreement (get Missouri's 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.

To properly enforce Missouri's tobacco laws with this agreement in place will require four field agents and two Tax Processing Technicians (TPT I)'s. The field agents will be responsible for closely checking each retailer of tobacco products in this state, seizing unlawful product, and requiring that all taxes that are due are paid. The two TPT I's will 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.

DOR assumes the revenue impact is unknown, but a failure on Missouri's part to use due diligence to enforce the tobacco agreement could cause a loss of a portion of the settlement funds.

DOR assumes this legislation seems very similar to HB 381, Truly Agreed and Finally Passed in the 2001 Session. DOR is requesting the same FTE due to the fact DOR was not appropriated these positions.

Oversight assumes this proposal makes minor technical changes to last year's House Bill 381. Oversight included the above requested DOR personnel (6 FTE) and related expenses in the fiscal note for HB 381. The fact that DOR was not appropriated the requested FTE is a function of the legislative process and should not be reflected in this fiscal note. Therefore Oversight will not show any expenses for DOR for this proposal.

Officials from the **Office of Administration, Budget and Planning (BAP)** assume this legislation should not result in additional costs or savings to the BAP.

ASSUMPTION (Continued)

In a similar proposal, **Secretary of State (SOS)** officials assume this bill creates a felony for the sale or distribution of gray market cigarettes. Based on experience with others divisions, the rules, regulations and forms issued by the Department of Revenue could require as many as approximately 10 pages in the Code of State Regulations. For any given rule, roughly one-half again as many pages are published in the Missouri Register as are published in the Code because of cost statements, fiscal notes and notices that are not published in the Code. The estimated cost of a page in the Missouri Register is \$23.00. The estimated cost of a page in the Code of State Regulations is \$27.00. SOS estimates the cost at \$492 for FY03. The actual costs could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn.

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 appropriations process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal

In a similar proposal, officials of the **Department of Public Safety, Division of Liquor Control, Missouri State Highway Patrol** and the **Office of Prosecution Services** state this proposal would have minimal or no fiscal impact to their agencies and any costs involved could be absorbed.

Officials of the **Attorney General's Office** state this proposal would have minimal or no fiscal impact to their agency. Any costs could be absorbed.

Officials of the **Office of State Courts Administrator (CTS)** state this proposal would impose new restrictions on the sales of grey market cigarettes and 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 the State Public Defender (SPD)** assume existing staff could provide representation for those cases arising where indigent persons were charged with marketing gray market cigarettes - a class D felony. However, SPD assumes passage of more than one similar bill would require the SPD to request increased appropriations to cover cumulative cost of representing the indigent persons accused in the now more serious cases or in the new additional cases.

In a similar proposal, officials from the **Department of Corrections (DOC)** assume at this time, the DOC is unable to determine the number of people who would be convicted under the

ASSUMPTION (Continued)

provisions of this bill and therefore the number of additional inmate beds that may be required as

a consequence of passage of this proposal. Estimated construction cost for one new medium to maximum-security inmate bed is \$55,000. Utilizing this per-bed cost provides for a conservative estimate by the DOC, as facility start-up costs are not included and entire facilities and/or housing units would have to be constructed to cover the cost of housing new commitments resulting from the cumulative effect of various new legislation, if adopted as statute.

This proposed legislation creates a class D felony for the sale or distribution of gray market cigarettes. The penalty provisions create the potential for fiscal impact for DOC.

Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offenses(s) 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 either through incarceration (FY01 average of \$35.78 per inmate, per day or an annual cost of \$13,060 per inmate) or through supervision provided by the Board of Probation and Parole (FY01 average of \$3.34 per offender, per day or an annual cost of \$1,219 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, DOC assumes the impact would be less than \$100,000 per year for the DOC.

This legislation would not affect Total State Revenues.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
	\$0	\$0	\$0

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

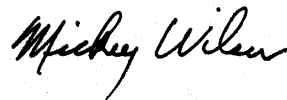
DESCRIPTION

This act provides that any illegally paid or overcharged cigarette taxes shall be either refunded to the person who paid the tax and not the retailer, or retained by the Director of Revenue. No stamp is required to be attached until the package is sold to a retailer or consumer. The act prohibits a tax stamp from being affixed to any package of cigarettes unless certain federal requirements are met. No stamp shall be affixed to any package labeled as not intended for sale inside the United States or has a label that has been altered. Any violation is a Class D felony, whether committed knowingly or recklessly, and is also deemed an unlawful trade practice.

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 Revenue
Office of Administration, Budget and Planning
Department of Public Safety
Office of State Courts Administrator
Office of the State Public Defender
Office of Prosecution Services
Office of the Attorney General
Department of Corrections



Mickey Wilson, CPA
Acting Director
May 1, 2002