

Legislative Analysis



TOBACCO PRODUCTS TAX ACT AMENDMENTS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5668 (Substitute H-2)
Sponsor: Rep. Larry Julian
Committee: Regulatory Reform

Complete to 7-14-04

A SUMMARY OF HOUSE BILL 5668 (SUBSTITUTE H-2) AS REPORTED FROM COMMITTEE

The bill would amend the Tobacco Products Tax Act to do the following.

** Extend to counterfeit cigarettes the same penalties that currently exist for the illegal possession, acquisition, transportation, or offering for sale of cigarettes and tobacco products, and for the falsification of a manufacturer's label on cigarettes.

** Increase the tax penalty for a person, other than a licensee under the act, who is in control of possession of a tobacco product in violation of the act, in control or possession of an individual package of cigarettes without a stamp in violation of the act, or who offers products for sale to another for purposes of resale without a license. Currently, a person committing these violations is personally liable for the taxes imposed by the act plus a penalty of 100 percent of the amount of tax due. The bill would increase this to 500 percent of taxes due.

** Alter the penalty for a person who commits a violation of the act for which a criminal penalty is not specifically provided. Currently, such a violation is a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$1,000. The bill would make the fine \$1,000 or five times the retail value of the tobacco products involved, whichever was greater.

** Add provisions (and penalties) regarding the sale of cigarettes through the Internet, by telephone, or by mail order, including provisions to prevent sales to minors.

** Provide a tax credit to wholesalers and unclassified acquirers on sales of cigarettes for specified weeks in 2004.

Counterfeit Cigarettes. The following are the existing penalties for violations of the act that would be specifically extended to counterfeit cigarettes. The bill would define a "counterfeit cigarette" as a cigarette in an individual package of cigarettes or other container with a false manufacturing label or a cigarette in an individual package of cigarettes or other container with a counterfeit stamp.

A violation involving 3,000 or more cigarettes is a felony punishable by a fine of not more than \$50,000 and/or imprisonment for not more than five years. A violation involving 1,200 to 2,999 cigarettes is a misdemeanor punishable by a fine of not more than \$5,000 and/or imprisonment for not more than one year.

The falsification of a manufacturer's label on cigarettes is a felony punishable by imprisonment for not less than one year or more than ten years. A fine of not more than \$50,000 could also be imposed.

Tax Credit on Cigarette sales. Wholesalers and unclassified acquirers are required under the act to make monthly reports on inventory, the number of unfixed tobacco stamps, the quantity of cigarettes purchased, and so forth and pay the required tax for tobacco products sold during the calendar month covered by the return.

The bill would allow every wholesaler and unclassified acquirer who paid the tax in July 2004 to claim a credit against their current tax liability on their August 2004 return equal to 37.5 mills per cigarette for each cigarette sold in the last seven-day period of June 2004 and another tax credit for the same amount could be claimed on the October 2004 return for each cigarette sold in the second-to-last seven-day period of June 2004.

Internet, Phone, and Mail-Order Sales. Such sales could not be completed unless the seller had obtained from the purchaser a certification that included a valid government-issued document confirming that the purchaser was at least the legal minimum age to purchase cigarettes; that the cigarettes were not intended for consumption by an underage person; and a written statement signed by the purchaser that certified the purchaser's address and that the purchaser is at least the minimum legal age. The statement would also have to confirm that the purchaser understood that signing another's name was illegal; that the sale of cigarettes to underage persons was illegal; and that the purchase of cigarettes by underage persons was illegal in Michigan. The seller would have to verify the information contained in the certification against a commercially available database of government records or obtain a photocopy or other image of the valid, government-issued identification.

All invoices, bills of lading, sales receipts, and other documents related to the sale of cigarettes through the Internet, by telephone, or by mail order would have to contain the current seller's valid Michigan sales tax registration number, business name and address, and a statement whether all sales taxes and tobacco taxes had been paid. All packages of cigarettes shipped from a seller to purchasers residing in Michigan would have to clearly print the package with the word "Cigarettes" on the outside of all sides of the package clearly visible to the shipper. In addition, the package would have to contain an externally visible and clearly legible notice located on the same side of the package as the delivery address, stating (in capital letters): "If these cigarettes have been shipped to you from a seller located outside of the state in which you reside, the seller has reported under federal law the sale of these cigarettes to our state tax collection agency, including your name and address. You are legally responsible for all applicable unpaid state taxes on these cigarettes."

If an order was made as a result of an advertisement over the Internet, the tobacco retailer would have to request the electronic mail address of the purchaser and receive payment by credit card or check before shipping.

A person who violated the bill's provisions regarding Internet, phone, or mail order sales would be guilty of a misdemeanor, punishable by a fine of not more than \$10,000 and/or imprisonment for not more than one year. Each violation would be a separate offense. (The Internet, phone, and mail order provisions would not apply to sales made by wholesalers and unclassified acquirers.)

MCL 205.422 et al.

FISCAL IMPACT:

This bill would increase the penalty for a person, other than a licensee, who is in possession of a tobacco product that is contrary to the tobacco products tax act and would impose a new penalty for transactions that violate requirements of Internet, telephone, or mail-order sales.

In addition, this bill would provide for a credit to wholesalers and unclassified acquirers equal to the product of the cigarette tax increase and a one week period, as specified in the bill, for FY 2003-04 and for FY 2004-05. This would reduce cigarette tax revenue by an estimated \$20 million to \$40 million – approximately half would affect FY 2003-04 revenue and half would affect FY 2004-05 revenue. However, the revenue loss could be greater if sales from wholesalers and unclassified acquirers during the last two week period of June 2004 were higher than estimated. The estimated fiscal impact would affect the General Fund/General Purpose (GF/GP), School Aid Fund (SAF), Health and Safety Fund, Healthy Michigan Fund, Medicaid Trust Fund, and Wayne County revenue.

POSITIONS:

The following organizations indicated support for the bill to the House Committee on Regulatory Reform on 7-6-04: the Michigan Distributors and Vendors Association, Inc.; the Michigan Grocers Association; Altria (parent company of Philip Morris and Kraft Foods); and Lorillard Tobacco.

The Department of Treasury is opposed to the bill.

Legislative Analyst: Chris Couch
Susan Stutzky
Fiscal Analyst: Rebecca Ross

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.