Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 781 (Substitute S-2 as reported)
Senate Bill 782 (Substitute S-1 as reported)
Senate Bill 783 (Substitute S-1 as reported)
Senate Bill 784 (Substitute S-2 as reported)
Senate Bills 785 and 786 (as introduced 2-5-20)
Sponsor: Senator Jim Ananich (S.B. 781)
Senator Marshall Bullock II (S.B. 782)
Senator Jim Runestad (S.B. 783)
Senator Lana Theis (S.B. 784)
Senator Dale W. Zorn (S.B. 785)
Senator Paul Wojno (S.B. 786)
Committee: Regulatory Reform

CONTENT

Senate Bill 781 (S-2) would amend the Tobacco Products Tax Act to do the following:

-- Specify that the tax levied on cigars could not exceed $0.65 per cigar, beginning November 1, 2020, through October 31, 2021, and specify that the tax could not exceed $0.75 per cigar, beginning November 1, 2021.
-- Levy an 18% tax on the wholesale price of consumable materials, beginning January 1, 2021, and prescribe the distribution of the revenue generated from the tax.
-- Levy a $0.50 per ounce tax on alternative nicotine products, beginning January 1, 2021.
-- Exclude consumable material from a 32% tax on the wholesale price on cigars, noncigarette smoking tobacco, and smokeless tobacco.
-- Require every licensee and retailer who, on January 1, 2021, had on hand for sale any consumable materials to file a complete inventory of those consumable materials before February 1, 2021, to the Department of Treasury.

Senate Bill 782 (S-1) would amend the Youth Tobacco Act to do the following:

-- Prohibit a person from selling a tobacco product, vapor product, or alternative nicotine product at retail unless that person was licensed beginning October 1, 2020.
-- Require the Department of Treasury to grant a license to a person who submitted a completed application and paid a licensing fee (which could not exceed $100 per location) to the Department.
-- Require the Department to issue a certificate of licensure to a person who was granted a license under the bill, and require that person to display it in the person's place of business where a tobacco product, vapor product, or alternative nicotine product was sold.
-- Specify that each license would be valid for one year and would have to be renewed annually before December 31 of the year that the license expired, and that the cost of renewing the license could not exceed $75.
-- Allow the Department to assess an administrative fine of not more than $500 if it determined that a person violated the bill.

Senate Bill 783 (S-1) would amend the Youth Tobacco Act to do the following:

-- Prohibit a person who sold vapor products at retail from advertising those products in certain manners.
-- Prescribe a civil infraction and fine for a person who violated the bill's provisions.
-- Allow a person to sell a vapor product of any flavor to an individual who was at least 21 years of age, subject to the bill's restrictions.

Senate Bill 784 (S-2) would amend the Youth Tobacco Act to do the following:

-- Prescribe a civil infraction for a sales clerk, agent, or employee of a person who sells tobacco products, vapor products, or alternative nicotine products at retail who knowingly sold or furnished a tobacco product, vapor product, or alternative nicotine product to a minor, or who failed to make diligent inquiry as to whether the individual were a minor.
-- Modify various provisions relating to vapor products to raise the age, from 18 to 21, that is referenced currently in those provisions.
-- Allow the Department of Health and Human Services (DHHS) to conduct unannounced compliance checks of any establishment that sold tobacco products, vapor products, or alternative nicotine products, subject to certain restrictions.
-- Prescribe penalties for an establishment that failed a compliance check.
-- Require the DHHS to publish the results of all compliance checks at least annually and make the publicly available on request.

Senate Bill 785 would amend the Michigan Penal Code to require a person that distributed a tobacco product to ascertain that the individual who received the tobacco product was 21, instead of 18, years of age or older.

Senate Bill 786 would amend the Age of Majority Act to specify that the Act would not apply to the Youth Tobacco Act.

MCL 205.422 et al. (S.B. 781) Legislative Analyst: Stephen Jackson
MCL 722.644 et al. (S.B. 782)
Proposed MCL 722.641a (S.B. 783)
MCL 722.641 (S.B. 784)
MCL 750.42b (S.B. 785)
MCL 722.53 (S.B. 786)

FISCAL IMPACT

Senate Bill 781 (S-2) would increase State revenue by approximately $6.2 million in FY 2020-21, and approximately $10.0 million per year in later fiscal years. The actual amount of revenue generated by the bill could differ substantially from the estimate. The bill would make multiple changes to taxes on tobacco products, and the impact of some of those changes would be subject to substantial variation.

In terms of the potential market for liquid nicotine products, the market is expected to grow substantially over the next few years, perhaps increasing four-fold by 2024. However, this growth could be offset by any of a number of Federal taxes currently under consideration. Estimates for one bill before Congress suggest its proposed tax could reduce e-liquid sales by 22%. Furthermore, to the extent that many of the affected products are ordered over the internet, while the State may be able to collect sales tax on those sales, it is unclear the degree to which the State would be able to assess tobacco taxes on online sales.

Revenue generated by the bill also would be affected by how the proposed tax base ultimately was interpreted. While many proposed taxes levy the tax on the volume of liquid in the product, the bill would levy a 18% tax on the "wholesale price". Electronic cigarette products are delivered in a variety of ways, including prefilled cartridges, rechargeables, disposables, and e-liquids. The bill is unclear if the price of the delivery device would be included in the tax base. To the extent that the bill was interpreted to tax only the liquid nicotine in the device, the bill would generate less revenue than estimated because the available data include the price of the delivery device. In fact, for "bundled" products, such as disposables, it is possible the tax under the bill could not be levied at all. Furthermore, the bill's provisions excluding inventoried products from the tax could reduce the projected revenue, particularly during the first year.

Once fully phased in, the changes in taxes on cigars would increase revenue to the Medicaid Benefits Trust fund by approximately $750,000 per year to the General Fund by approximately $250,000 per year. The bill would earmark the first $5.25 million of revenue from taxes on consumable materials, with $2.75 million directed to tax enforcement and $2.5 million directed to local health departments for public health purposes. Remaining revenue from the tax on consumable materials would be directed to the General Fund. The bill does not specifically earmark revenue from the taxes on alternative nicotine products to the General Fund or any other fund. Under the assumption that 100% of the tax on alternative nicotine products would be directed to the General Fund, the combined impact of all changes in the bill would increase General Fund revenue by approximately $4.0 million per year once fully phased in.

Senate Bill 782 (S-1) would have an indeterminate fiscal impact on the Department of Treasury and no fiscal impact on local units of government. The total fiscal impact would depend on the number of businesses that sold vapor products. The Department likely would incur increased administrative costs because of the development of the licensing program. There likely would be one-time costs to the Department associated with information technology upgrades and staff training.

The proposed $100 license fee and $75 renewal fee caps would be higher than the current license fee on tobacco wholesalers and would raise additional revenue for administration. Total revenue would depend on the number of licenses, which would correspond with the associate costs. Therefore, the additional revenue likely would be sufficient to cover the additional administrative and information technology costs.

The bill also would allow the Department to levy an administrative fine of $500 on a person who violated its provisions, which also would support additional administrative and information technology costs.

Senate Bill 783 (S-1) could result in additional revenue for local libraries. Although it is unknown how many people would be cited under the bills' provisions, any additional revenue from imposed fines would go to local libraries.

Senate Bill 784 (S-2) could result in additional revenues for local libraries. Although it is unknown how many people would be cited for knowingly selling or furnishing a tobacco product, vapor product, or alternative nicotine product to a minor, or for failing to make diligent inquiry as to whether the individual was a minor, any additional revenue from imposed fines would go to local libraries.

The bill also would have an indeterminant fiscal impact on the Department of Health and Human Services and on local units of government. The bill is unclear as to whether the DHHS could delegate the responsibility for unannounced compliance checks to local entities, such as local health departments or substance use disorder coordinating agencies. If the DHHS were unable to delegate responsibility, the Department would face increased costs resulting from the need to hire and train employees to perform unannounced compliance checks on establishments that sell tobacco products, vapor products, or alternative nicotine products. However, there would be no fiscal impact on local units of government.

The ability to delegate responsibility still would result in an increase in costs to the DHHS, but at a lower level, as both local health departments and substance use disorder coordinating agencies perform similar functions related to monitoring underage drinking and performing compliance checks for satisfying federal substance abuse block grant youth tobacco access requirements. However, delegation of these responsibilities would result in an increase in costs to local units of government. Any increased costs to the DHHS resulting from the required unannounced compliance checks would be offset by the fines collected for violation of the follow-up compliance check ranging from $1,000 for a first violation to $3,000 for four or more violations. The total amount offset would depend on the number of violations.

Senate Bills 785 and 786 would have no fiscal impact on State or local government.

Date Completed: 6-18-20

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