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BILL ANALYSIS

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House Bill 5668 (Substitute H-5 as passed by the House)
Sponsor: Representative Larry Julian
House Committee: Regulatory Reform
Senate Committee: Commerce and Labor

Date Completed: 12-2-04

CONTENT

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

- Increase the civil penalty on an unlicensed person for violating the Act.**
- Establish criminal penalties for violations involving counterfeit cigarettes.**
- Require sellers to obtain proof of a cigarette purchaser's age when making internet, telephone, or mail-order sales, and require deliverers to obtain proof of the purchaser's age.**
- Require documents related to internet, telephone, or mail-order cigarette sales to contain certain information regarding taxes; and establish shipping requirements.**
- Require the Department of Treasury to destroy all cigarettes forfeited to the State.**

Unlicensed Violator

The Act sets a penalty for an unlicensed person who is in control or possession of a tobacco product in violation of the Act, or in control or possession of cigarettes without a stamp in violation of the Act, or who sells or offers to sell a tobacco product for purposes of resale. Presently, the person is liable for the tax imposed by the Act plus a penalty of 100% of the amount of the tax due. The bill would increase the penalty to 500% of the amount due.

Criminal Penalties

Section 8 of the Act establishes criminal penalties for certain violations. It is a felony, punishable by a \$50,000 maximum fine and/or imprisonment for up to five years, to possess, acquire, transport, or offer for sale in violation of the Act, 3,000 or more cigarettes, or tobacco products other than cigarettes with an aggregate wholesale price of \$250 or more. Under the bill, the penalty also would apply to a violation involving 3,000 or more counterfeit cigarettes.

If the violation involves between 1,200 and 2,999 cigarettes, or other tobacco products with a wholesale value of at least \$100 but less than \$250, the offense is a misdemeanor punishable by a maximum fine of \$5,000 and/or up to one year's imprisonment. The bill would extend this to violations involving between 1,200 and 2,999 counterfeit cigarettes.

Under the Act, it is a felony for a person to manufacture, possess, or use a stamp, a counterfeit stamp, or a writing or device intended to replicate a stamp without authorization

from the Department of Treasury, or for a licensee to purchase or obtain a stamp from anyone other than the Department. The penalty is a maximum fine of \$50,000 and mandatory imprisonment for at least one year but not more than 10 years. The bill would extend this penalty to a licensee who falsified a manufacturer's label on cigarettes or counterfeit cigarettes.

("Counterfeit cigarette" would mean a cigarette in an individual package of cigarettes or other container with a false manufacturing label or a cigarette in an individual package or other container with a counterfeit stamp.)

Currently, a violation of the Act for which a criminal penalty is not otherwise provided is a misdemeanor, punishable by a \$1,000 maximum fine and/or up to one year's imprisonment. Under the bill, the maximum fine would be \$1,000 or five times the retail value of the tobacco products involved, whichever was greater.

Internet, Telephone, & Mail-Order Sales

The bill would prohibit the completion of all sales conducted through the internet, by telephone, or in a mail-order transaction unless, before each delivery of cigarettes was made, the seller had obtained from the purchaser an affirmation that included a copy of a valid government-issued document that confirmed the purchaser's name, address, and date of birth, showing that the purchaser was at least the legal minimum age to purchase cigarettes, and that they were not intended for consumption by an individual under the legal minimum age. The seller also would have to obtain a written statement signed by the purchaser that affirmed his or her address and that he or she was at least the minimum legal age to purchase cigarettes. In addition, the statement would have to confirm that the purchaser understood that signing another person's name to the affirmation was illegal; that the sale of cigarettes to underage individuals was illegal; and that the purchase of cigarettes by underage individuals was illegal under Michigan law.

The seller would have to verify the information contained in the affirmation against a commercially available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the purchaser's date of birth or age.

All invoices, bills of lading, sales receipts, or other documents related to internet, telephone, or mail-order sales of cigarettes would have to contain the current seller's valid Michigan sales tax registration number and business name and address, and a statement as to whether all sales taxes and taxes levied under the Act had been paid. All packages of cigarettes shipped from a cigarette seller to purchasers residing in Michigan would have to be stamped or printed on all sides with the word "CIGARETTES" so it was clearly visible to the shipper. The package also would have to contain an externally visible and clearly legible notice on the same side as the delivery address. The notice would have to contain language set forth in the bill regarding liability for unpaid State taxes on the cigarettes.

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

The requirements described above would not apply to sales by wholesalers and unclassified acquirers.

The bill also would require the deliverer of the cigarettes to obtain proof from a valid government-issued document that the person signing for them was the purchaser.

FISCAL IMPACT

The bill would likely have a minimal effect on State revenue or expenditures. The bill's primary fiscal impact likely would reflect the increased penalties as well as the additional steps that cigarette retailers and consumers would have to take in order to avoid penalties. Currently, the Department of Treasury is not selling seized cigarettes, so the requirement to destroy them would not affect revenue. The other provisions in the bill primarily pertain to enforcement of cigarette tax laws, although the extent to which Michigan would be able to enforce the provisions is unclear. To the extent that the bill would discourage unlawful behavior, it could increase cigarette tax and sales tax revenue by increasing compliance with existing laws and aiding existing enforcement efforts, under the assumption that affected consumers would maintain their cigarette consumption. To the extent that the bill discouraged consumption of cigarettes by affected taxpayers, it would have less of an impact.

According to the Department of Corrections Statistical Report, in 2001 a total of 18 offenders were convicted of violating Section 8 of the Act, all of whom received probation. There are no data to indicate the number of additional offenders who would be convicted under the proposed changes to this section. If one assumes that additional offenders also would receive probationary sentences, the State would incur additional felony probation costs at an average annual cost of \$1,800, while local units of government would incur any additional costs of misdemeanor probation, which vary by county. Any additional revenue raised by the proposed misdemeanor fine increase would benefit public libraries.

The fiscal impact is preliminary and will be revised as new information becomes available.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.