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BILL ANALYSIS

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Senate Bill 882 (as introduced 11-6-07)  
Sponsor: Senator Tom George  
Committee: Commerce and Tourism

Date Completed: 2-5-08

### **CONTENT**

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

- Prohibit the Department of Treasury from purchasing or using cigarette stamps unless they had been produced by a facility certified as secure, were capable of being read by a scanning or similar device, and were encrypted with specific information.**
- Establish criminal and civil penalties for unlawfully possessing, transporting, or offering for sale cigarettes, other tobacco products, counterfeit cigarettes or papers, or grey market cigarettes or papers in quantities smaller than those subject to current penalties.**
- Revise the definition of "unclassified acquirer".**
- Delete an exemption for secondary wholesalers from a requirement to file a return with the Department.**

#### Cigarette Stamps

The Act requires the Department to procure cigarette stamps, and allows wholesalers and unclassified acquirers to apply to the Department for stamps to affix to packages of cigarettes. Before delivery, transfer, or sale, wholesalers and unclassified acquirers must place a stamp on the bottom of each individual package of cigarettes to be sold in Michigan. The Act prohibits a retailer or a person licensed under the Act, other than a wholesaler or unclassified acquirer or a person acting as a transporter for a wholesaler or unclassified acquirer, from acquiring for resale an individual package of cigarettes or a cigarette unless that individual package has a stamp on it. The Act also prohibits a retailer or vending machine operator from selling or offering for sale to the general public an individual package of cigarettes that has not been stamped.

The Act defines "stamp" as a distinctive character, indication, or mark, as determined by the Department, attached or affixed to an individual package of cigarettes to indicate that the tax imposed by the Act has been paid.

The bill would prohibit the Department from purchasing, acquiring, or using stamps unless they had been produced entirely in a facility that had been certified as secure by an independent organization accredited by the American National Standards Institute or a successor organization. The Department also would be prohibited from purchasing, acquiring, or using stamps unless they were capable of being read by a scanning or similar device, including a minimum of four layers of overt, semicovert, and covert data, and were encrypted with at least all of the following information:

- The name and address of the wholesaler or other entity affixing the stamp.
- The date the stamp was affixed.
- The denominated value of the stamp.

Penalties

The Act prescribes criminal penalties for various violations, including possessing, acquiring, transporting, or offering for sale cigarettes, other tobacco products, counterfeit cigarettes or cigarette papers, or grey market cigarettes or papers, in violation of the Act. The penalties depend on the quantity of the cigarettes or papers involved, or the aggregate wholesale value of the other tobacco product. Table 1, below, shows the current penalties as well as the proposed penalties for offenses involving smaller quantities or tobacco products of less value.

Table 1

| <u>Current Penalties</u>      |                  |              |           |
|-------------------------------|------------------|--------------|-----------|
| Quantity; Value               | Offense          | Maximum Fine | Max. Term |
| 3,000 or more; \$250 or more  | Felony           | \$50,000     | 5 years   |
| 1,200-2,999; \$100 - \$249.99 | Misdemeanor      | \$5,000      | 1 year    |
| <u>Proposed Penalties</u>     |                  |              |           |
| 600 - 1,199; \$50 - \$99.99   | Misdemeanor      | \$1,000      | 90 days   |
| 201 - 599; \$25 - \$49.99     | Civil Infraction | \$100        | NA        |

Unclassified Acquirer

The Act defines "unclassified acquirer" as a person, except for a transportation company or a retailer purchaser from a retailer licensed under the General Sales Tax Act, who imports or acquires a tobacco product from "a source other than a wholesaler or secondary wholesaler" licensed under the Tobacco Products Tax Act for use, sale, or distribution. The bill would refer to a person who imports or acquires a tobacco product from a wholesaler or secondary wholesaler licensed under the Act.

The current definition also includes a person who receives cigars, noncigarette smoking tobacco, or smokeless tobacco directly from a licensed manufacturer or from another source outside this State that is not licensed under the Act. The bill would delete reference to an unlicensed source outside this State.

Filing a Return

The Act requires every licensee, other than a retailer, secondary wholesaler, unclassified acquirer licensed as a manufacturer, or vending machine operator, to file a return with the Department. The return must contain the wholesale price of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in them, and the number and denominations of stamps affixed to individual packages of cigarettes sold.

The bill would delete the exception for secondary wholesalers.

MCL 205.422 et al.

Legislative Analyst: Suzanne Lowe

**FISCAL IMPACT**

The bill could have a significant fiscal impact on the Department of Treasury. It is unclear under the bill whether the Department or the wholesalers would be responsible for providing

the new equipment necessary for the implementation of new tobacco stamp technology. If the Department were responsible, the cost could be considerable. Currently, the Department is reviewing bids for contracts pertaining to tobacco stamping, so the cost of a new contract is unclear. Any revenue from violations would depend on increased funding for enforcement, which the bill does not address.

The bill would have an indeterminate fiscal impact on local government. Currently, if a person commits a violation of the Act for which a penalty is not provided, the offense is a misdemeanor punishable by a fine of up to \$1,000 or five times the retail value of the tobacco products involved, whichever is greater, or imprisonment for up to one year, or both. There are no data to indicate how many offenders would be convicted of, or found civilly responsible for, violations involving fewer than 1,200 cigarettes or papers, or products worth less than \$100. To the extent that the bill resulted in decreased incarceration time, local governments would incur decreased costs of incarceration in local facilities, which vary by county. The bill also could result in lower penal fines, which benefit public libraries.

In addition, the bill could lead to an increase in civil fine revenue, which would benefit public libraries.

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