

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4326-04  
Bill No.: SCS for SB 1213  
Subject: State Attorney General; Tobacco Products; Business and Commerce  
Type: Original  
Date: April 2, 2004

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue	Unknown	Unknown	Unknown
<b>Total Estimated Net Effect on General Revenue Fund*</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

\*Costs of \$263,072 for FY05, \$281,626 for FY06 and \$288,902 for FY07 are expected to be offset by collection of disgorgements, penalties and fees.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **Department of Public Safety - Liquor Control, Office of Prosecution Services, Office of the State Public Defender, Office of Administration, Administrative Hearing Commission** and the **Office of the State Courts Administrator** each state this proposal would not fiscally impact their respective agencies.

Officials from the **Office of the Attorney General (AGO)** note that this proposal (unlike the original bill) give primary administrative duties to the Department of Revenue and assume that their office could carry out its duties with existing resources.

AGO believes that after start up, these positions would be self-sustaining through collection of disgorgements, penalties and fees.

**Department of Revenue** officials suggested to officials of the Attorney General that the following resources would be needed to enforce and administer this proposal: (1) Attorney, two (2) Investigators and one (1) paralegal. These employees would also investigate, monitor compliance, collect and maintain data and promulgate rules.

### ASSUMPTION (continued)

Officials from the **Department of Corrections (DOC)** assume the bill, if passed into law, provides additional regulation of tobacco product manufactures. Penalty provisions for violations, the component of the bill to have potential fiscal impact for DOC, is for a class A misdemeanor.

DOC stated that currently, they cannot predict the number of new commitments which may result from the creation of the offenses 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 through supervision provided by the Board of Probation and Parole (FY03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender).

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Department of Revenue's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 10 new pages of regulations in the *Code of State Regulations* at a cost of \$27.00 per page, and 15 new pages in the *Missouri Register* at a cost of \$23.00 per page. Costs due to this proposal are estimated to be \$615, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal; however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

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

**Office of the State Treasurer (STO)** officials assume they are required by this proposal to make deposits to the General Revenue Fund. STO currently doesn't make collect or make deposits for court fees; therefore, STO is requesting one FTE at the level of Accounting Analyst I and the ASSUMPTION (continued)

corresponding expense and equipment.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
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**GENERAL REVENUE FUND**

<u>Income</u> - collection of disgorgements, penalties and fees	Unknown	Unknown	Unknown
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<u>Cost</u> - Department of Revenue (DOR)			
Personal Service (4 FTE)	(\$108,906)	(\$133,955)	(\$137,304)
Fringe Benefits	(\$45,087)	(\$55,457)	(\$56,844)
Expense and Equipment	<u>(\$67,794)</u>	<u>(\$46,144)</u>	<u>(\$47,529)</u>
Administrative Costs - DOR	<u>(\$221,787)</u>	<u>(\$235,556)</u>	<u>(\$241,677)</u>

<u>Cost</u> - State Treasurer (STO)			
Personal Service (1 FTE)	(\$26,312)	(\$32,363)	(\$33,173)
Fringe Benefits	(\$10,893)	(\$13,398)	(\$13,734)
Expense and Equipment	<u>(\$4,080)</u>	<u>(\$309)</u>	<u>(\$318)</u>
Administrative Cost - STO	<u>(\$41,285)</u>	<u>(\$46,070)</u>	<u>(\$47,225)</u>

**ESTIMATED NET EFFECT ON THE  
 GENERAL REVENUE FUND \***

<u>UNKNOWN</u>	<u>UNKNOWN</u>	<u>UNKNOWN</u>
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\*The income from disgorgements, penalties and fees is expected to exceed costs.

<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal may impact small businesses that sell tobacco products.

## DESCRIPTION

This proposal would require all tobacco product manufacturers who sell cigarettes in this state to file an annual form with the Department of Revenue stating they are in compliance with the Master Settlement Agreement. Participating manufacturers would certify a list of its brand families. Nonparticipating manufacturers would provide additional information as indicated including a more detailed listing of brand families and units sold, and that the nonparticipating manufacturer is registered to do business in the state, maintains a qualified escrow fund (including specific information regarding the account), is in full compliance with the Master Settlement. Tobacco product manufacturers would maintain information used to compile the certification for five years.

By January 1, 2005, the Department of Revenue would publish or make available on its website a list of all tobacco product manufacturers who have filed certifications. It would be unlawful for any person to affix a stamp to a package of cigarettes of a tobacco product manufacturer or brand family that is not included in the directory or to offer those cigarettes for sale.

Foreign nonparticipating manufacturers who are not registered to do business in the state would be required to designate an agent for service of process as a condition precedent to being listed in the directory.

Stamping agents would be required to submit a quarterly report to the Department of Revenue showing the equivalent stick count for which the stamping agent affixed stamps or otherwise paid the tax due for the cigarettes. The stamping agent must maintain documentation used to compile the report for five years. The Director of Revenue and the Attorney General may share information for the purpose of enforcement of the provisions of this act.

The Department of Revenue could require nonparticipating manufacturers, stamping agents and tobacco product manufacturers to provide certain additional information necessary to determine compliance.

Upon determination of a violation, the Director of the Department of Revenue could suspend the license of a stamping agent. Each stamp affixed and each sale or offer to sell cigarettes would constitute a separate violation. The Director of the Department of Revenue could also impose a civil penalty of the greater of 500% of the retail value of the cigarettes or \$5,000.

Cigarettes offered for sale or possessed for sale that are in violation would be deemed contraband and subject to seizure and forfeiture. The Department of Revenue could request the Attorney General to seek an injunction for threatened or actual violations.

DESCRIPTION (continued)

It would be a Class A misdemeanor to sell or distribute cigarettes, or acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knew or should have known were intended for distribution in the state which are in violation of the stamping provisions.

Violations of the stamping provisions would also be deemed to be engaged in unfair merchandising practices pursuant to Chapter 407, RSMo.

Decisions regarding maintenance of the directory by the Department of Revenue would be subject to review by the Administrative Hearings Commission. Effective dates for implementation of the provisions are provided. The Department of Revenue could promulgate necessary rules.

The state would be entitled to recover costs of enforcement actions including reasonable attorneys fees. If a court determined that a violation has occurred, the court would order any profits be disgorged and paid into the General Revenue Fund to be used primarily to enforce the provisions of this proposal.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space. This proposal could affect Total State Revenue.

SOURCES OF INFORMATION

Department of Public Safety - Alcohol and Tobacco Control  
Department of Revenue  
Office of the State Courts Administrator  
Office of the State Public Defender  
Secretary of State  
Office of Prosecution Services  
Office of the Attorney General  
State Treasurer  
Department of Corrections  
Office of Administration - Administrative Hearing Commission

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
April 2, 2004