

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4619-01
Bill No.: SB 829
Subject: Children and Minors; Drugs and Controlled Substances; Health, Public;
 Department of Public Safety; Tobacco Products
Type: Original
Date: March 3, 2020

Bill Summary: This proposal modifies provisions relating to tobacco products.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on General Revenue**	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Health Initiative (0275)*	\$10,390,085 to \$20,155,027	\$12,468,102 to \$24,186,032	\$12,468,102 to \$24,186,032
Total Estimated Net Effect on Other State Funds**	\$10,390,085 to \$20,155,027	\$12,468,102 to \$24,186,032	\$12,468,102 to \$24,186,032

*Impact is ranged from estimates provided by Budget & Planning to the Department of Revenue.

**Oversight notes this proposal could indirectly increase sales tax revenue if the excise tax on vapor products is passed on from the manufacturer to the consumer (through increased prices).

Using B&P's & DOR's estimates, the increase in sales tax collections could total:

General Revenue \$374,043 - \$725,581
 School District Trust \$124,681 - \$241,860
 Conservation \$ 15,585 - \$ 30,233
 Parks, Soil & Water \$ 12,468 - \$ 24,186

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2021	FY 2022	FY 2023
Local Government**	\$0	\$0	\$0

**Oversight notes this proposal could indirectly increase sales tax revenue if the excise tax on vapor products is passed on from the manufacturer to the consumer (through increased prices). Using B&P's & DOR's estimates, the increase in sales tax collections could total:

Local Funds \$489,996 - \$949,302

FISCAL ANALYSIS

ASSUMPTION

§§191.765, 191.769, 191.775, 191.776, 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934 - Tobacco products

Officials from the **Department of Revenue (DOR)** state this proposal updates the tobacco statutes by changing the name of the Division of Liquor to the Division of Alcohol and Tobacco. The Department notes that updating the name of the division will not have a fiscal impact.

Currently, statutes prohibit the use of tobacco products in certain locations in the state such as child care facilities. This proposal updates sections 191.765, 191.769, 191.775 and 191.776 to include vaping products as prohibited in these same locations. The DOR assumes no fiscal impact from these changes.

This proposal raises the age of selling smoking, tobacco, or vapor products from 18 to 21. The Federal Budget signed on December 20, 2019, included a provision that raised the smoking, tobacco, or vapor products age from 18 to 21. The federal law went into effect immediately. The changes in this proposal are to bring Missouri statutes into alignment with federal law. The DOR assumes no impact from these changes.

This proposal in Section 407.926.3 would require alternative nicotine products and vapor products to be subject to state and local sales tax and to be taxed and regulated as tobacco products. Currently, these products are subject to state and local sales tax but are not assessed either the cigarette excise tax or the other tobacco products excise tax.

The current cigarette excise tax is on a per stick basis of eight and one half mills per cigarette which comes out to be \$0.17 per pack of 20. This tax is deposited into the Fair Share Fund, the Health Initiative Fund, and the School District Fund.

The Other Tobacco Products (OTP) excise tax is on all products other than cigarettes. The tax is 10% of the manufacturer's invoice price and is deposited into the Health Initiative Fund. This proposal would allow the taxing of these vaping products as tobacco products. The definition of "tobacco products" includes both cigarettes and the other tobacco items so it is unclear which of the two excise taxes the vaping products would fall under. For this fiscal note, it is assumed they would pay the OTP excise tax.

A July 2019 Gallup poll found that 8% of adults in the United States use vaping products. A 2019 survey by the CDC found that 1 in every 4 high school students is using vaping products.

ASSUMPTION (continued)

According to U.S. Census Bureau data there are approximately 4,589,185 adults in Missouri and, therefore, 367,135 use vaping products. There are 391,923 high school students of which 97,981 using vaping products.

Based on research 2ml of vaping fluid is equivalent to 1 pack of cigarettes. Vaping fluid retails for approximately \$20 per bottle. If people smoke the equivalent of one pack of cigarettes per day, then a vapor user could be expected to purchase 26 bottles of 30ml vaping fluid per year. This would result in an annual cost of \$520.

DOR estimates that the OTP excise tax of 10% would be assessed on the vaping fluid. Therefore, an excise tax would generate approximately \$24,186,032 (465,116 vapor users * \$520 * 10% tax) annually. Given that retailers would recoup this cost by adding it to the price of the vaping products (as they do with other tobacco products), this same amount would be subject to the state sales tax. The chart below indicates the impact to each fund.

	FY 2021	FY 2022	FY 2023
Health Initiative (excise tax)	\$20,155,027	\$24,186,032	\$24,186,032
General Revenue (sales tax)	\$604,651	\$725,581	\$725,581
School District Trust (sales tax)	\$201,550	\$241,860	\$241,860
Conservation (sales tax)	\$25,194	\$30,233	\$30,233
Parks, Soil & Water (sales tax)	\$20,155	\$24,186	\$24,186
Local Funds (sales tax)	\$791,085	\$949,302	\$949,302

Oversight assumes the ten percent excise tax will generate the amounts noted above to the Health Initiative Fund. However, Oversight assumes the sales tax revenue estimates provided by DOR will be an indirect impact as a result of the increase in costs of goods. For the purposes of this fiscal note, Oversight will only report the fiscal impact of the excise tax to the Health Initiative Fund and footnote the potential increase in sales tax revenue.

Oversight does not have any information contrary to that provided by DOR. Therefore, Oversight will reflect DOR's impact for fiscal note purposes to the Health Initiative Fund.

Officials from the **Office of Administration - Budget and Planning (B&P)** state this proposal requires that alternative nicotine products and vapor products be taxed and regulated as tobacco products. B&P notes that currently vaping products are subject to state sales taxes, but are not subject to either the tax on cigarettes or the other tobacco products (OTP) tax on wholesale prices.

ASSUMPTION (continued)

B&P notes that the language is unclear as to whether vapor products would fall under the cigarette tax or the OTP tax as the definition for "tobacco products" contains both cigarettes and other nicotine products. For the purpose of this fiscal note, B&P assumes that vapor products would fall under the OTP 10% excise tax on wholesale prices as the cigarette tax includes only the word "cigarette" within its levy language.

For the purpose of this fiscal note, B&P assumes that the 10% excise tax on the wholesale price will be levied on vaping products, as it is on all other tobacco products. B&P notes that the excise tax is levied at the wholesale level before the final consumer price is determined. Therefore, this proposal will also increase sales tax collections.

B&P defers to the Division of Alcohol and Tobacco for administrative costs due to the regulation of alternative nicotine and vapor products. B&P defers to DOR for the administrative costs of the OTP tax on vapor products.

B&P notes that federal law changed the legal age to buy vaping products to 21; however, B&P will include the usage by minors within the estimated impact because a large percentage of youth use vaping products.

Based on data published by the CDC, 5.6% of adults use e-cigarette or vaping products while 10.9% of high school students use such products. In 2019, there were 391,923 Missouri residents age 15-19 and 4,589,185 Missouri residents age 20 and older. Based on this information, B&P estimates that approximately 42,720 high school age residents and 256,994 Missouri adults use vaping products.

Based on further research, B&P determined that the average price for a 30mL bottle of vaping fluid is \$16 at the wholesale level. Based on studies, 2mL of vaping fluid is equivalent to 1 pack of cigarettes. B&P will assume that the average vaping user smokes the equivalent of one pack of cigarettes per day. Therefore, B&P estimates that the average vapor user will purchase 26 bottles of 30mL vaping fluid per year, for an annual cost of \$416 per user.

Therefore, B&P estimates that a 10% excise tax on the wholesale price of vaping fluid will increase TSR by \$12,468,102 ($\$416 \times 299,714$ individuals \times 10% excise tax) annually. B&P notes that revenues from the "other tobacco products" tax are deposited into the Health Initiatives Fund (HIF).

In addition, because the excise tax is levied at the wholesale level this proposal will also increase the final price paid by consumers and thus state and local sales taxes. Therefore, B&P estimates that this proposal will increase TSR by \$12,994,879 (sales taxes + excise tax) and GR by \$374,043 (sales tax) annually once fully implemented.

Table 1: Impact to Funds by Fiscal Year

Fund	FY 2021	FY 2022	FY 2023
GR (sales tax)	\$311,703	\$374,043	\$374,043
Education (sales tax)	\$103,901	\$124,681	\$124,681
Conservation (sales tax)	\$12,988	\$15,585	\$15,585
DNR (sales tax)	\$10,390	\$12,468	\$12,468
HIF (10% excise tax)	\$10,390,085	\$12,468,102	\$12,468,102
TSR	\$10,829,067	\$12,994,879	\$12,994,879
Local (sales tax)	\$408,330	\$489,996	\$489,996

Oversight assumes the ten percent excise tax will generate the amounts noted above to the Health Initiative Fund. However, Oversight assumes the sales tax revenue estimates provided by B&P will be an indirect impact as a result of the increase in costs of goods. For the purposes of this fiscal note, Oversight will only report the fiscal impact to the Health Initiative Fund and footnote the potential increase in sales tax revenue.

Oversight does not have any information contrary to that provided by B&P. Therefore, Oversight will reflect B&P’s impact for fiscal note purposes to the Health Initiative Fund. For purposes of this fiscal note, Oversight will range the anticipated revenue from the “low” estimates of B&P to DOR’s “higher” estimate.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The creation of a new crime creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

Oversight notes the **Department of Elementary and Secondary Education**, the **Department of Public Safety - (Alcohol and Tobacco Control and Missouri State Highway Patrol)**, the **Department of Health and Senior Services**, the **Office of State Courts Administrator**, and the **State Public Defender’s Office** have each stated the proposal would not have a direct fiscal impact on their respective organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other county prosecutors and K-12 schools were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT - State Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
HEALTH INITIATIVE FUND (0275)			
<u>Revenue - Excise tax on vaping products</u>	<u>\$10,390,085 to</u> <u>\$20,155,027</u>	<u>\$12,468,102 to</u> <u>\$24,186,032</u>	<u>\$12,468,102 to</u> <u>\$24,186,032</u>
ESTIMATED NET EFFECT ON THE HEALTH INITIATIVE FUND	<u>\$10,390,085 to</u> <u>\$20,155,027</u>	<u>\$12,468,102 to</u> <u>\$24,186,032</u>	<u>\$12,468,102 to</u> <u>\$24,186,032</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2021 (10 Mo.)	FY 2022	FY 2023
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal could impact certain small businesses that sell vapor products.

FISCAL DESCRIPTION

This act modifies the Indoor Clean Air Act to include vapor products such as electronic cigarettes and vapor cartridges in the definition of "smoking", thereby extending existing prohibitions on smoking in public places, public schools, and child day care facilities, outside of designated areas, to such products.

This act raises the age under which the sale of certain tobacco, alternative nicotine, or vapor products to a minor shall be prohibited from 18 years to 21 years. The Division of Alcohol and Tobacco Control may employ a person between 17 and 20 years of age, with parental consent for persons under 18, to attempt to purchase tobacco for the purpose of inspection or enforcement of tobacco laws.

Additionally, vapor products, including those devices classified as electronic nicotine delivery systems, shall be taxed and regulated as tobacco products. Any person who engages in the sale of liquid nicotine containers or vapor products that contain any amount of tetrahydrocannabinol (THC) or any other controlled substances shall be guilty of a Class A misdemeanor.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Elementary and Secondary Education
Department of Revenue
Department of Public Safety -
 Alcohol and Tobacco Control
 Missouri State Highway Patrol
Department of Health and Senior Services
Missouri Office of Prosecution Services
Office of Administration -
 Budget and Planning
Office of State Courts Administrator
State Public Defender's Office



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