

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0780S.01I
 Bill No.: SB 124
 Subject: Children and Minors; Civil Penalties; Crimes and Punishment; Drugs and
 Controlled Substances; Health, Public; Public Safety, Department of; Revenue,
 Department of; Tobacco Products
 Type: Original
 Date: January 26, 2021

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue	(\$217,942)	\$112,000	\$112,000
Total Estimated Net Effect on General Revenue*	(\$217,942)	\$112,000	\$112,000

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
ATC Dedicated Fund (0544)	\$56,000	\$112,000	\$112,000
Health Initiative (0275)	\$6,253,354	\$12,506,707	\$12,506,707
Total Estimated Net Effect on <u>Other</u> State Funds	\$6,309,354	\$12,618,707	\$12,618,707

The impact to the Health Initiative Fund is under the assumption that Section 407.926.3 adds vapor products regulation (assumed to include excise taxation) to that of tobacco products. Also, 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:

	<u>FY22</u>	<u>FY23 and Beyond</u>
General Revenue	\$394,593	-\$582,193
School District Trust	\$ 62,534	-\$125,067
Conservation	\$ 7,817	-\$ 15,633
Parks, Soil & Water	\$ 6,253	-\$ 12,507

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

[X] Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
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:

	<u>FY22</u>	<u>FY23 and Beyond</u>
Local Funds	\$507,003	- \$588,922

FISCAL ANALYSIS

ASSUMPTION

§§191.765, 191.769, 191.775, 191.776, 407.924, 407.925, 407.926, 407.927, 407.929, 407.930, 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, and 191.776 to include vaping products as prohibited in these same locations. The Department 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 Department assumes no impact from these changes.

Section 407.926.3 may require alternative nicotine products and vapor products to be taxed and regulated as tobacco products. Currently, these products are subject to state and local sales tax, but are not subject to either the tax on cigarettes or the other tobacco products (OTP) tax on wholesale prices.

For the purpose of this fiscal note, the Department assumes that the 10% excise tax on the wholesale price will be levied on vaping products, as it is on all other tobacco products. The Department 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.

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 389,671 Missouri residents age 15 to 19 and 4,610,137 Missouri residents age 20 and older. Based on this information, the Department estimates that approximately 42,474 high school age residents and 258,168 Missouri adults use vaping products.

Based on further research, the Department determined that the average price for a 30mL bottle of vaping fluid is \$16.00 at the wholesale level. Based on studies, 2mL of vaping fluid is equivalent to 1 pack of cigarettes. The Department will assume that the average vaping using individual smokes the equivalent of one pack of cigarettes per day. Therefore, the Department

estimates that the average vapor user will purchase 26 bottles of 30mL vaping fluid per year, for an annual cost of \$416 per user.

The Department notes that revenues from the “other tobacco products” tax is deposited into the Health Initiatives Fund (HIF). This proposal assuming a 10% excise tax on the wholesale price of vaping fluid will increase TSR by \$12,468,102 ($\$416 \times 300,642$ individuals \times 10% excise tax) annually. Since this will increase the final amount of the product paid by the consumers it is expected to increase TSR by \$13,035,116 (sales taxes + excise tax) and GR by \$375,201 (sales tax) annually once fully implemented.

Table 1: OTP Tax on Vapor Products

Fund	FY 2022	FY 2023	FY 2024
GR (sales tax)	\$187,601	\$375,201	\$375,201
Education (sales tax)	\$62,534	\$125,067	\$125,067
Conservation (sales tax)	\$7,817	\$15,633	\$15,633
DNR (sales tax)	\$6,253	\$12,507	\$12,507
HIF (10% excise tax)	\$6,253,354	\$12,506,707	\$12,506,707
TSR	\$6,517,559	\$13,035,115	\$13,035,115
Local (sales tax)	\$409,595	\$491,514	\$491,514

Section 407.930 would require any person or entity selling, providing, or distributing tobacco products, alternative nicotine products, or rolling papers, in any quantity, to annually register with the department of revenue. The registration would be through an on-line application, and must be accompanied by a \$50 registration charge for each location. The Department notes that businesses that sell tobacco products already file a report with the Department notifying us of their intent to sell tobacco products. Based on the current information there are approximately 6,088 locations that sell tobacco products. At \$50 per location charge, the Department would expect to receive \$304,400 ($6,088 \times \50) annually.

This proposal details that the annual registration charge is to be deposited as follows:

- \$2 to the Department for administration = \$12,176
- \$16 to the local public health agency in the area where the store is located for enforcement efforts = \$97,408
- \$16 to Department of Health and Senior Services for tobacco and smoking cessation activities = \$97,408
- \$16 to the Division of Alcohol and Tobacco for tobacco and smoking cessation activities = \$97,408

So the total impact from all provisions:

Table 3: Impact to Funds by Fiscal Year

Fund	FY 2022	FY 2023	FY 2024
GR (sales tax)	\$187,601	\$375,201	\$375,201
GR (registration fee)			
DOR Admin	\$12,176	\$12,176	\$12,176
DPS-ATC	\$97,408	\$97,408	\$97,408
DHSS	\$97,408	\$97,408	\$97,408
Total GR	\$394,593	\$582,193	\$582,193
Education (sales tax)	\$62,534	\$125,067	\$125,067
Conservation (sales tax)	\$7,817	\$15,633	\$15,633
DNR (sales tax)	\$6,253	\$12,507	\$12,507
HIF (10% excise tax)	\$6,253,354	\$12,506,707	\$12,506,707
TSR	\$6,724,551	\$13,242,107	\$13,242,107
Local (sales tax)	\$409,595	\$491,514	\$491,514
Local (LPHA registration fee)	\$97,408	\$97,408	\$97,408
Total Local	\$507,003	\$588,922	\$588,922

Administrative Impact

The DOR anticipates being able to absorb any impact.

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 the language in Section 407.926.3 leaves ambiguity about the taxation of vapor products as tobacco products since it is not explicitly stated but does state that they are to be regulated as tobacco products. Also, Section 407.925(11) includes vapor products within the definition of tobacco products.

Section 407.930 establishes a \$50 annual registration for all tobacco retailers in the state. Thus, this proposal will increase TSR by \$13,242,107 and GR by \$582,193 annually once fully implemented.

The following changes may also result in an unknown increase to TSR as a result of additional fines that may be collected:

- Raising the statutory age to buy and use tobacco products from 18 to 21;
- Adding vapor products to the scope of applicable penalties; and
- Increasing penalties in subsections 2 and 5 of Section 407.926, Section 407.930.4(4), and Section 407.931.5.

This proposal will increase the calculation under Article X, Section 18(e). Article IX, Section 7 of the Missouri Constitution requires that penalties, forfeitures and fines collected for violations of state law be distributed to the schools. To the extent any additional such revenues are deposited into the state treasury, TSR may further increase.

Sections 407.925(11) and 407.926.3 of this proposal leaves open the possibility for 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.

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 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 389,671 Missouri residents age 15-19 and 4,610,137 Missouri residents age 20 and older. Based on this information, B&P

estimates that approximately 42,474 high school age residents and 258,168 Missouri adults use vaping products.

Based on further research, B&P determined that the average price for a 30mL bottle of vaping fluid is \$16.00 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 using individual 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 \$12,506,707 ($\$416 \times 300,642$ 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 \$13,035,116 (sales taxes + excise tax) and GR by \$375,201 (sales tax) annually once fully implemented.

Table 1: OTP Tax on Vapor Products

Fund	FY 2022	FY 2023	FY 2024
GR (sales tax)	\$187,601	\$375,201	\$375,201
Education (sales tax)	\$62,534	\$125,067	\$125,067
Conservation (sales tax)	\$7,817	\$15,633	\$15,633
DNR (sales tax)	\$6,253	\$12,507	\$12,507
HIF (10% excise tax)	\$6,253,354	\$12,506,707	\$12,506,707
TSR	\$6,517,559	\$13,035,115	\$13,035,115
Local (sales tax)	\$409,595	\$491,514	\$491,514

Section 407.930 would create an annual \$50 registration fee for all tobacco retailers in the state. DOR will receive \$2 of the fee for administrative purposes, and the remaining \$48 will be distributed with \$16 each going to DPS-Alcohol and Tobacco Control, DHSS, and local public health agencies.

Table 2: Annual Registration Charge Revenue

	FY 2022	FY 2023	FY 2024
DOR	\$12,176	\$12,176	\$12,176
DPS Div. of Alcohol and Tobacco Control	\$97,408	\$97,408	\$97,408
DHSS	\$97,408	\$97,408	\$97,408
TSR	\$206,992	\$206,992	\$206,992

Local Public Health Agencies	\$97,408	\$97,408	\$97,408
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In summary, B&P estimates that this proposal may increase TSR by \$6,724,551 and GR by \$394,593 in FY22. Once fully implemented, this proposal may increase TSR by \$13,242,107 and GR by \$582,193 annually. See table 3 for the estimated impact by fund and fiscal year.

Table 3: Impact to Funds by Fiscal Year

Fund	FY 2022	FY 2023	FY 2024
GR (sales tax)	\$187,601	\$375,201	\$375,201
GR (registration fee)			
DOR Admin	\$12,176	\$12,176	\$12,176
DPS-ATC	\$97,408	\$97,408	\$97,408
DHSS	\$97,408	\$97,408	\$97,408
Total GR	\$394,593	\$582,193	\$582,193
Education (sales tax)	\$62,534	\$125,067	\$125,067
Conservation (sales tax)	\$7,817	\$15,633	\$15,633
DNR (sales tax)	\$6,253	\$12,507	\$12,507
HIF (10% excise tax)	\$6,253,354	\$12,506,707	\$12,506,707
TSR	\$6,724,551	\$13,242,107	\$13,242,107
Local (sales tax)	\$409,595	\$491,514	\$491,514
Local (LPHA registration fee)	\$97,408	\$97,408	\$97,408
Total Local	\$507,003	\$588,922	\$588,922

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.

Officials from the **Department of Public Safety - Division of Alcohol and Tobacco Control (ATC)** state §407.930.4 requires all persons or entities to register each location at which tobacco

products, alternative nicotine products, or rolling papers shall be sold, provided, or distributed. It also imposes a fifty dollar charge for each registration; the first \$2 goes to the Department of Revenue, one-third (\$16) goes to the Division of Alcohol and Tobacco Control, one-third (\$16) goes to the Department of Health and Senior Services, and one-third (\$16) goes to the local public health agency.

ATC estimates there are approximately 7,000 tobacco retailers that will need to be registered for a total of \$112,000 that will be deposited to Alcohol and Tobacco Control Fund (7,000 x \$16 = \$112,000).

ATC does not have an estimate for fines at this time. However, ATC notes it may be a conflict of interest to receive the financial benefits from the administrative disciplinary process by being responsible for enforcing the law, administering discipline, and then collecting money from violators.

Oversight does not have any information contrary to that provided by ATC. Therefore, Oversight will reflect ATC's impact for fiscal note purposes.

Oversight notes the provisions of Section 407.926 provide for fines against the owner of the establishment or entity selling to persons under 21 by mail or Internet. Section 407.930 provides for penalties against any person or entity who fails to register in accordance with the provisions of this section. Oversight notes civil penalties collected per Article IX, Section 7 of the Missouri Constitution requires fines to be distributed to the school district where the violation occurred; therefore, Oversight will reflect a positive fiscal impact of \$0 to Unknown to local school districts on the fiscal note.

Officials from the **Office of Administration (OA), Information Technology Services Division (ITSD)/DPS** state this would potentially be a new application and would have to interface with DOR's tobacco registration system. The alternative would be to build onto DOR's system. It is estimated that 2,883.60 hours at \$95 per hour would be required for a total cost of \$273,942 to the General Revenue Fund.

Requirements Gathering	500 Hours
Analysis	200 Hours
Design	200 Hours
Development	1,250 Hours
Test	500 Hours
Implementation	20 Hours
Project Management*	<u>213.60 Hours</u>
Total	2,883.60 Hours

*The consultant rate of \$95 per hour is an estimated rate based on current contract(s) pricing. It is assumed any new IT project/system will be bid out as all ITSD resources are at full capacity.

Officials from the **Department of Health and Senior Services (DHSS)** state this is a federal mandate. On December 20, 2019, the President signed legislation amending the Federal Food, Drug, and Cosmetic Act, and raising the federal minimum age for the sale of tobacco products from 18 to 21 years.

DHSS states §407.930 of this proposed legislation would require entities selling, providing or distributing tobacco products, alternative nicotine products, or rolling papers after January 1, 2022, to acquire a retail sales tax license and to register with the Department of Revenue. The Department of Revenue shall charge a \$50 registration fee for each location registered and \$16 of each fee collected shall be allocated to DHSS for tobacco and smoking cessation activities.

Based on a recent list provided by the Department of Revenue, there are approximately 7,186 tobacco retailers selling tobacco products in Missouri. Thus, the department estimates \$114,976 (7,186 x \$16) will be allocated to The Department of Health and Senior Services for tobacco cessation activities.

Oversight will utilize ATC's estimate of \$112,000 of revenue for DPS, DHSS & Local Health Agencies.

Officials from the **Department of Natural Resources (DNR)** state the DNR's Parks and Soils Sales Tax Funds are derived from one-tenth of one percent sales and use tax pursuant to Article IV Section 47(a) of the Missouri Constitution. Any increase in sales tax collected could increase revenue to the Parks and Soils Sales Tax Funds. The Department assumes any increase in revenue to the Parks and Soils Sales Tax Fund would be used for the purposes established in Article IV Section 47(a) of the Missouri Constitution.

The DNR assumes the Department of Revenue would be better able to estimate the anticipated fiscal impact that would result from this proposal.

Officials from the **Office of Administration (OA), Administrative Hearing Commission** anticipate this legislation will not significantly alter its caseload. However, if similar bills pass resulting in more cases, there could be a fiscal impact.

For the purpose of the proposed legislation, and as a result of excessive caseloads, the **Missouri State Public Defender (SPD)** cannot assume existing staff will be able to provide competent, effective representation for any new cases where indigent persons are charged with the proposed new crime(s) concerning tobacco products under Section 407.925. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards. While the number of new cases may be too few or uncertain to request additional funding for this specific bill, the Missouri State Public Defender will continue to request sufficient appropriations to provide competent and effective representation in all cases where the right to counsel attaches.

Oversight assumes the SPD will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the SPD for fiscal note purposes.

Officials from the **Joint Committee on Administrative Rules (JCAR)** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of the Secretary of State (SOS)** notes many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, they also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with their core budget. Therefore, they reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

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 require additional resources.

Officials from the **Missouri Office of Prosecution Services (MOPS)** assume the proposal will have no measurable fiscal impact on MOPS. The enactment of a new crime (407.926.5) creates additional responsibilities for county prosecutors which may, in turn, result in additional costs, which are difficult to determine.

Officials from the **Department of Elementary and Secondary Education**, the **Department of Public Safety - Missouri Highway Patrol**, the **Missouri Department of Conservation**, the **Office of the State Courts Administrator**, and the **Newton County Health Department** each assume the proposal will have no 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.

Officials from the **Boone County Health Department** state should Columbia/Boone County Public Health and Human Services (PHHS) accept an enforcement agreement with the Division, PHHS would expect a revenue increase as there will be unknown costs for conducting

inspections including staff time, travel costs, and supplies. However, based on the legislation, it is unclear what the amount of the revenue would be.

Oversight notes approximately one-third or \$16 of the \$50 registration fee shall be allocated to Local Public Health Agencies (LPHA). Oversight assumes the DHSS will make the determination on which LPHAs will receive the additional funds and these additional funds will be enough to compensate for any additional expenses incurred by the LPHA.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other local public health agencies 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 2022 (6 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Revenue – DHSS (\$407.930) Registration fees</u>	\$56,000	\$112,000	\$112,000
<u>Costs - OA,ITSD/DPS (\$407.930 and 407.931) Tobacco inspections and violations system changes</u>	(\$273,942)	\$0	\$0
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$217,972)</u>	<u>\$112,000</u>	<u>\$112,000</u>

<u>FISCAL IMPACT –</u> <u>State Government</u> (continued)	FY 2022 (6 Mo.)	FY 2023	FY 2024
DIVISION OF ALCOHOL AND TOBACCO CONTROL (0544)			
<u>Revenue – ATC</u> (§407.930) Registration fees	<u>\$56,000</u>	<u>\$112,000</u>	<u>\$112,000</u>
ESTIMATED NET EFFECT ON THE ALCOHOL AND TOBACCO CONTROL FUND	<u>\$56,000</u>	<u>\$112,000</u>	<u>\$112,000</u>
HEALTH INITIATIVE FUND (0275)			
<u>Revenue – Excise tax</u> on vaping products	<u>\$6,253,354</u>	<u>\$12,506,707</u>	<u>\$12,506,707</u>
ESTIMATED NET EFFECT ON THE HEALTH INITIATIVE FUND	<u>\$6,253,354</u>	<u>\$12,506,707</u>	<u>\$12,506,707</u>

<u>FISCAL IMPACT –</u> <u>Local Government</u>	FY 2022 (6 Mo.)	FY 2023	FY 2024
POLITICAL SUBDIVISIONS			
<u>Revenue - School districts (§§407.926 and 407.930) Fines from violations</u>	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Revenue - Local Public Health Agencies (§407.930) Registration fees</u>	\$56,000	\$112,000	\$112,000
<u>Costs - Local Public Health Agencies (§407.930) Increase of program costs</u>	(\$56,000)	(\$112,000)	(\$112,000)
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>

FISCAL IMPACT – Small Business

Certain small businesses that sell tobacco products and/or vapor products could be impacted by this proposal.

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 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 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. The Division may enter into enforcement agreements with local public health agencies to enforce the state's tobacco laws.

Under current law, persons or entities selling to minors by mail or Internet are assessed a fine of \$250 for the first violation and \$500 for each subsequent violation. Under this act, the owner of the establishment or entity selling to persons under 21 by mail or Internet shall be assessed a fine of \$500 for the first violation and a sales and distribution prohibition for one month for each subsequent violation, with a \$500 per day fine assessed for any violation of such sales and distribution prohibition.

Additionally, vapor products, including those devices classified as electronic nicotine delivery systems, shall be 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.

Any person or entity selling, providing, or distributing tobacco products, including vapor products, alternative nicotine products, or rolling papers, in any quantity, shall annually register with the Department of Revenue prior to such sale, provision, or distribution, as described in the act. Each location where such products are sold shall be registered and such registration shall be accompanied by a \$50 registration charge, to be used for enforcement of the state's tobacco laws and for tobacco and smoking cessation activities. Each registrant shall prominently display a notice of registration at the registered location. Failure to register shall result in the following penalties: (1) for the first offense, a written warning and a \$500 fine; (2) for the second offense, a citation prohibiting sales of tobacco products for 10 days; (3) for the third offense, a citation prohibiting sales of tobacco products for 60 days; and (4) for the fourth offense, a citation prohibiting sales of tobacco products permanently. Any person or entity in violation of a sales prohibition shall be fined \$500 per day such violation occurs. The Department of Revenue shall provide the Division with a complete and updated list of every registered person or entity for purposes of enforcing the state's tobacco laws.

Current law requires tobacco product vending machines to be supervised and to include a locking device, unless the machines are located in areas where minors are not permitted or in factories, private clubs, or other locations not accessible to the general public. This act repeals that exception and instead excludes vending machines located in areas not accessible to persons under 21 years of age from such regulations. Additionally, current law prohibits the sale, provision, or distribution of tobacco products, including vapor products, to minors unless the distribution is by a family member on private property. This act repeals this exception.

This act repeals the fines assessed under current law for persons, including sales clerks, who sell tobacco products to minors and modifies the penalties assessed against the owners of the establishments where tobacco products are sold to persons under 21 years of age as follows: (1) for the first offense, a reprimand and a \$150 fine; (2) for the second offense, a citation prohibiting sales of tobacco products for 7 days; and (3) for the third and subsequent offenses, a

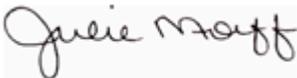
citation prohibiting sales of tobacco products for 30 days. Any person or entity in violation of a sales prohibition shall be fined \$500 per day such violation occurs. Additionally, this act repeals current law permitting the elimination of penalties if the owner has a tobacco compliance training program.

The provisions of this act shall become effective on January 1, 2022.

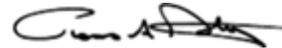
A portion of this proposal is federally mandated. The proposal would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Elementary and Secondary Education
Department of Revenue
Department of Public Safety
Department of Health and Senior Services
Department of Natural Resources
Joint Committee on Administrative Rules
Missouri Department of Conservation
Missouri Office of Prosecution Services
Office of Administration
Office of the State Courts Administrator
Office of the Secretary of State
Office of the State Public Defender
Boone County Health Department
Newton County Health Department



Julie Morff
Director
January 26, 2021



Ross Strope
Assistant Director
January 26, 2021