

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 809 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 10-22-99

RATIONALE

In May 1994, the cigarette tax in Michigan increased from 25 cents to 75 cents per pack as part of Proposal A's changes to the State's tax structure. Currently, Michigan's cigarette tax is the seventh highest in the nation, which has created a significant economic incentive to smuggle cigarettes to Michigan from other states with lower tax rates, such as North Carolina (where the tax is 5 cents and no cigarette stamp is required), Kentucky (where the tax is 3 cents), and Virginia (with a tax of 2.5 cents), and from other states' Indian reservations (which are exempt from Federal and state excise taxes).

In order to eliminate further widespread smuggling of cigarettes in Michigan, Public Act 187 of 1997 requires a tax stamp to be affixed to cigarette packages to make them readily identifiable. According to the Department of Treasury, the cigarette tax stamp program has drastically curbed cigarette smuggling. In 1999 alone, the tax stamp program reportedly will bring in an additional \$136 million, for a total of \$637 million in tobacco product revenues for schools, public health and safety programs, and the State General Fund.

Despite the tax stamps, smugglers evidently continue to operate a lucrative business. For example, according to an article in the *Detroit News* (7-8-99), a Farmington Hills man was required to pay the State \$1 million in back taxes for selling 240,000 cartons of Kentucky cigarettes to Detroit-area retailers earlier this year. Also, according to the article, in June of this year, two Warren men were charged with smuggling cigarettes marked with stolen tax stamps. Police reportedly confiscated about 220,000 stamps and more than 50,000 cigarette packs marked with stolen stamps.

Apparently, Michigan recently also has become a target market for the sale and distribution of cigarettes that were manufactured for sale outside the United States. The sale of these cigarettes is profitable since their cost basis is significantly less than the cost for cigarettes that are manufactured for sale in the United States. The sale of these products, however, could pose more of a health risk since they may contain more nicotine than cigarettes manufactured for the United States. Many people believe that these cigarettes should be prevented from entering the Michigan market supply and that those cigarettes found should be seized and confiscated.

CONTENT

The bill would amend the revenue Act to do the following:

- **Prohibit the acquisition, possession, sale, distribution, or importation of tobacco products that violated Federal law, or that were intended for sale outside the United States.**
- **Allow the confiscation of noncomplying products and associated records.**
- **Allow private lawsuits for violations.**

The current Act prohibits the importing of tobacco products that violate any Federal requirement for the placement of labels, warnings, or other information, including health hazards. The bill would prohibit a person from acquiring, possessing, selling, distributing, or importing into the State a tobacco product that violated any Federal law or regulation, including requirements concerning health warnings or other information on the container or individual package.

In addition, the bill would prohibit a person from acquiring, possessing, selling or distributing, or importing into the State a tobacco product or container of tobacco products if one or more of the following applied:

- The tobacco product or container bore any

statement, label, stamp, sticker, or notice indicating that the manufacturer intended that the tobacco product be sold or distributed outside the United States, including a non-United States health warning and/or labels or markings stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

- The tobacco product, container of tobacco products, or any statement, label, stamp, sticker, or notice on a tobacco product or container had been altered from the manufacturer's original packaging to conceal the fact that the manufacturer intended that the tobacco product be sold or distributed outside the United States.
- The person knew or should have known that the manufacturer intended the tobacco product to be sold or distributed outside the United States.
- The tobacco product was imported into the United States after January 1, 2000, in violation of the Internal Revenue Code.

The bill specifies that a tobacco product or container of tobacco products that did not comply with these provisions and books and records associated with those tobacco products would be subject to seizure and confiscation by the Department of Treasury, a police officer, or designated agent under the same conditions as provided in the Tobacco Products Tax Act.

Any person who was injured by another person who violated these provisions could bring an action in circuit court for damages or equitable or injunctive relief including reasonable attorney fees. In awarding damages, the court could award up to three times the actual damages if the violation were intentional. A manufacturer of tobacco products whose tobacco products were acquired, possessed, sold, distributed, or imported into the State in violation of the current and proposed prohibitions would be presumed to be injured.

MCL 205.14

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would help prevent people from smuggling into the State cigarettes that were intended for foreign markets or were manufactured in other countries to be sold illegally in the United States. Since foreign countries have different manufacturing regulations and standards, the sale of these products could pose serious health risks to Michigan cigarette

consumers. In addition, since other states have already prohibited the sale of cigarettes intended for foreign markets, Michigan has become a prime market for these cigarettes. The bill would eliminate Michigan as a target market, increase the supply of legally stamped cigarettes in the State, and ensure that the content of cigarettes sold in this State was uniform. The bill also would allow the Department of Treasury to provide additional enforcement of the current tax stamp program by ensuring that the wholesale locations were readily available.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would increase the enforcement activities of the Department of Treasury for the Cigarette Stamp Enforcement program. The additional enforcement could increase the revenue received from cigarette tax revenue; however, the amount of additional revenue that would be received is unknown at this time. In the FY 1999-2000 General Government appropriations bill, the Legislature appropriated \$1,725,000 for cigarette stamp enforcement.

Fiscal Analyst: E. Limbs

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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.