



Senate Fiscal Agency  
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BILL ANALYSIS

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House Bill 5052 (Substitute H-1 as passed by the House)  
Sponsor: Representative Jacob Hoogendyk, Jr.  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 11-1-05

### **CONTENT**

**The bill would amend the Tobacco Products Tax Act to extend criminal penalties to the following:**

- Possessing, acquiring, transporting, or offering for sale counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers.**
- Falsifying a manufacturer's label on gray market cigarette papers or counterfeit cigarette papers.**

Under the bill, "counterfeit cigarette paper" would mean a cigarette paper with a false manufacturing label or that has not been printed, manufactured, or made by authority of the trademark owner.

"Gray market cigarette" would mean any cigarette whose package bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including a label stating "for export only", "U.S. tax exempt", "for use outside U.S.", or similar wording.

"Gray market cigarette paper" would mean any cigarette paper whose package bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarette papers to be sold, distributed, or used in the United States, including a label stating "for export only", "U.S. tax exempt", "for use outside U.S.", "for use in \_\_\_\_\_ (another country) only", or similar wording.

Under the Act, a person who possesses, acquires, transports, or offers for sale, contrary to the Act, 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of \$250 or more, or 3,000 or more counterfeit cigarettes, is guilty of a felony punishable by up to five years' imprisonment and/or a maximum fine of \$50,000. If the amount is 1,200 or more, but less than 2,999 or the aggregate wholesale value of tobacco products other than cigarettes is \$100 or more but less than \$250, the violation is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$5,000. The bill would include in those provisions possessing, acquiring, transporting, or offering for sale, contrary to the Act, the same number of counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers.

Under the Act, a person who manufactures, possesses, or uses a stamp or counterfeit stamp or writing or device intended to replicate a stamp without the authorization of the Department of Treasury, and a licensee who purchases or obtains a stamp from any person

other than the Department, or who falsifies a manufacturer's label on cigarettes or counterfeit cigarettes is guilty of a felony punishable by imprisonment for not less than one year or more than 10 years and a maximum fine of \$50,000. The bill would extend the penalty to a licensee who falsified a manufacturer's label on gray market cigarette papers or counterfeit cigarette papers.

MCL 205.422 & 205.428

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of possessing, acquiring, transporting, or offering to sell counterfeit cigarette papers, "gray market cigarette papers", or "gray market cigarettes". Local governments would incur the cost of incarceration in local facilities, which varies by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Between 1998 and 2003, 100 people have been convicted under MCL 205.428 (the section the bill would amend). Of those offenders, three were sentenced to prison, five were sentenced to jail, and 88 were sentenced to probation. Additionally, the Department of Treasury would incur enforcement and administrative costs. Public libraries would benefit from any additional penal fine revenue raised.

Fiscal Analyst: Bill Bowerman  
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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.