



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bills 882 and 883 (as enrolled)  
Sponsor: Senator Tom George (S.B. 882)  
Senator Jason E. Allen (S.B. 883)  
Senate Committee: Commerce and Tourism  
House Committee: Commerce

Date Completed: 1-8-09

### **CONTENT**

**Senate Bill 882** would amend the Tobacco Products Tax Act to do both of the following:

- Establish criminal and civil penalties for unlawfully possessing, transporting, or offering for sale cigarettes, other tobacco products, counterfeit cigarettes or papers, or gray market cigarettes or papers in quantities smaller than those subject to current penalties.
- Delete an exemption for secondary wholesalers from a requirement to file a return with the Department of Treasury.

**Senate Bill 883** would amend the General Sales Tax Act to do all of the following:

- Require a person who engaged in any business in Michigan that was taxable under the Act to indicate on the application or renewal for a sales tax license if the person was subject to the Tobacco Products Tax Act.
- Allow the State Treasurer to deny an application or renewal and suspend a sales tax license if a person failed to comply with the requirement described above or fraudulently indicated that he or she was not subject to the Tobacco Products Tax Act.
- Authorize the State Treasurer to prohibit the sale of any products subject to the sales tax at any location where a person knowingly

violated certain provisions of the Tobacco Products Tax Act, and require the Department to identify on its website the name and location where the violation occurred.

- Prescribe a fine and sales tax license suspension for a person who violated certain provisions of the Tobacco Products Tax Act resulting in a seizure of tobacco products.
- Provide an affirmative defense in an action against a licensee, for a violation committed by an employee, under certain circumstances.

The bills are described in detail below.

### **Senate Bill 882**

#### Penalties

The Tobacco Products Tax Act prescribes criminal penalties for various violations, including possessing, acquiring, transporting, or offering for sale cigarettes, other tobacco products, counterfeit cigarettes or cigarette papers, or gray market cigarettes or papers, in violation of the Act. The penalties depend on the quantity of the cigarettes or papers involved, or the aggregate wholesale value of the other tobacco product. Table 1, below, shows the current penalties as well as the proposed penalties for offenses involving smaller quantities or tobacco products of less value. The proposed penalty for a quantity of 600 to 1,199, or a value of \$50 to \$99.99, would apply to offenses committed knowingly.

Table 1

<u>Current Penalties</u>			
Quantity; Value	Offense	Maximum Fine	Max. Term
3,000 or more; \$250 or more	Felony	\$50,000	5 years
1,200-2,999; \$100 - \$249.99	Misdemeanor	\$5,000	1 year
<u>Proposed Penalties</u>			
600 - 1,199; \$50 - \$99.99	Misdemeanor	\$1,000	90 days
180 - 599; \$25 - \$49.99	Civil Infraction	\$100	NA

The bill would prohibit a person from possessing, acquiring, transporting, or offering for sale, contrary to the Act, fewer than 600 cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of less than \$50, or fewer than 600 counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers. As shown in Table 1, the proposed penalties would apply to offenses involving 180 to 1,199 cigarettes or papers or tobacco products other than cigarettes with an aggregate wholesale value of \$25 to \$99.99.

The Act prescribes a misdemeanor penalty of up to one year's imprisonment and/or a maximum fine of the greater of \$1,000 or five times the retail value of the tobacco products involved, for a violation of the Act for which a criminal punishment is not otherwise proved. Under the bill, that penalty would not apply to offenses involving fewer than 600 cigarettes or papers or other tobacco products with an aggregate wholesale value under \$50.

Filing a Return

The Act requires every licensee, other than a retailer, secondary wholesaler, unclassified acquirer licensed as a manufacturer, or vending machine operator, to file a return with the Department. The return must contain the wholesale price of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in them, and the number and denominations of stamps affixed to individual packages of cigarettes sold.

The bill would delete the exception for secondary wholesalers.

**Senate Bill 883**

License & Sanctions

Under the bill, a person who engaged in any business in Michigan that was taxable under the General Sales Tax Act would have to indicate on the application or renewal for a sales tax license if the person was subject to the Tobacco Products Tax Act. The State Treasurer, or his or her designee, could deny an application or renewal and could suspend a license if a person failed to comply with that requirement or fraudulently indicated that he or she was not subject to the Tobacco Products Tax Act. The Treasurer, or the Treasurer's designee, could restore a license suspended under this provision if all delinquent taxes, interest, penalties, and fees due under either Act were paid in full.

The bill would allow the State Treasurer, or his or her designee, to prohibit the sale of any products subject to the sales tax at any location where a person knowingly violated provisions of the Tobacco Products Tax Act that prohibit (or under Senate Bill 882 would prohibit) the following:

- Possessing, acquiring, transporting, or offering for sale, contrary to that Act, 600 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of \$50 or more, or 600 or more counterfeit or gray market cigarettes or cigarette papers.
- Manufacturing, possessing, or using a stamp or counterfeit stamp, or a writing or device intended to replicate a stamp, without authorization of the Treasury Department; purchasing or obtaining a stamp from anyone except the Department; or falsifying a manufacturer's label on cigarettes, counterfeit cigarettes or papers, or gray market cigarette papers.
- Falsely making, counterfeiting, or altering a license, vending machine disc, or

marker; purchasing or receiving a false or altered license, vending machine, disc, or marker; assisting in or causing to be made a false or altered license, vending machine disc, or marker; or possessing a device used to forge, alter, or counterfeit a license, disc, or marker.

If a person were prohibited from the sale of products subject to the sales tax, the Department would have to identify on its website the name, address, and location where the person knowingly violated the Tobacco Products Tax Act.

If a person knowingly violated the provisions of the Tobacco Products Tax Act described above, and the violation resulted in a seizure of tobacco products under that Act, the

person would be subject to a fine and sales tax license suspension, based on the aggregate retail value of the illegal tobacco products, as shown in Table 2.

Affirmative Defense

Under the bill, in an action against a retailer or a person licensed under the General Sales Tax Act, for a violation committed by the retailer's or licensee's employee, it would be an affirmative defense that the retailer or licensee had in force at the time of the violation and continued to have in force a written policy prohibiting sale of prohibited products by employees and that the retailer or licensee enforced and continued to enforce that policy.

Table 2

Offense	Aggregate Retail Value	Fine/ License Suspension
First	Less than \$5,000	\$400/NA
First	\$5,000 or more	At least \$1,000/at least 3 days
Second	Less than \$3,000	\$700/NA
Second	\$3,000 or more	At least \$1,000/at least 3 days
Third or Subsequent	Any amount	At least \$1,000/at least 3 days

MCL 205.427 & 205.428 (S.B. 882)  
205.53 (S.B. 883)

Legislative Analyst: Patrick Affholter

**FISCAL IMPACT**

**Senate Bill 882**

The bill would have an indeterminate fiscal impact on local government. Currently, if a person commits a violation of the Act for which a penalty is not provided, the offense is a misdemeanor punishable by a fine of up to \$1,000 or five times the retail value of the tobacco products involved, whichever is greater, or imprisonment for up to one year, or both. There are no data to indicate how many offenders would be convicted of, or found civilly responsible for, violations involving fewer than 1,200 cigarettes or papers, or products worth less than \$100. To the extent that the bill resulted in decreased incarceration time, local governments would incur decreased costs of incarceration in local facilities, which vary by county. The bill also could result in lower penal fines, which benefit public libraries. In addition, the bill could lead to an increase in civil fine revenue, which would benefit public libraries.

**Senate Bill 883**

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the bill would serve as a deterrent to violating the Tobacco Products Tax Act, there could be a modest increase in license fee revenue. However, any increase could be offset by a corresponding decrease in fines and penalties. Revenue from license fees and penalties under the Tobacco Products Tax Act is used for the administration of that Act.

Fiscal Analyst: Lindsay Hollander  
Stephanie Yu

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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.