

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 280 - HB 764

February 18, 2019

SUMMARY OF BILL: Increases, from 18 to 21, the age of persons allowed to purchase and use tobacco or vapor products. Creates a Class C misdemeanor punishable by fine only for persons between the age of 18 and 21 who are in possession of a tobacco or vapor product, purchase or accept receipt of either product, or present to any person any purported proof of age that is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco or vapor product.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue - \$6,966,100

Decrease Local Revenue - \$1,001,700

Assumptions:

- Pursuant to the proposed legislation, the Department of Agriculture (DOA) will enforce a minimum age limit of 21 years under the Tobacco Enforcement Program, instead of the current age limit of 18 years, for the purchase of tobacco and vapor products.
- Enforcement of the age limit of 21 for the purchase of tobacco and vapor products can be accomplished within existing DOA resources without an increased appropriation or reduced reversion.
- The Synar Amendment, enacted in 1992 as part of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (section 1926), requires states to enact and enforce laws prohibiting the sale or distribution of tobacco products to individuals under the age of 18.
- To determine compliance with the legislation, the Amendment requires each state and U.S. jurisdiction to conduct annual, random, unannounced inspections of retail tobacco outlets and to report the findings to the Secretary of the U.S. Department of Health and Human Services.
- States that do not comply with the requirements set forth in the Amendment are subject to a penalty of 40 percent of their federal Substance Abuse Prevention and Treatment Block Grant funding.
- It is assumed that the state will obtain approval from the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention to implement

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the minimum age change, as proposed by this legislation, and that federal funding to the state will not be impacted by the proposed legislation.

- Pursuant to Tenn. Code Ann. § 67-4-1004(a) and Tenn. Code Ann. § 67-4-1004(d)(1), cigarette tax is \$0.62 per pack of 20 cigarettes.
- The average price per pack of 20 cigarettes in Tennessee is estimated to be \$5.00, which includes state cigarette tax of \$0.62 and a federal excise tax of \$1.01, but does not include state and local sales taxes.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent; the effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.
- The current Fiscal Review Committee staff estimate for tobacco tax collections in FY19-20 is \$238,700,000. This number is assumed to remain constant in subsequent years under current law.
- The number of 20-pack cigarettes estimated to be sold in FY19-20 and subsequent years under current law is 385,000,000 ($\$238,700,000 / \0.62).
- Based on information provided by DOR, the recurring decrease in sales of tobacco products as a result of the proposed legislation is estimated to be approximately 1.89 percent.
- The number of 20-pack cigarettes sold is estimated to decrease by 7,276,500 packs ($385,000,000 \times 1.89\%$), for a total of 377,723,500 pack sold each year ($385,000,000 - 7,276,500$).
- The recurring decrease in tobacco tax collections is estimated to be \$4,511,430 ($7,276,500 \times \0.62).
- The net recurring decrease in state sales tax collections is estimated to be \$2,454,658 [$(7,276,500 \times \$5.00 \times 7.0\%) - (7,276,500 \times \$5.00 \times 7.0\% \times 3.617\%)$].
- The total recurring decrease in local sales tax collections is estimated to be \$1,001,680 [$(7,276,500 \times \$5.00 \times 2.5\%) + (7,651,452 \times \$5.00 \times 7.0\% \times 3.617\%)$].
- The total recurring decrease in state revenue as a result of this bill is estimated to be \$6,966,088 ($\$4,511,430 + \$2,454,658$).
- Pursuant to Tenn. Code Ann. § 39-17-1509(b), a person found to be in violation of selling or distributing tobacco or vapor products to an individual that has not reached the minimum age of 21 will receive a warning letter for a first violation, a civil penalty up to \$500 for a second violation, a civil penalty up to \$1,000 for third violations, and a civil penalty up to \$1,500 for fourth and subsequent violations.
- Given the majority of violations will likely be first time offenses, whereby a warning letter will be issued, no significant increase in civil penalty revenue is anticipated.
- There will not be a significant impact on the number of cases in the court system for state or local government to experience any significant impact on revenue or expenditures.

IMPACT TO COMMERCE:

Decrease Business Revenue – \$24,521,800/Recurring

Increase Business Expenses – Exceeds \$30,000/One-Time

Jobs Impact – Not Significant

Assumptions:

- Pursuant to Tenn. Code Ann. § 39-17-1506, all retail establishments selling tobacco products are required to post a sign stating that state law prohibits the sale of tobacco products or smoking paraphernalia to persons under the age of 18 years. Such signs will have to be updated as a result of this legislation to reflect the new minimum age of 21 years.
- According to the Tennessee Fuel and Convenience Store Association, there are approximately 6,000 retail outlets that offer tobacco products for sale in Tennessee.
- Assuming a minimum cost of \$5.00 per sign, the one-time increase in business expenditures is estimated to exceed \$30,000 (6,000 businesses x \$5.00 per sign).
- The proposed legislation is estimated to result in a recurring decrease in the number of 20-pack cigarettes sold of 7,276,500.
- The average price per pack of 20 cigarettes in Tennessee is estimated to be \$5.00, which includes state cigarette tax of \$0.62 and a federal excise tax of \$1.01, but does not include state and local sales taxes.
- The recurring decrease in business revenue is estimated to be \$24,521,805 [7,276,500 x (\$5.00 - \$0.62 - \$1.01)].
- Assuming that such loss is distributed over all retail establishments selling tobacco, the average recurring decrease in revenue per establishment is estimated to be \$4,087 (\$24,521,805 / 6,000).
- Based on the 2012 Economic Census, the average annual salary of gasoline station employees, or employees for other similar retail establishments that sell tobacco products in Tennessee, is estimated to be \$16,737.
- It is therefore assumed that any decrease in the total number of jobs in the state as the result of this legislation will be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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