

Legislative Analysis



TOBACCO TAX ACT VIOLATIONS AND PENALTIES, INCLUDING SUSPENSION OF SALES TAX LICENSES

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Senate Bill 882 (Substitute H-2)

Sponsor: Sen. Tom George

Senate Bill 883 (Substitute H-3)

Sponsor: Sen. Jason E. Allen

House Committee: Commerce

Senate Committee: Commerce and Tourism

Complete to 12-18-08

A SUMMARY OF SB 882 & 883 AS REPORTED FROM HOUSE COMMITTEE

Senate Bill 882 would add to the Tobacco Products Tax Act specific criminal and civil penalties for violations of the act involving smaller quantities of cigarettes and other tobacco products than currently trigger such penalties.

Senate Bill 883 would amend the General Sales Tax Act to allow the state treasurer to prohibit the sale of any products subject to the sales tax at any location where a person had knowingly violated certain specified provisions of the Tobacco Products Tax Act. The bill also would impose penalties for violations of the Tobacco Products Tax Act, including sales tax license suspensions.

If a person were prohibited from making sales subject to the sales tax, then the Department of Treasury would identify on its website the name, address, and business name of the person who had knowingly violated the Tobacco Products Tax Act. Under the bill, a person applying for or renewing a sales tax license would have to indicate on the application if the person is subject to the Tobacco Products Tax Act, and the state treasurer could deny the issuance or renewal of a license, or could suspend a license, if a person failed to so indicate or fraudulently indicated that the act did not apply.

Senate Bill 882

Currently the Tobacco Products Tax Act contains specific criminal and civil penalties for violations of the act that involve, generally speaking, 1,200 or more cigarettes or counterfeit cigarettes or an amount of other tobacco products with an aggregate wholesale value of \$100 or more.

These penalties apply to the possession, acquisition, transport, or offering for sale of cigarettes, counterfeit or grey market cigarettes, counterfeit or grey market cigarette papers, and tobacco products other than cigarettes in a manner contrary to the act, and the

severity of the penalty depends on the number of cigarettes involved or the value of other tobacco products (as described later).

Senate Bill 882 would amend the act to establish penalties for violations involving smaller amounts. Specific criminal and civil penalties would apply to violations involving 180 or more cigarettes or counterfeit cigarettes or an amount of tobacco products with an aggregate wholesale value of \$25 or more.

Under the bill, the penalties for violations would be as follows.

** For 180-599 cigarettes or other tobacco products with a value of \$25 or more but less than \$50, the offense would be a civil infraction with a maximum civil fine of \$100.

** For 600-1,199 cigarettes or other tobacco products with a value of \$50 or more but less than \$100, the offense would be a misdemeanor, punishable by a fine of up to \$1,000 and/or imprisonment for up to 90 days.

Current penalties for violations involving larger amounts are as follows.

** For 1,200-2,299 cigarettes or other tobacco products with a value of \$100 or more but less than \$250, the offense is a misdemeanor punishable by a fine of up to \$5,000 and/or imprisonment for up to one year.

** For 3,000 or more cigarettes or other tobacco products with a value of \$250 or more, the offense is a felony punishable by a fine of up to \$50,000 and/or imprisonment for up to five years.

The act currently also contains a *default penalty*: the act states that a violation of the act for which a criminal punishment is not otherwise provided 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, and/or imprisonment for up to one year. The bill specifies that this default provision would not apply to offenses described above for which civil fines would be imposed for civil infractions.

Senate Bill 883

The bill would amend the General Sales Tax Act in the following ways.

It would allow the state treasurer to prohibit the sale of any products subject to the sales tax at any location where a person had knowingly violated certain specified provisions of the Tobacco Products Tax Act. The bill also would impose penalties for violations of the Tobacco Products Tax Act. If a person were prohibited from making sales subject to the sales tax, then the Department of Treasury would identify on its website the name, address, and business name of the person who had knowingly violated the Tobacco Products Tax Act.

Under the bill, a person applying for or renewing a sales tax license would have to indicate on the application if the person is subject to the Tobacco Products Tax Act, and the state treasurer could deny the issuance or renewal of a license, or could suspend a license, if a person failed to do so or fraudulently indicated that that act did not apply.

The bill also would impose penalties on retailers for violations of the Tobacco Products Tax Act that involve large amounts of illegal cigarettes or tobacco. These penalties are as follows:

First Offense: If the amount of illegal tobacco products is less than \$5,000, then a fine of \$400. If the amount is \$5,000 or more, then a fine of at least \$1,000 and suspension of the sales tax license for at least three days at the location where the violation occurred.

Second Offense: If the amount of illegal tobacco products is less than \$3,000, then a fine of \$700. For larger amounts, then a fine of at least \$1,000 and sales tax license suspension for at least three days at the location where the violation occurred.

Third and Subsequent Offenses: A fine of at least \$1,000 and sales tax license suspension for at least three days.

It would be an affirmative defense for a retailer that it had in force at the time of the violation, and continues to have in force, a written policy prohibiting the sale of prohibited products by employees and that the retailer enforced and continues to enforce the policy.

FISCAL IMPACT:

Senate Bill 882: The state would receive an increase in revenue to the extent that imposing penalties for violations involving cigarettes or other tobacco products in quantities smaller than those subject to the current penalties increases tobacco tax collections. This bill would have an indeterminate fiscal impact on local governments.

Senate Bill 883: This bill would have an indeterminate fiscal impact on the state and local governments.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.