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Senate Bill 970 (as introduced 6-17-20)
Sponsor: Senator Jim Runestad
Committee: Finance

Date Completed: 6-17-20

CONTENT

The bill would amend the Tobacco Products Tax Act to do the following:

- **Modify or add terms and definitions, including "tobacco product", "nongigarette smoking tobacco", "unclassified acquirer", and "wholesale price".**
- **Prohibit a person that was not licensed under the Act from engaging in a transaction to acquire a tobacco product that was to be brought into Michigan unless it was to be sold to or through a wholesaler or unclassified acquirer licensed under the Act.**
- **Specify that a retailer would be considered to have purchased or otherwise acquired a tobacco product in compliance with the proposed requirement to purchase from a wholesaler, unclassified acquirer, or secondary wholesaler if certain conditions were met.**
- **Replace various references to "cigarettes" with "tobacco products".**

Definitions

"Tobacco product" means cigarettes, cigars, nongigarette smoking tobacco, or smokeless tobacco. Under the bill, the term would mean a product containing any amount of tobacco regardless of form including cigars, nongigarette smoking tobacco, or smokeless tobacco. The term would not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration as those terms are defined under the Federal Food, Drug, and Cosmetic Act.

"Cigars" would mean any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco. The term would not include cigarettes.

"Nongigarette smoking tobacco" means tobacco sold in loose or bulk form that is intended for consumption by smoking and includes roll-your-own cigarette tobacco. Under the bill, the term also would include hookah tobacco, pipe tobacco, or a wrap. "Roll-your-own cigarette tobacco" would mean any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes. "Pipe tobacco" would mean any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to smoke in a pipe. "Hookah tobacco" would mean tobacco sold in loose or bulk form that is intended for consumption by smoking in a hookah and that is flavored with honey, molasses, fruit, or other flavors. The term includes those products commonly known or referred to as narghile, argileh, shisha, hubble-bubble, or goza. "Hookah" would mean a device used for smoking hookah tobacco that consists of a tube connected to a chamber where the smoke is cooled passing through water. "Wrap" would

mean an individual tobacco wrapper that is made wholly or in part from tobacco, including reconstituted tobacco, whether in the form of tobacco leaf, sheet, or tube, if the wrap is designed to be offered, or is offered, for sale to consumers to create or to use as a component part of a tobacco product.

"Manufacturer" means any of the following: a person who manufactures or produces a tobacco product; or a person who operates or who permits any other person to operate a cigarette making machine in Michigan for the purpose of producing, filling, rolling, dispensing, or otherwise generating cigarettes. Under the bill, a person who did any of the following would not be considered a manufacturer:

- Mixed or blended two or more different tobacco products to create a custom mix or blend of those products if each of the constituent tobacco products mixed or blended together were finished tobacco products that the person could or does otherwise sell to consumers and upon which the tax under the Act had been paid.
- Placed hookah tobacco in a fruit, bowl, or other receptacle in which hookah tobacco was placed and that was heated when smoking hookah tobacco through the use of a hookah.
- Created or produced what is commonly known as a fruit head for use in a hookah.
- Rolled a cigar for his or her own consumption.

"Unclassified acquirer" means a person, except a transportation company or a purchaser at retail from a retailer licensed under the General Sales Tax Act who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under the Tobacco Products Tax Act for use, sale, or distribution. The term also means a person who receives cigars, noncigarette smoking tobacco, or smokeless tobacco directly from a manufacturer licensed under the Act or from another source outside the State, which source is not licensed under the Act. Where the definition refers to "cigars, noncigarette smoking tobacco, or smokeless tobacco", the bill would refer to "tobacco products". The bill also specifies that the term would include a person not located in Michigan who sold a tobacco product, through mail order, catalog sale, telephone order, internet sale, or any other means, to a retailer or other person in Michigan that was not licensed under the Act as a wholesaler, unclassified acquirer other than a manufacturer, or secondary wholesaler.

"Wholesaler" is defined as a person who purchases all or part of his or her tobacco products from a manufacturer, who sells 75% or more of those tobacco products to others for resale, and who maintains an established business where substantially all of the business is the sale of tobacco products or cigarettes and related merchandise at wholesale and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale. Under the bill, "wholesaler" would mean a person who purchases all or part of its tobacco products from a manufacturer and who sells 75% or more of those tobacco products to others for resale.

"Wholesale price" means the actual price paid for a tobacco product, including any tax, by a wholesaler or unclassified acquirer to a manufacturer, excluding any discounts or reductions. Under the bill, the term would mean the actual price paid to a seller for tobacco product by a wholesaler or unclassified acquirer in order to acquire that tobacco product from the seller. The term would include any tax, fee, licensing, or other charge, excluding shipping or handling charges, reflected on the invoice, bill of sale, purchase order or other document evidencing the sale or purchase of the tobacco product. The bill also specifies under what circumstances the wholesale price could be adjusted and how the price could be computed.

"Container" or "shipping case" would mean an individual receptacle within which a tobacco product or group of tobacco products is placed for shipment or distribution, such as a box or a tote. The terms would not include any of the following:

- An individual package of cigarettes or cigarette carton.
- The package or other article containing tobacco product that was sold directly to the ultimate consumer.
- A bag or similar package containing bulk or loose hookah tobacco, pipe tobacco, or roll-you-own cigarette tobacco that a retailer used to fill bins, barrels, or tubs located at the retailer's place of business from which either the retailer sold a specified quantity or those tobacco products or a blend or mixture of those products to the consumer, or the consumer removed or drew a specified quantity of those products or a blend or mixture of those products for purchase at retail from the retailer.
- A pallet or similar article or device upon which an individual receptacle or group of receptacles, containing the tobacco products, was placed for shipment or distribution.
- Property used as a protective covering for, or to keep items together during shipment or distribution, a receptacle or group of receptacles within which the product was placed for shipment or distribution, including wrapping material, but excluding the protective covering which formed, gave shape to, or otherwise constituted the receptacle within which the tobacco product was placed for shipment or distribution.

Require Sale through Licensed Entity

Under the Act, a person may not sell or solicit a sale of a tobacco product to be shipped, mailed, or otherwise sent or brought into the State, to a person not a licensed manufacturer, licensed wholesaler, licensed secondary wholesaler, licensed vending machine operator, licensed unclassified acquirer, licensed transporter, or licensed transportation company, unless the tobacco product is to be sold to or through a licensed wholesaler. The bill would remove references to "licensed" and would allow a tobacco product to be sold to an unclassified acquirer other than a manufacturer licensed under the Act.

The bill would prohibit a person that was not licensed under the Act from ordering, purchasing, or otherwise engaging in a transaction to acquire a tobacco product that was to be shipped, mailed, imported, sent, or brought into Michigan unless it was to be sold to or through a wholesaler or unclassified acquirer licensed under the Act. A product ordered, purchased, or acquired in violation of this prohibition would be contraband subject to seizure and forfeiture. A person who violated the prohibition would be in control or possession of a tobacco product in violation of the Act regardless of whether the product had been sold, consumed, or otherwise disposed of. The 50-cent per cigar limitation on tax would not apply to, or otherwise be taken into account for purposes of determining the liability for taxes and penalties arising from a violation of the prohibition.

(Under Section 8(1), a person, other than a licensee, who is in control or in possession of a tobacco product contrary to the Act, who is in control or in possession of an individual package of cigarettes without a stamp in violation of the Act, or who offers to sell or does sell a tobacco product to another for purposes of resale without being licensed to do so under the Act, is personally liable for the tax imposed under the Act, plus a penalty of 500% of the amount of tax due.)

Except as provided in Section 8(2) regarding representatives of a licensed manufacturer, the bill would prohibit a retailer in Michigan from purchasing, possessing, acquiring for resale at retail, or selling a tobacco product in Michigan unless the product was purchased or otherwise acquired directly from a wholesaler, unclassified acquirer other than a manufacturer, or secondary wholesaler, licensed under the Act. A retailer who violated the prohibition would be in control or possession of a tobacco product in violation of the Act regardless of whether the product had been sold, consumed, or otherwise disposed of. The 50-cent per cigar limitation on tax would not apply to, or otherwise be considered for purposes of determining the liability for taxes and penalties arising from a violation of the prohibition.

A retailer would be considered to have purchased or otherwise acquired a tobacco product in compliance with the proposed requirement to purchase from a wholesaler, unclassified acquirer, or secondary wholesaler if all of the following conditions were met:

- The retailer obtained a copy of the license of the wholesaler, secondary wholesaler, or unclassified acquirer when the tobacco product was purchased or otherwise acquired.
- The license was not expired when the product was purchased or otherwise acquired.
- The copy of the license was preserved by the retailer in the same manner, for the same period of time, and offered for the same inspection as required for other statements.

A licensee could provide a copy of its license to a retailer. A retailer that obtained a copy of the license for a particular licensee would not have to obtain another copy of the license for subsequent purchases or acquisitions of tobacco products from that licensee which were made during the active licensee year and before the license expired.

Replacement of "Cigarettes" with "Tobacco Products"; Other Provisions

The Act specifies that all sales conducted through the internet, by telephone, or in a mail-order transaction may not be completed unless, before each delivery of cigarettes is made, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth and a written statement signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase cigarettes. Where this provision refers to "cigarettes", the bill instead would refer to "tobacco products".

All invoices, bills of lading, sales receipts, or other documents related to cigarette sales conducted through the internet, by telephone, or in a mail-order transaction must contain the current seller's valid Michigan sales tax registration number, business name and address of the seller, and a statement as to whether all sales taxes and taxes levied under the Act have been paid. All packages of cigarettes shipped from a cigarette seller to purchasers who reside in Michigan must print or stamp the package with the word "cigarettes" and include with the package a notice as specified in the Act. Under the bill, where these provisions and the notice language refer to "cigarettes", the bill instead would refer to "tobacco products". Also, invoices, bills of lading, sales receipts, or other documents would have to include the seller's use tax registration number, as applicable.

The Act specifies that a retailer that is not licensed as an unclassified acquirer, retail importer of tobacco products other than cigarettes, must post a sign that informs purchasers of cigars through catalog or internet sales of their responsibility to pay all applicable unpaid State taxes on those cigars. Instead, the bill would require a retailer not otherwise licensed or required to be licensed under the Act to post the sign.

MCL 205.422 & 205.431

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would increase General Fund and Medicaid Benefits Trust Fund by an unknown amount by expanding the definition of noncigarette smoking tobacco to include hookah tobacco and by improving the ability of the State to tax cigars sold by non-Michigan sellers. Limited information exists regarding sales of hookah tobacco, even at the national level. The revenue that would result from the technical changes to improve tax enforcement on non-Michigan cigar sellers is similarly unknown. However, if the bill's changes increased tax revenue on other tobacco products by 10%, it would generate approximately \$9.0 million per year, of

which \$2.3 million would be directed to the General Fund and the remaining \$6.7 million would be directed to the Medicaid Benefits Trust Fund.

Fiscal Analyst: David Zin

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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.