

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7634

BILL NUMBER: SB 290

NOTE PREPARED: Jan 6, 2003

BILL AMENDED:

SUBJECT: Tobacco Retailer Permit.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill requires tobacco retailers to have permits to sell tobacco products. The bill authorizes the Alcohol and Tobacco Commission to issue and enforce permits. The bill amends laws concerning the sale and distribution of tobacco products. It also repeals a prohibition on certain tobacco billboard advertisements.

Effective Date: July 1, 2003.

Explanation of State Expenditures: *Alcohol and Tobacco Commission (ATC):* This bill would require persons wishing to either sell tobacco at retail or through a vending machine to obtain a tobacco retailer permit from the Alcohol and Tobacco Commission for each location where they desire to sell tobacco. Based on adjusted U.S. Census 1997 *Economic Census* data, it estimated that tobacco products are sold at approximately 14,000 locations statewide. This estimate includes stores, hotels, restaurants, and bars. It does not include vending machines placed in locations other than within these types of establishments.

Depending on the administrative actions taken by the ATC, the Commission could need to hire additional staff to process and enforce tobacco retailer permits. The ATC estimates that it processes approximately 10,000 retailer and dealer permits and 45,000 employee permits each year. The provisions could also require the ATC to hire more excise offices. The Commission currently has 63 excise officers located in six district offices. This provision may also result in an increase in the number of violations cited, which would increase costs associated with court appearances, depositions, and report drafting. The ATC currently has one prosecutor to process violations and appeals related to alcoholic beverages.

This bill does not contain an appropriation. The funds and resources required above could be supplied

through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. The Alcohol and Tobacco Commission reverted approximately \$1.8 M in FY 2002. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: *General Fund Revenue:* Retailers that sell tobacco products would be required to pay an annual fee of \$100 for the tobacco products retailer permit. The permit fee to reinstate a lapsed or suspended permit is \$200. If 14,000 tobacco retailers apply for a permit, it is estimated that the fee revenue could generate approximately \$1.4 M each year. Permit fee revenue would be deposited in the state General Fund.

Youth Tobacco Education and Enforcement Fund: The provisions in the bill could have impact the civil penalties received in the Youth Tobacco Education and Enforcement Fund. Under current law, persons cited for distributing tobacco products to minors under 18 are subject to a tiered system of civil penalties depending on the frequency and number of violations. This bill removes the list of fines and simply makes selling the offense of distributing tobacco products to minors a Class C infraction. The maximum fine for a Class C infraction is \$500. All fine revenue would continue to be deposited in the Youth Tobacco and Education Fund.

Penalty Provision: A person who sells tobacco without a tobacco products retailer permit commits a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Alcohol and Tobacco Commission.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Don Okey, Alcoholic Beverage Commission, 232-2463; U.S. Census Bureau, 1997 *Economic Census*.

Fiscal Analyst: John Parkey, 317-232-9854