

April 6, 2016

The Honorable Jeff King, Chairperson
Senate Committee on Judiciary
Statehouse, Room 341-E
Topeka, Kansas 66612

Dear Senator King:

SUBJECT: Fiscal Note for SB 455 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 455 is respectfully submitted to your committee.

SB 455 would amend the Kansas Cigarette and Tobacco Products Act by implementing enforcement provisions related to the Tobacco Master Settlement Agreement. The bill would make individuals who purchase, possess, use, or consume more than 400 cigarettes liable for the tax imposed by this Act if the cigarettes do not have the required tax indicia. The bill clarifies what would be considered a first, second, third or subsequent conviction for the purposes of sentencing under the Act. The fine for a first conviction of trafficking in counterfeit or illegal cigarette and tobacco products would be at least \$1,000, but no more than \$2,500. Subsequent convictions could result in fines of up to \$100,000 and possible jail time after the third conviction. The bill would increase civil fines from a maximum of \$1,000 up to a maximum of \$2,500 for findings under administrative, non-criminal proceedings.

The bill would define cigarettes and tobacco in violation of KSA 50-6a01 et seq. as contraband. The bill would subject counterfeit or illegal cigarettes and tobacco, and property used in the trafficking, to seizure and sale. The bill provides the procedure and process the Department of Revenue would be required to follow to effectuate the sale and disbursement of any funds. Any packages of cigarettes bearing indicia of tax payment pursuant to compacts signed between the Governor and the Prairie Band Potawatomi Nation and the Iowa Tribe of Kansas and Nebraska and ratified by the Legislature would not be considered contraband.

The bill would make it unlawful to possess, transport, import, distribute, wholesale or manufacture more than 1,000 cigarettes; cigarettes without Kansas stamps being affixed; or cigarettes or tobacco products otherwise in violation of the Master Settlement Act. It would also be unlawful to transport cigarettes to a retailer or at retail that do not bear Kansas tax stamps.

The bill would require tobacco distributors to file their reports electronically on forms and in a manner prescribed by the Department. It would provide that all monies received from license fees, fines, and forfeiture proceedings must be used exclusively for assisting in funding diligent enforcement as required by the Master Settlement Agreement and the 2012 Settlement.

The bill would strike outdated language regarding vending machines and would allow the Department to divulge vending machine information to contracting entities. The bill would create an exception for the retention of invoices requirement for an outlet, fuel outlet or fuel center owned by the same entity. The bill provides that wholesale dealers must be in good standing with the Director of Taxation in order to receive a discount on stamps purchased. The Department would be authorized to suspend, deny or not renew license applications based on a list of relevant factors.

The bill would include the sale of tobacco products from the internet, telephone, and mail order transactions. The bill would require penalties, fines, and taxes to be collected in a manner similar to sales taxes. The bill would amend definitions for cigarette, dealer, dealer establishment, package, retail dealer, stamps, and tobacco specialty store, and would strike the definition of meter imprints and any other language regarding meter imprints or water applied. The bill would add a definition for conspicuous location or place. Finally, the bill includes several amendments that are technical in nature, or are necessary for clarification or compatibility.

The Department of Revenue indicates that SB 455 would require \$466,996 from the State General Fund in FY 2017. This estimate includes one-time costs of \$14,215 for system changes, form changes, and notices to customers; and recurring costs of \$452,781 for nine additional staff including 1.00 Customer Service Representative FTE position, 1.00 Office Assistant FTE position, 6.00 Field Inspector or Enforcement Agent FTE positions, and 1.00 Attorney FTE position.

The Office of Judicial Administration indicates that SB 455 would increase the number of cases filed in district courts beginning in FY 2017, which could increase the workload of the courts and the amount of revenues collected from docket fees. However, an accurate estimate of the fiscal effect on additional revenues and expenditures of the Judicial Branch cannot be estimated.

The Office of the Attorney General indicates that SB 455 would create new enforcement duties, but would require the Department of Revenue to assign one of its attorneys to the enforcement effort; therefore, it does not anticipate a need for additional staff at this time. It also anticipates additional revenues collected from fines, but is unable to provide an estimate until enforcement actions occur.

The Kansas Association of Counties indicates that SB 455 could decrease costs incurred by county governments because it would allow them to request the Department of Revenue to

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appoint special prosecutors to prosecute violations of the Kansas Cigarette and Tobacco Products Act, but a precise estimate of possible savings was not provided.

The Kansas Sentencing Commission indicates SB 455 would increase its journal entry workload and could also increase prison admissions and beds, but an accurate estimate of the fiscal effect cannot be determined at this time. Any fiscal effect associated with SB 455 is not reflected in *The FY 2017 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a long horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Jack Smith, Department of Revenue
Ashley Michaelis, Judiciary
Scott Schultz, Sentencing Commission
Willie Prescott, Attorney General's Office
Melissa Wangemann, Association of Counties