

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

1. **Patron** Patrick A. Hope
3. **Committee** Senate Finance and Appropriations
4. **Title** Registration of tobacco products retailers; retail tobacco products and liquid nicotine tax; penalties

2. **Bill Number** HB 790
House of Origin:
 Introduced
 Substitute
 Engrossed
- Second House:**
 X **In Committee**
 Substitute
 Enrolled

5. Summary/Purpose:

This impact statement is limited to taxes administered by the Department of Taxation (“the Department”).

The bill would broaden the definition of “retail dealer” to also include any person that holds an approved Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or an Other Tobacco Products (“OTP”) Distributor’s License issued by the Department.

This bill would provide a definition for “retail tobacco product” that would encompass:

- Any product containing, made of, or derived from tobacco or that contains nicotine, including a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and
- Any component, part, or accessory of such products, whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes.

This definition also includes any nicotine vapor product.

The bill would also impose the Tobacco Products Tax, beginning July 1, 2024:

- Upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter;
- Upon liquid nicotine in open systems at the rate of 10% of the wholesale price.

Additionally, the bill would establish that no tobacco retailer can operate a tobacco retail establishment, unless such tobacco retailer has obtained a license for each location or place of business from the Department. Each license application shall be accompanied by a fee.

The bill would also allow the Department to impose the following penalties on any retail establishment that sells, gives, or furnishes a tobacco product to a person who has not attained the legal age for purchase liquid nicotine or nicotine vapor products:

- No less than \$1,000 for the first violation in a 36-month period;
- No less than \$5,000, and a 30-day suspension of the Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or OTP Distributor's License for a second violation in a 36-month period;
- No less than \$10,000, revocation of the Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or OTP Distributor's License, and shall be ineligible to possess the license for a period of 3 years from the date of the most recent violation for a third violation in a 36-month period.

The bill would provide that the Department would be required to enforce and administer the tax and licensing of liquid nicotine and nicotine vapor products. This would include enforcement of age verification, product verification, advertising restrictions, licensing, and collection of the tax.

In addition, the bill would also create the Tobacco Retail Permit Fund ("Fund"). Permit application and renewal fees would be deposited into the Tobacco Retail Permit Fund. Moneys in the fund would be allowed to be used solely for the purposes of funding the Department's direct and indirect costs of the license administration and enforcement program, and the administrative costs of education and training, retail inspections, and unannounced compliance checks.

Under current law, the Tobacco Products Tax is imposed on cigars, smokeless tobacco, pipe tobacco, loose leaf tobacco, liquid nicotine, and heated tobacco products. Beginning July 1, 2020, a tax is imposed on liquid nicotine at the rate of \$0.066 per milliliter.

This bill would become effective if is reenacted during the regular session of the 2025 General Assembly.

- 6. Budget amendment necessary:** Yes. (See Line 8.)
- 7. Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
- 8. Fiscal implications:**

Administrative Costs

Because this bill contains a reenactment clause, it would have no administrative cost impact on the Department unless it is reenacted during the 2025 Session.

If the bill were to be reenacted and become effective during the 2025 General Assembly session, it would result in administrative costs to the Department of Taxation of \$658,000 in Fiscal Year 2025, \$771,000 in Fiscal Year 2026, and \$296,000 annually in Fiscal Year 2027 and thereafter. These costs include four full-time employees and the necessary systems, processing, and forms changes. These costs are solely for administering the tax aspects of the bill.

As the bill requires the Department to collaborate with Virginia ABC and local law enforcement in enforcing the provisions pertaining to the unannounced investigations every

24 months to verify that retail dealers are not selling tobacco products to persons under age 21 years of age and the Department does not have law enforcement authority, the Department's costs assume that the Virginia Alcohol Beverage Control Authority or local law enforcement would work to conduct such investigations. If the intent is for the Department of Taxation to conduct such investigations, the Department's costs would be significantly higher and would require an indeterminate, but likely significant, number of additional staff. Since the Department does not have law enforcement authority, it is unclear how the Department would conduct such investigations.

These costs would be paid from the Fund established by this bill. As the Department would incur substantial costs in Fiscal Year 2024 to implement this bill before any application or reapplication fees paid by distributors are deposited into the Fund, a budget amendment to allow the Department to obtain a treasury loan would be necessary. The treasury loan would be repaid when there are sufficient revenues in the Fund.

Revenue Impact

Because this bill contains a reenactment clause, it would have no revenue impact unless it is reenacted during the 2025 Session.

If this bill did not contain a reenactment clause, the revenue impact of the changes proposed by the bill to the excise tax on liquid nicotine in open systems would be unknown. In Fiscal Year 2023, the Department collected \$20.1 million from the excise tax on all liquid nicotine. Since there is no data on the amount of tax collected on open systems versus closed systems, it is unknown how such collections would change.

In addition, this bill may result in an unknown positive state revenue impact to the extent that the Department is able to assess and collect the penalties authorized by this bill.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Alcoholic Beverage Control Authority
Local law enforcement

10. Technical amendment necessary: No.

11. Other comments:

Retail Sales and Use Tax on Cigarettes

Under current law, retailers purchasing cigarettes for resale are required to pay sales tax on stamped cigarettes unless they have been issued a Cigarette Retail Sales and Use Tax Exemption Certificate (Form ST-10C) by the Department. This exemption certificate process is not retail licensing. It simply allows retailers to purchase cigarettes exempt from sales tax. The exemption certificate does not give the retailer authorization to sell cigarettes. Any person can purchase and sell cigarettes without an exemption certificate. The Department plays no role in the enforcement of state and federal laws banning the sale of cigarettes to minors.

Tobacco Products Tax

Under current law, the Tobacco Products Tax is imposed on cigars, smokeless tobacco, pipe tobacco, loose leaf tobacco, liquid nicotine, and heated tobacco products. Effective July 1, 2020, the 2020 Appropriation Act doubled the tobacco products tax rates on all products subject to the tax and imposed the tax on liquid nicotine at the rate of \$0.066 per milliliter. Most tobacco products, other than moist snuff, loose leaf tobacco, and liquid nicotine are subject to the tax at the rate of 20% of the manufacturer's sales price. This includes cigars and pipe tobacco.

The tobacco products tax is generally paid by licensed distributors based on the "manufacturer's sales price," which is the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

Under Item 3-5.19 of the Appropriation Act, a distributor of tobacco products is deemed to have sufficient activity within the Commonwealth to require registration, if such distributor:

- Receives more than \$100,000 in gross revenue, or other minimum amount as may be required by federal law, from sales of tobacco products in the Commonwealth in the previous or current calendar year; or
- Engages in 200 or more separate tobacco products sales transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year.

Licensing

No person may engage in the business of selling tobacco products as a distributor in the Commonwealth without first having received a separate license from the Department for each place of business. The Department conducts a background investigation of the applicant and such of its officers and employees as deemed necessary by the Department. This licensing process is for the purpose of administering the Tobacco Products Tax. The Department plays no role in the enforcement of state and federal laws banning the sale of tobacco products to youths.

Every application for a license must be made on a form prescribed by the Department, and the following information must be provided:

- The name and address of the applicant. If the applicant is a corporation, it must also provide the name and address of its principal officers. If the applicant is any other type of legal entity, it must also provide the name and address of each of its members;
- The address of the applicant's principal place of business;
- The location where the business to be licensed is to be conducted; and
- Such other information as the Department may require.

Proposal

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Similar Legislation

Senate Bill 582 as engrossed is similar to this bill but would have several differences, including having Virginia ABC administer the penalties related to sales to minors rather than the Department and changing the tax treatment of liquid nicotine. It is also not subject to a reenactment clause.

cc : Secretary of Finance

Date: 2/25/2024 KS
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