

DEPARTMENT OF TAXATION

2014 Fiscal Impact Statement

1. **Patron** Janet D. Howell

3. **Committee** House Finance

4. **Title** Tobacco Products Tax; Civil Penalty on
Unlawful Possession of Untaxed Tobacco
Products

2. **Bill Number** SB 285

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide a civil penalty for the possession, transportation, or sale of untaxed tobacco products in a manner as to knowingly or intentionally evade the Tobacco Products Tax. The penalty would be in the same amounts as the current civil penalties for unstamped cigarettes. The bill would continue to subject tobacco products possessed, transported, or sold in a manner as to knowingly or intentionally evade the tax to seizure, forfeiture, and destruction by law-enforcement officers.

Under current Virginia law, tobacco products possessed, transported, or sold in a manner as to knowingly or intentionally evade the tax are subject to seizure, forfeiture, and destruction by the Department of Taxation ("Department") or any law-enforcement officer.

The effective date of this bill is not specified.

This is a Department of Taxation bill.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

8. **Fiscal implications:**

The bill would have a minimal positive impact on tax revenue. Currently the Department may only seize untaxed tobacco products; the bill would require the imposition of a civil monetary penalty.

9. **Specific agency or political subdivisions affected:**

Department of Taxation

10. **Technical amendment necessary:** No.

11. Other comments:

Background

The *Code of Virginia* does not currently provide a civil monetary penalty for the possession, transportation, or sale of unlawful untaxed tobacco products. Current Virginia law allows only for the seizure, forfeiture, and destruction of the tobacco products by the Department or any law-enforcement officer. However, the Department is not equipped to store or destroy significant amounts of seized tobacco products.

Legislation in 2010 proposed by the Department set forth the current penalty structure for unstamped cigarettes. Virginia law currently provides penalties of \$2.50 per pack, up to \$500, for the first violation in the location, \$5 per pack, up to \$1,000, for the second violation in the location, and \$10 per pack, up to \$50,000, for the third or subsequent violation in the location. A civil penalty of \$25 per pack, up to \$250,000, is imposed where willful intent exists to defraud. Both stamping agents and persons other than stamping agents who sell, purchase, transport, receive, or possess unstamped cigarettes, except as otherwise provided by law, are subject to the same civil penalties.

Most states use criminal prosecutions to enforce compliance with their cigarette tax law. Virginia is among the few states in the country which use civil penalties and administrative measures to enforce compliance with their tobacco products tax laws. This bill would give Virginia a workable compliance tool to ensure compliance with the law.

Proposal

This bill would provide a civil penalty for the possession, transportation, or sale of untaxed tobacco products in a manner as to knowingly or intentionally evade the Tobacco Products Tax. The bill would provide penalties of \$2.50 per tobacco product, up to \$500, for the first violation by a person, \$5 per tobacco product, up to \$1,000, for the second violation by the person, and \$10 per tobacco product, up to \$50,000, for the third or subsequent violation by the person. A civil penalty of \$25 per tobacco product, up to \$250,000, would be assessed where willful intent exists to defraud.

The bill would continue to subject tobacco products possessed, transported, or sold in a manner as to knowingly or intentionally evade the tax to seizure, forfeiture, and destruction by law-enforcement officers.

The effective date of this bill is not specified.

Similar Legislation

House Bill 898 is identical to this bill.

cc : Secretary of Finance

Date: 2/7/2014 AM
DLAS File Name: SB285FS1161