

Department of Planning and Budget 2015 Fiscal Impact Statement

1. Bill Number: SB1230S2

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Reeves

3. Committee: Senate Finance

4. Title: Regulation of the distribution and sale of cigarettes and other tobacco products by the ABC Board

5. Summary: Transfers the regulation of the distribution of cigarettes and other tobacco products from the Department of Taxation to the Alcoholic Beverage Control Board. The bill also creates a new retail dealer's license for the sale of cigarettes and other tobacco products to be granted and otherwise regulated by the Alcoholic Beverage Control Board. The bill sets out the licensing requirements for distributors and retail dealers, sets out recordkeeping requirements, and provides penalties for violation. The bill contains technical amendments and is a recommendation of the State Crime Commission.

6. Budget Amendment Necessary: Yes, Item 378

7. Fiscal Impact Estimates: Preliminary (see Item #8)

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2016	\$676,000	7	NGF
2017	\$2,861,100	32	NGF
2018	\$2,160,000	32	NGF
2018	\$2,160,000	32	NGF
2020	\$2,160,000	32	NGF
2021	\$2,160,000	32	NGF

7b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2016	\$121,225	NGF
2017	\$2,519,500	NGF
2018	\$1,976,025	NGF
2019	\$2,029,722	NGF
2020	\$2,047,984	NGF
2021	\$2,145,236	NGF

8. Fiscal Implications: This bill requires the Alcoholic Beverage Control Board (ABC) to license retail dealers selling cigarettes and other tobacco products. In addition, the bill would

transfer the licensing of tobacco product distributors from the Department of Taxation (TAX) to ABC along with the administration of stamping agent permits.

ABC estimates 12,000 retail tobacco licenses will be added in FY 2017 as a result of this bill with 6,000 of the licensees currently possessing at least one existing ABC license. As a result, ABC will need to incorporate approximately 6,000 new licensees into its existing systems. Accordingly, the number of new licensees coupled with additional responsibilities outlined in the bill will require additional personnel and systems modifications. According to ABC, the agency will have to modify its licensing system, adjust long-standing processes, and hire approximately 32 new positions.

Positions Needed	Quantity	Cost
Special Agents	20	\$1,530,000
Enforcement support personnel	4	\$ 172,000
Licensing Technician	4	\$ 205,600
Hearing Officer	1	\$ 80,250
Hearing Assistant	1	\$ 47,000
Court Reporter	1	\$ 56,200
Education and Prevention Coordinator	1	\$ 67,000

ABC assumes that 100 of the estimated 300 distributor licensees will apply for a license in FY 2016. Based on this assumption, ABC believes it will only need 7 of the 32 new positions in FY 2016 (2 special agents, 1 crime analyst, 1 forensic accountant, 2 licensing technicians and 1 Education and Prevention Coordinator). The remaining 25 positions would be needed starting in FY 2017.

ABC estimates the personnel cost to be \$2.8 million in FY 2017 and \$2.2 million thereafter. The FY 2017 cost includes one-time equipment purchases to outfit each new enforcement officer. Due to the office space constraints of its current headquarters building, the agency will likely have to rent additional space to accommodate the new personnel. Additionally, ABC now estimates it will cost the agency an amount in excess of \$200,000 in one-time cost in FY 2016 to make the required modifications to its licensing system. The FY 2016 cost reflected above includes the \$200,000 cost to modify its licensing system.

The substitute bill establishes the initial license fee for a tobacco products distributor's license at \$750 and the license fee for a tobacco products retail dealer license at \$150. Any person licensed as a tobacco products distributor or retail dealer would qualify as a stamping agent. In addition to the estimated 300 tobacco product distributors, ABC estimates there are 12,000 tobacco product retailers and 24-28 manufacturers. Manufacturers would be able to apply for a 3 year stamping agent permit for a fee of \$750. ABC would conduct background investigations, including a criminal history search, on all applicants for distributor licenses, retail dealer licenses, and stamping agent permits. ABC also would have the power to suspend or revoke a license or permit for any violation of the licensing provisions or the Cigarette Tax and Tobacco Products Tax provisions. As a result of the substitute bill which increases fees, ABC estimates revenues from tobacco licensing will be \$2.5 million in FY 2017 and approximately \$2 million in FY 2018. FY 2017 revenues are projected to be higher

than the projected revenues in later years due to an influx in application fee revenue in FY 2017 as the agency starts licensing retail licensees. After FY 2017, application fee revenue is projected to be minimal. While it is possible the agency could receive additional revenue from fines and penalties, the amount is expected to be small and not quantifiable. To the extent that projected expenditures from cigarette and other tobacco regulation activities exceed projected revenues, ABC has indicated that they will curtail expenditures to the level of revenues derived from this activity.

The bill also would provide criminal and civil penalties for purchasing cigarettes using a forged business license or a forged or invalid Virginia sales and use tax exemption certificate. The civil penalties would be assessed and collected by TAX as other taxes are collected. The bill provides that any licenses issued by TAX prior to July 1, 2015, remain in full force and effect until the expiration of such license. Additionally, any rules or guidelines issued by TAX in effect as of July 1, 2015, relating to the licensing of tobacco products distributors and stamping agent permits would remain in full force and effect until altered, amended, or rescinded by ABC. It requires TAX and ABC to conduct a review of the taxes imposed on cigarettes and other tobacco products to determine which additional administrative responsibilities may be transferred to ABC and jointly prepare any legislation necessary to provide for such transfer on or before December 1, 2015.

According to TAX, the bill would result in general fund savings of \$361,000 a year for 3.75 full time positions. With the increase number of personnel dedicated to compliance monitoring activities, it is possible the licensing and penalties proposed in this bill could decrease evasion of the Cigarette Tax, Other Tobacco Products Tax and Retail Sales and Use Tax resulting in an indeterminate increase in state revenues.

The bill also provides that a background investigation, to include Virginia criminal history records search, be conducted on those seeking retail or distributor licenses. The language, starting in Lines 356 and 417, provide that “actual cost charged to the Department of State Police by the Federal Bureau of Investigation or the Central Criminal Records Exchange for processing any fingerprints through the Federal Bureau of Investigation” is the amount paid by the applicant. According to the Department of State Police (Department), the fee associated with criminal background checks that require fingerprints is \$37.00. Out of that fee, \$17.25 is submitted to the Federal Bureau of Investigation by the Department; \$3.00 is collected by the Department and deposited to the general fund. The remainder is retained by Department for expenses resulting to the background checks conducted. The language is unclear if “actual cost” refers only to the \$17.25 which is the cost to the FBI. Additionally, if the intent is to charge the current fee of \$37, there would be an impact on the general fund from the revenue collected and deposited consistent with current procedure. However, given the uncertainty of the intended charge, it is indeterminate whether there is a benefit to the general fund. It will also depend on whether the Board deems a national criminal records search is necessary.

According to the Virginia Criminal Sentencing Commission's fiscal impact statement for the legislation, there is a minimum fiscal impact of \$50,000 on state-responsible (prison) bed space. Chapter 3 of the 2014 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill if the estimated amount of the necessary appropriation cannot be determined.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Alcoholic Beverage Control, Department of Taxation and Department of State Police
- 10. Technical Amendment Necessary:** Yes. Lines 336 and 417 require the submission of criminal history search applications to the Federal Bureau of Investigations. According to the Department of State Police, the process outlined in the bill is not the process used in Virginia to conduct national criminal history checks. All requests go through the State Police who work with the Federal Bureau of Investigation.
- 11. Other Comments:** None