

DEPARTMENT OF TAXATION

2023 Fiscal Impact Statement

1. **Patron** Adam P. Ebbin

3. **Committee** Senate Finance and Appropriations

4. **Title** Tobacco Products Tax; Liquid Nicotine and Nicotine Vapor Products; Licensing

2. **Bill Number** SB 1350

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would impose a statutory tax on liquid nicotine. The tax would be imposed:

- Upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter; or
- Upon liquid nicotine in open systems at the rate of 20 percent of the wholesale price.

This bill would also require a person to obtain a liquid nicotine and vapor products license from the Department of Taxation ("the Department") before such person engages in the business of selling or dealing liquid nicotine and nicotine vapor products or shipping or transporting liquid nicotine or nicotine vapor products to retailers in the Commonwealth, to be sold by those retailers, as a manufacturer, distributor, or retail dealer in the Commonwealth.

This bill would also create the Virginia Liquid Nicotine and Nicotine Vapor Products Compliance Fund to be used solely by the Department to enforce and administer the tax on nicotine vapor products. 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.

Under current law, effective July 1, 2020, Item 3-5.21 of House Bill 30 (the 2020 Appropriation Act) imposed a tax on liquid nicotine at the rate of \$0.066 per milliliter beginning July 1, 2020. Revenues generated from the tobacco products tax are dedicated to the Virginia Health Care Fund. Currently, the Department plays no role in the enforcement of state and federal laws banning the sale of tobacco products to minors.

If enacted during the regular session of the 2023 General Assembly, this bill would become effective July 1, 2023.

6. **Budget amendment necessary:** Yes.

Items: Page 1, Revenue Estimates

304, Medicaid Program Services

3-5.21, Cigarette Tax, Tobacco Products Tax and Tax on Liquid Nicotine

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

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2023-24	\$1.6 million \$9.9 million (\$9.9 million)	24 0 0	VLNF GF Special Dedicated
2024-25	\$2.4 million \$10.2 million (\$10.2 million)	24 0 0	VLNF GF Special Dedicated
2025-26	\$2.0 million \$10.3 million (\$10.3 million)	24 0 0	VLNF GF Special Dedicated
2026-27	\$2.0 million \$10.3 million (\$10.3 million)	24 0 0	VLNF GF Special Dedicated
2027-28	\$2.0 million \$10.3 million (\$10.3 million)	24 0 0	VLNF GF Special Dedicated
2028-29	\$2.0 million \$10.3 million (\$10.3 million)	24 0 0	VLNF GF Special Dedicated

7b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2023-24	\$9.9 million (\$9.9 million)	VLNF HCF
2024-25	\$10.2 million (\$10.2 million)	VLNF HCF
2025-26	\$10.3 million (\$10.3 million)	VLNF HCF
2026-27	\$10.3 million (\$10.3 million)	VLNF HCF
2027-28	\$10.3 million (\$10.3 million)	VLNF HCF
2028-29	\$10.3 million (\$10.3 million)	VLNF HCF

8. Fiscal implications:

Administrative Costs – Department of Taxation

This bill would result in administrative costs to the Department of Taxation of \$1.6 million in Fiscal Year 2023; \$2.4 million in Fiscal Year 2024; and \$2.0 million annually in Fiscal Year 2025 and thereafter. These costs include the initial start-up costs of programming the Department's systems and updating forms. In addition, such costs would include hiring 24 full-time employees, including office staff and field inspectors, to enforce and administer the tax and licensing of liquid nicotine and nicotine vapor products.

Revenue Impact

The revenue impact of the changes proposed by the bill to the excise tax on liquid nicotine in open systems is unknown. In Fiscal Year 2022, the Department of Taxation collected \$10.1 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. If the tax collected were to remain unchanged, this bill would result in an increase to the Virginia Liquid Nicotine and Nicotine Vapor Products Compliance Fund (“VLNF”) and a corresponding decrease in the Virginia Health Care Fund (“HCF”) of \$9.9 million in Fiscal Year 2024; \$10.2 million in Fiscal Year 2025; and \$10.3 million annually in Fiscal Year 2026 and each year thereafter.

These estimates assume that Item 3-5.21 of the Introduced Executive Budget would be updated in a manner consistent with this bill.

Department of Medical Assistance Services

Item 304 C 2 of the Appropriation Act (Chapter 2, 2022 Virginia Acts of Assembly, Special Session I) requires that revenues deposited to the Virginia Health Care Fund only be used as the state share of Medicaid. As such, any actions that reduce revenue deposited to the Virginia Health Care Fund will require a dollar-for-dollar General Fund increase in the Medicaid program.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Medical Assistance Services

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, Item 3-5.21 of House Bill 30 (the 2020 Appropriation Act) imposed a tax on

liquid nicotine at the rate of \$0.066 per milliliter beginning July 1, 2020. It also doubled the tobacco products tax rates on all products subject to the tax. Most tobacco products, other than moist snuff, loose leaf tobacco, and liquid nicotine are currently subject to the tax at the rate of 20% of the manufacturer's sales price.

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. Revenues generated from the tobacco products tax are dedicated to the Virginia Health Care Fund.

Under 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, provided that in determining the amount of a dealer's gross revenues the sales made by all commonly controlled persons as defined in subsection D of *Va. Code* § 58.1-612 shall be aggregated; 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, provided that in determining the total number of a dealer's retail sales transactions the sales made by all commonly controlled persons as defined in subsection D of *Va. Code* § 58.1-612 shall be aggregated.

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

This bill would impose a statutory tax on liquid nicotine at the time of retail sale by a retail dealer or distributor at the time the distributor makes, manufactures, or fabricates liquid nicotine in the Commonwealth for sale in the Commonwealth or at the time the distributor ships or transports liquid nicotine to retail dealers in the Commonwealth to be sold by those retailers. The tax would be imposed:

- On closed systems at the rate of \$0.066 per milliliter; or
- On open systems at the rate of 20 percent of the wholesale price.

A "closed system" would be defined as a nicotine vapor product capable of utilizing a disposable container that is: (i) prefilled with liquid nicotine and sealed by the manufacturer; (ii) not easily refillable or intended or designed to be refillable; and (iii) intended or used to dispense liquid nicotine for use in a nicotine vapor product that is intended or designed for reuse.

An "open system" would be defined as a nicotine vapor product designed and intended by the manufacturer to be reusable and refilled with liquid nicotine of the end user's choice.

The Department would be required to enforce and administer all of the bill's tax and licensing provisions with regard to liquid nicotine and nicotine vapor products. This would include enforcement of age verification, product verification, advertising restrictions, licensing, safety requirements, and collection of the tax.

This bill would require a person to obtain a liquid nicotine and vapor products license from the Department before such person engages in the business of selling or dealing liquid nicotine and nicotine vapor products or shipping or transporting liquid nicotine or nicotine vapor products to retailers in the Commonwealth, to be sold by those retailers, as a manufacturer, distributor, or retail dealer in the Commonwealth. The Department may at any time revoke the license from a person who is found guilty of violating or noncompliance with any of the provisions of the liquid nicotine tax or any of the rules of the Department.

A liquid nicotine or nicotine vapor products license holder must not make a sale of liquid nicotine or nicotine vapor products: (i) to any person who has not attained the legal age for purchasing liquid nicotine or nicotine vapor products; and (ii) without a valid liquid nicotine and nicotine vapor products license issued by the Department. Any person who is found guilty of violating or noncompliance would be subject to the following penalties:

- For the first violation in a 36-month period, a penalty of no less than \$1,000;
- For a second violation in a 36-month period, a penalty of no less than \$5,000 and a seven-day suspension of the liquid nicotine and vapor products license; and
- For a third violation in a 36-month period, a penalty of no less than \$10,000 and revocation of the liquid nicotine and vapor products license.

Before a retail dealer may sell liquid nicotine or nicotine vapor product to any consumer, the person selling must verify that the consumer is of legal age by:

- For any retail sale by a retail dealer, examining from any person that appears to be under 27 years of age a government-issued photographic identification that establishes the person is of legal age and verifying the identification presented using third-party identification fraud detection software, technology, or scanner that confirms the authenticity of such identification; or
- For any delivery sale by a retail dealer to a consumer in the Commonwealth, performing an age verification through an independent, third-party age verification software, service, or technology that compares information available from public records to the personal information entered by the purchaser during the ordering process that establishes the purchaser is of legal age or older.

A person that has not attained legal age and who violates the age requirement would be guilty of a civil offense and the court may impose a sentence of:

- For the first violation, a penalty of no less than \$50 and 25 hours of community service;
- For a second violation within 12 months of the first violation, a penalty of no less than \$75 and 50 hours of community service; and
- For a third violation within 12 months of the first violation or subsequent violations, a penalty of no less than \$500, 50 hours of community service, and the suspension such person's driver's license for a period of no more than six months.

This bill would create the Virginia Liquid Nicotine and Nicotine Vapor Products Compliance Fund to be used solely by the Department to enforce and administer the tax on nicotine vapor products. Taxes from the sale of liquid nicotine that are currently dedicated to the Virginia Health Care Fund would instead be dedicated to the Virginia Liquid Nicotine and Nicotine Vapor Products Compliance Fund.

If enacted during the regular session of the 2023 General Assembly, this bill would become effective July 1, 2023.

Similar Legislation

House Bill 2296 is identical to this bill.

cc : Secretary of Finance

Date: 1/22/2023 SK
SB1350F161