

# DEPARTMENT OF TAXATION

## 2014 Fiscal Impact Statement

1. **Patron** Christopher K. Peace

3. **Committee** House Finance

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

2. **Bill Number** HB 898

**House of Origin:**

X **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

The Department understands that the patron plans to introduce a substitute bill. This impact statement addresses the substitute bill.

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

Under current law, a tobacco products tax is imposed on cigars, smokeless tobacco, and pipe tobacco. Cigarettes are not subject to the tax on tobacco products. Tobacco products include the following:

- Cigars -- any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette).
- Smokeless tobacco --
  - Snuff -- any finely cut, ground, or powdered tobacco not intended to be smoked.
  - Chewing tobacco -- any leaf tobacco not intended to be smoked.
- Pipe tobacco -- any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

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 in the location, \$5 per tobacco product, up to \$1,000, for the second

violation in the location, and \$10 per tobacco product, up to \$50,000, for the third or subsequent violation in the location. 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

**Senate Bill 285** is identical to this bill.

cc : Secretary of Finance

Date: 1/19/2014 AM  
DLAS File Name: HB898F161