

## Department of Planning and Budget

### 2015 Fiscal Impact Statement

**1. Bill Number:** HB2036

<b>House of Origin</b>	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** DeSteph

**3. Committee:** Courts of Justice

**4. Title:** Purchase of tobacco products by minors; vapor products; liquid nicotine packaging; civil penalty.

**5. Summary:** The bill prohibits the sale of vapor products to a minor and the purchase or possession of vapor products by a minor. The bill defines vapor product as a noncombustible product, which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other means that can be used to produce vapor from a substance in a solution or other form. Current law prohibits the sale of nicotine vapor products to a minor and the purchase or possession of nicotine vapor products by a minor. The bill also provides that no person shall sell or distribute, or offer for sale or distribution, a liquid nicotine container on or after October 1, 2015, unless the liquid nicotine container is packaged in child-resistant packaging and complies with labeling requirements consistent with regulations adopted by the Board of Agriculture and Consumer Services. The bill requires the Board to adopt regulations establishing standards for child-resistant packaging and labeling requirements no later than September 1, 2015. Any person who sells or distributes, or offers for sale or distribution, a liquid nicotine container on or after October 1, 2015, in packaging that does not meet the child-resistant packaging and labeling requirements is subject to a civil penalty not to exceed \$100 for a first violation, \$200 for a second violation, and \$500 for a third or subsequent violation.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** Preliminary. See item 8.

**8. Fiscal Implications:** The bill requires the Board of Agriculture and Consumer Services (Board) to adopt regulations establishing child-resistant packaging standards and warning label requirements for liquid nicotine containers. The agency does not have staff with subject matter expertise in the area of child safety packaging, and the Department of Agriculture and Consumer Services (VDACS) will most likely need to convene a regulatory advisory panel for the purpose of promulgating the regulations required by this bill. It is estimated that the costs associated with the advisory panel meetings may be up to \$5,000. In general, the costs associated with promulgating regulations may be absorbed in the existing appropriation for department.

While the initial regulation that the Board is required to adopt by September 1, 2015, is exempt from the Administrative Process Act, the Board is required to file a Notice of Intended Regulatory Action with the Registrar and allow for a 30-day public comment period. The Board typically meets quarterly and special Board meetings with associated costs may be necessary to adopt final regulations by the prescribed deadline of September 1, 2015.

As written, the proposed legislation does not specify which state agency will be responsible for inspection activities related to the provisions of the bill. If VDACS is expected to inspect retail locations for compliance with the regulations that the Board is required to promulgate, the agency will need additional inspection staff. In order to maintain the agency's current inspection activities as well as inspect for compliance with the proposed regulations, the agency estimates that it will need an additional five full-time employees at an annual estimated expense of \$387,860.

Currently, the Department of Alcoholic Beverage Control (ABC) is responsible for enforcing the laws related to youth access to tobacco products. The underage buyer operations conducted by the department are carried out under a USDA contract. This contract does not include protocol related to vaping devices and liquids. Again, as written, the bill does not specify if ABC would be responsible for enforcing the provisions related to vapor products and liquid nicotine containers. As such, any fiscal impact to ABC is indeterminate.

The bill states that any law enforcement office may issue a summons for a violation of the provisions, and the Commonwealth's Attorney of the locality in which an alleged violation occurs may initiate action to recover the civil penalty established in the bill. Specifically, the bill provides that a civil penalty not to exceed \$100 for a first violation, \$200 for a second violation, and \$500 for a third or subsequent violation shall be assessed to those in violation of the provisions of the bill. Such penalties shall be deposited to the state treasury. At this time, it is not possible to determine the revenue impact of such penalties.

**9. Specific Agency or Political Subdivisions Affected:** Department of Agriculture and Consumer Services; Department of Alcoholic Beverage Control; state and local law enforcement agencies; local Commonwealth Attorneys.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** This bill is the companion to SB1325 as introduced.