

DEPARTMENT OF TAXATION

2019 Fiscal Impact Statement

1. **Patron** Thomas K. Norment, Jr.

3. **Committee** House Finance

4. **Title** Cigarette Tax; Tobacco Products Tax;
Definitions.

2. **Bill Number** SB 1371

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would, for purposes of the cigarette tax, remove from the definition of the term “cigarette” any cigarettes that function by heating rather than burning tobacco. This bill would also, for purposes of the tobacco products tax, provide definitions for the terms “alternative nicotine product,” “heated tobacco product,” “liquid nicotine,” and “nicotine vapor product.” These newly defined products, however, would not be made subject to the tobacco products tax by this bill. Additionally, this bill would extend the study by the Joint Subcommittee to Evaluate Tax Preferences of options for the modernization of cigarette taxes and possible reforms to the taxation of tobacco products from November 2018 to November 2019.

If enacted during the 2019 Regular Session of the General Assembly, this bill would be effective July 1, 2019.

6. **Budget amendment necessary:** No

7. **Fiscal Impact Estimates are:** Not Available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation (“the Department”) considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

The revenue impact of this bill on the Commonwealth is unknown. As “heated tobacco products” are not sold in the United States, the revenue impact of removing heated tobacco products from the cigarette tax is unknown.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No

11. Other comments:

Virginia Cigarette Tax

Under current law, Virginia imposes a state cigarette tax at the rate of 30 cents per pack. The cigarette tax is paid by dealers who have obtained a stamping agent permit from the Department through the purchase of stamps, which must be affixed to each container from which cigarettes are sold.

Cigarette is currently defined as any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition.

Cigarettes also include "roll-your-own" tobacco, which means 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 for making cigarettes.

Virginia Tobacco Products Tax

Under current law, a tobacco products tax is imposed on cigars, smokeless tobacco, pipe tobacco, and loose leaf 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.
- Loose Leaf Tobacco: any leaf tobacco that is not intended to be smoked, but excludes moist snuff.

Tobacco products other than moist snuff and loose leaf tobacco are taxed at the rate of 10 percent of the "manufacturer's sales price," which is defined as the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco

products to an unaffiliated distributor. The tax is imposed on the first “distributor” who possesses the taxable product in Virginia.

Proposal

This bill would, for purposes of the cigarette tax, remove from the definition of the term “cigarette” any cigarettes that function by heating rather than burning tobacco.

Although this bill would not impose a tax on the following items, it would provide definitions for purposes of the tobacco products tax:

“Alternative nicotine product” would be defined as any noncombustible product containing nicotine that is not made of tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. “Alternative nicotine product” would not include any nicotine vapor product or any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

“Heated tobacco product” would be defined as a product containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

“Liquid nicotine” would be defined as a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a nicotine vapor product.

“Nicotine vapor product” would be defined as any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. “Nicotine vapor product” would include any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. “Nicotine vapor product” would not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

Also, this bill would direct the Joint Subcommittee to Evaluate Tax Preferences to continue studying options for the modernization of cigarette taxes and possible reforms to the taxation of tobacco products. A final report recommending reforms to the taxation of tobacco products would be required by November 1, 2019.

If enacted during the 2019 Regular Session of the General Assembly, this bill would be effective July 1, 2019.

cc : Secretary of Finance
Date: 2/4/2019 SK
SB1371FS1161