

# DEPARTMENT OF TAXATION

## 2019 Fiscal Impact Statement

1. **Patron** Adam P. Ebbin

2. **Bill Number** SB 1606

3. **Committee** Senate Finance

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

4. **Title** Vapor Products Tax; School Mental Health  
Counselors Fund Created; Quit Now Virginia  
Fund Created

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would impose a state tax on nicotine “vapor products,” including electronic cigarettes and similar products and devices. The state tax would be imposed at a rate of 40 percent of the wholesale price, to be collected and remitted by wholesale dealers, who would be permitted to deduct two percent of the tax otherwise due, if not delinquent, to compensate them for accounting for the tax.

Cities, and towns would be authorized to tax nicotine vapor products at rates determined by the local governing bodies. The bill authorizes Arlington and Fairfax Counties to impose a vapor products tax, but at a rate that does not exceed the state tax on vapor products created under the bill.

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

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

Page 1, Revenue Estimates

Item 273, Department of Taxation

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

### 8. **Fiscal implications:**

#### Administrative Costs

If the Department of Taxation (“the Department”) is able to implement this legislation by the effective date, it would incur estimated administrative costs of \$268,774 in Fiscal Year 2019; \$519,610 in Fiscal Year 2020; and \$317,000 annually thereafter. Such expenses would be associated with forms and systems changes, and notifying taxpayers of the new tax.

However, due to uncertainty about the systems and processing changes that may be required for the 2018 and 2019 income tax filing seasons, it is possible that the Department may not have the ability to implement the changes set forth in this bill by the proposed effective date. During 2017, Congress enacted the Tax Cuts and Jobs Act, which made substantial changes to federal tax law. At this time, it is uncertain what Virginia tax policy changes will be adopted in reaction to the federal law. Accordingly, the Department will reevaluate its costs once action is taken and may request additional funding or an amendment to delay the effective date of this legislation.

This bill could result in unknown administrative costs to localities that impose the tax on vapor products.

#### Revenue Impact

This bill could potentially result in a positive impact to state revenue of \$15 to \$20 million annually, beginning in the first full year the new tax on vapor products is implemented. It could also result in an unknown increase in Retail Sales and Use Tax revenue from currently taxed vapor products to the extent that the new vapor products tax is passed on to consumers in the form of price increases.

This bill would have an unknown positive revenue impact to localities that impose the tax on vapor products.

#### **9. Specific agency or political subdivisions affected:**

Department of Taxation  
Localities that impose the local option tax

#### **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, manufacturers' 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 impose a state tax on "vapor products," including electronic cigarettes, electronic cigars, electronic cigarillos, and similar products and devices and authorizes cities and towns and certain counties to impose a tax on vapor products. The state tax would be imposed at a rate of 40 percent of the wholesale price.

For the purpose of compensating wholesale dealers for accounting for the tax imposed, such wholesale dealers would be allowed when filing a monthly return and remitting the tax to deduct two percent of the tax otherwise due if the amount due was not delinquent at the time of payment.

The Department would administer and enforce the tax and adopt rules and regulations with respect to the enforcement of the provisions of this section to prevent any evasion of the tax herein imposed.

The bill would provide that 90 percent of the revenue generated by the state vapor products tax would be distributed to the School Mental Health Counselors Fund, created by the bill. Such revenues would be required to be used to fund the state's share of Standards of Quality Costs related to increasing the ratio of school counselors to students. Ten percent of the tax revenue generated by the state tax would be distributed to the Quit Now Virginia Fund that would also be created by the bill. The fund would be

dedicated to the Virginia Department of Health's costs to provide phone-based and Internet-based services with the purpose of discouraging and eliminating the use of tobacco products and providing counseling and support for smoking cessation efforts.

Cities, and towns that are currently authorized to impose a tax on cigarettes would be authorized to tax vapor products at rates determined by the local governing bodies. The bill authorizes Arlington and Fairfax Counties to impose a vapor products tax, but at a rate that does not exceed the state tax on vapor products created under the bill. Under current law, Arlington and Fairfax Counties may impose a tax on cigarettes at a rate that does not exceed the state cigarette tax.

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

#### Similar Bills

**Senate Bills 1371** and **1252** would provide definitions for noncombustible tobacco products.

**House Bill 1946** would authorize certain localities to impose a local cigarette tax with revenue dedicated school construction.

cc : Secretary of Finance

Date: 1/21/2019 SK  
SB1606F161