

## DEPARTMENT OF TAXATION 2020 Fiscal Impact Statement

1. **Patron** Patrick A. Hope
2. **Bill Number** HB 1283
3. **Committee** House Finance
- House of Origin:**  
  X   Introduced  
      Substitute  
      Engrossed
4. **Title** Tobacco Products Retailers; Registration,  
Purchase, Possession, and Sale of Products,  
Penalties
- Second House:**  
      In Committee  
      Substitute  
      Enrolled

**5. Summary/Purpose:**

This bill would prohibit any person from selling any tobacco product at retail without first obtaining a permit from the Department, and would prohibit any person from selling any tobacco product at a location within 1,000 feet of a youth-oriented facility.

This bill would also prohibit internet sales of tobacco products, except to a permit-holding retailer, and prohibit the sale of tobacco products from vending machines. The bill imposes civil penalties of up to \$1,500 for selling tobacco products without a permit and up to \$2,000 for selling tobacco products to persons under age 21. Permits would be subject to annual renewal and subject to revocation for violations of federal, state, or local laws related to tobacco products.

The Department would collaborate with the Virginia Alcoholic Beverage Control Authority (ABC) on enforcement.

If enacted during the Regular Session of the 2020 General Assembly, this bill would become effective July 1, 2020.

6. **Budget amendment necessary:** Yes.  
Item 284, Department of Taxation
7. **Fiscal Impact Estimates are:** Preliminary (See Line 8.)
- 7a. **Expenditure Impact:**

**Department of Taxation**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2019-20	\$226,000	0	GF
2020-21	\$757,000	4	GF
2021-22	\$293,000	4	GF
2022-23	\$293,000	4	GF
2023-24	\$293,000	4	GF
2024-25	\$293,000	4	GF

**Virginia ABC**

<b><i>Fiscal Year</i></b>	<b><i>Dollars</i></b>	<b><i>Positions</i></b>	<b><i>Fund</i></b>
2019-20	\$2,394,832	22	Enterprise
2020-21	\$1,453,320	22	Enterprise
2021-22	\$1,475,119	22	Enterprise
2022-23	\$1,497,246	22	Enterprise
2023-24	\$1,519,705	22	Enterprise
2024-25	\$1,542,501	22	Enterprise

**8. Fiscal implications:**Administrative Costs*Department of Taxation*

This bill would result in administrative costs to the Department of \$226,000 in Fiscal Year 2020; \$757,000 in Fiscal Year 2021; and \$293,000 annually thereafter to administer the new tobacco products retailer licensing process, including development of an automated licensing system and hiring four additional auditors to enforce compliance with the new law.

*Virginia ABC*

This bill would result in administrative costs to Virginia ABC of \$2,394,832 in Fiscal Year 2020; \$1,453,320 in Fiscal Year 2021; \$1,475,119 in Fiscal Year 2022; \$1,497,246 in Fiscal Year 2023; \$1,519,705 in Fiscal Year 2024; and \$1,542,501 in Fiscal Year 2025.

To accommodate conducting 20,000 new tobacco product selling retailer compliance checks, Virginia ABC's Bureau of Law Enforcement would potentially need to create a new tobacco compliance section. This section would consist of 20 new special agents and two data entry personnel to assist in recording compliance checks as they are completed and to assist the agents in reporting statistics. Furthermore, additional under-age buyer part-time positions would be required.

Revenue Impact

Revenue generated from this bill would depend on future violations of the prohibition and would result in a positive revenue impact to the Virginia Health Care Fund. Due to the lack of information about rates of future non-compliance, the impact is unknown.

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

Department of Taxation  
Virginia ABC

## **10. Technical amendment necessary:**

There is no revenue provided in the bill to offset the costs of Virginia ABC's special agents conducting compliance checks on tobacco product selling retailers or for the use of underage buyers aged 21 years of age to ensure compliance with the bill's provisions. Special agents employed by Virginia ABC are primarily assigned to inspect the operations of alcoholic beverage licensees. Consequently, the Authority's costs for the use of its special agents and underage buyers to conduct these compliance checks on tobacco product selling retailers represent additional costs that would reduce the profits otherwise deposited to the General Fund.

## **11. Other comments:**

### Virginia Tobacco Products Tax

Under current law, a tobacco products tax is imposed on cigars, smokeless tobacco, pipe tobacco, moist snuff, and loose leaf tobacco. Tobacco products generally 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.

Legislation passed during the 2019 General Assembly added definitions to the tobacco products tax for "alternative nicotine product," "heated tobacco product," "liquid nicotine," and "nicotine vapor product." These products, however, are not currently subject to the Tobacco Products Tax.

### Enforcement

Currently, auditors from the Department visit retail establishments and audit these businesses for compliance with the cigarette tax and the tobacco products tax. The auditors can make assessments of omitted excise taxes and sales taxes, and assess penalties for violations of tax law. The Department collects these penalties like other tax assessments. However, the Department does not generally assess and collect civil penalties that are not related to filing or payment of taxes.

At one time, Virginia ABC conducted certain tobacco inspections. These inspections were conducted pursuant to a contract with the Food and Drug Administration (FDA). Ultimately, Virginia ABC did not resubmit for the contract based upon its inability to meet changed contractual timelines with its current staffing. The FDA contract is no longer in place. The bill specifies that the ABC's special agents are to conduct a minimum of two compliance checks annually on any tobacco product selling retailers. The bill defines a tobacco retail establishment as any place of business where tobacco products are available for sale to the general public, including: grocery stores, tobacco product shops, kiosks, convenience stores, gas stations, bars, or restaurants. Currently, it is conservatively estimated that there may be 10,000 of these tobacco retail establishments, which means that the Authority's special agents could be conducting as many as 20,000

compliance checks. This could entail the creation of a separate tobacco unit of special agents, data entry personnel, and under-age buyers.

### Proposal

The bill would prohibit any person from selling any tobacco product at retail without first obtaining a permit from the Department, and would prohibit any person from selling any tobacco product at a location within 1,000 feet of a youth-oriented facility.

The bill would also prohibit internet sales of tobacco products, except to a permit-holding retailer, and prohibits the sale of tobacco products from vending machines. The bill imposes civil penalties of up to \$1,500 for selling tobacco products without a permit and up to \$2,000 for selling tobacco products to persons under age 21. Permits would be subject to annual renewal and subject to revocation for violations of federal, state, or local laws related to tobacco products. All penalties assessed would be collected by the Department and deposited into the Health Care Fund.

"Tobacco product" would mean any product made of tobacco and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" would not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under the Federal Food, Drug, and Cosmetic Act.

"Tobacco retailer" would mean any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation that owns, operates, or manages any tobacco retail establishment. It would not include non-management employees of a tobacco retail establishment;

"Tobacco retail establishment" would mean any place of business where tobacco products are available for sale to the general public, including any grocery store, tobacco product shop, kiosk, convenience store, gasoline service station, bar, or restaurant where tobacco products are available for sale to the general public;

"Youth-oriented facility" would mean a child care center, elementary school, middle school, junior high school, high school, and public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors.

### Registration for Permit

Under this bill, no tobacco retailer would be permitted to operate a tobacco retail establishment, conduct business as a tobacco retailer, or otherwise sell or offer to sell tobacco products without first obtaining a permit from the Department and would be prohibited from conducting business at retail at a location within 1,000 feet of a youth-oriented facility.

The permit process proposed in this bill would require the following of the Department:

- The Department would issue to the applicant a permit authorizing the permit holder to sell and offer to sell tobacco products at retail. Each permit, or a copy thereof, must be prominently displayed in the place of business covered by the permit, and no permit would be transferable to any other person. The Department would compile and maintain a current list of permit holders, updated on a semiannual basis.
- Permits would be valid for one year from the date of issue unless revoked by the Department.
- Any person that applies for a permit and any permit holder would be required to attest that it has conducted education and training for its employees related to the provisions of this article; the prohibitions on the sale of tobacco products to persons under age 21; forms of identification that are acceptable as proof of age; and the legal penalties that may be incurred for violation of the provisions of law identified in subdivisions.
- The Department would annually determine and publish a fee for applications and renewals of permits, but the fee must not exceed the Department's administrative and other costs of processing applications, conducting background investigations, and issuing permits.
- The Department would be required to develop guidelines and such guidelines would be exempt from the provisions of the Administrative Process Act.

#### Permit Enforcement

- The Department would be required to conduct two unannounced investigations per year to verify that the permit holder is not selling tobacco products to persons under 21 years of age. If the Department determines that the permit holder has violated any law related to the sale of tobacco products, the Department would conduct four unannounced investigations of the permit holder per year at intervals not to exceed three months.
- If the Department determines that a permit holder sold a tobacco product to a person under 21 years of age, then the Department would be required to (i) impose a civil penalty of \$500 for a first offense, (ii) impose a civil penalty of \$1,000 for a second offense, (iii) impose a civil penalty of \$1,500 and suspend the permit holder's permit for 15 days for a third offense, and (iv) impose a civil penalty of \$2,000, revoke the permit holder's permit, and restrict such person from applying for a permit for a period of three years for a fourth offense.

The Department would collaborate with Virginia ABC on enforcement. The bill requires that special agents employed by Virginia ABC pursuant to § 4.1-105, conduct a minimum of two compliance checks each year of tobacco product retail sellers. The bill also

requires that these special agents use persons under 21 years of age in order to ensure compliance the bill's provisions.

If enacted during the Regular Session of the 2020 General Assembly, this bill would become effective July 1, 2020.

#### Similar Legislation

**House Bill 93** would prohibit the sale or distribution of flavored tobacco products and impose civil penalties for violations of the prohibition.

**House Bill 1119** would prohibit the sale or distribution of flavored tobacco products and impose civil penalties for violations of the prohibition.

**House Bill 1120** would make multiple changes to the taxation of tobacco in the Commonwealth, including modifications to definitions, tax rates, funding, and penalties.

**House Bill 1372** would prohibit any person from selling any tobacco product at retail without first obtaining a permit from the Department

**Senate Bill 852** would make multiple changes to the taxation of tobacco in the Commonwealth, including modifications to definitions, tax rates, funding, and penalties.

**Senate Bill 921** would permit any county to impose a cigarette tax without a rate limitation.

cc: Secretary of Finance

Date: 1/30/2020 SK  
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