



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1365 ***(Patron – Leftwich)***

LD#: 20101170

Date: 1/3/2020

Topic: Sale, etc. of imitation nicotine vapor products

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposed legislation adds § 18.2-511.2 to the *Code* to prohibit the manufacture, sale, or distribution of any imitation nicotine vapor product, defined as (i) any counterfeit nicotine vapor product, or (ii) any liquid nicotine or nicotine vapor product that was not manufactured, prepared, compounded, or processed by a person registered with the U.S. Food and Drug Administration (FDA). The proposal makes a first violation a Class 1 misdemeanor and a second or subsequent offense a Class 6 felony.

Analysis:

Data sources available to the Commission do not identify the number of people in Virginia who manufacture, sell, or distribute imitation nicotine vapor products. However, individuals who commit a misdemeanor violation of the proposed § 18.2-511.2 may be sentenced similarly to those who violate § 3.2-4212 regarding the sale or distribution of cigarettes not certified for sale in the Commonwealth. According to General District Court Case Management System (CMS) data for fiscal year (FY) 2014 through FY2019, one offender was convicted of a misdemeanor violation of § 3.2-4212 and this individual did not receive an active term of incarceration to serve after sentencing.

Impact of Proposed Legislation:

State adult correctional facilities. By adding a new Class 6 felony to the *Code*, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, data is not available to estimate how many additional felony convictions may result if the proposal is enacted. Therefore, the magnitude of the impact cannot be quantified.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs, but the magnitude cannot be determined.

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be quantified.

Virginia's sentencing guidelines. Felony convictions under the proposed § 18.2-511.2 would not be covered by the sentencing guidelines as the primary (most serious) offense in a case; however, a conviction under this provision may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice reports the impact of this proposal on bed space needs for juvenile correctional centers cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that this proposal's impact on detention center bed space needs cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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