

DEPARTMENT OF TAXATION

2020 Fiscal Impact Statement

1. **Patron** James A. "Jay" Leftwich

3. **Committee** House Finance

4. **Title** Tobacco Products; Licensing of Vapor
Products Retailers

2. **Bill Number** HB 1372

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would require any person that engages in the retail sale of heated tobacco products, liquid nicotine, or nicotine vapor products to register with the Department of Taxation ("the Department") as a retail dealer. Such dealer would be required to obtain a separate license from the Department for each location or place of business.

Current law related to the Tobacco Products Tax provides definitions 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 and do not require registration with the Department.

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

6. **Budget amendment necessary:** Yes

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

7a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2020-21	\$304,000	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
2025-26	\$293,000	4	GF

8. **Fiscal implications:**

Administrative Costs

This bill would result in administrative costs to the Department of \$304,000 in Fiscal Year 2021 and \$293,000 annually thereafter to implement and administer the new registration and enforcement process. Such costs would include hiring additional auditors to enforce

the licensing requirements imposed by this bill. The bill authorizes the Department to charge an application fee not to exceed its costs of enforcement and application processing. However, budget language may be necessary to allow the Department to recover its costs from such fees.

Revenue Impact

This bill would have a minimal impact on state revenues. Any excess fees collected in excess of the Department's costs would be required to be deposited into the state treasury.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No

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.

Persons engaged in the business of selling or dealing in tobacco products as a distributor in the Commonwealth are required to receive a separate license from the Department for each location or place of business.

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.

Currently, auditors from the Department visit retail establishments and audit such 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.

Proposal

This bill would require any person that engages in the retail sale of heated tobacco products, liquid nicotine, or nicotine vapor products to register with the Department as a retail dealer. Such dealer would be required to obtain a separate license from the Department for each location or place of business. The Department would develop and

provide forms to be used in the application process. The bill would authorize the Department to charge an application fee not to exceed its costs of enforcement and application processing. Excess amounts collected would be required to be deposited into state treasury.

Each license, or a copy thereof, would be required to be prominently displayed in the place of business covered by the license. The license would not be transferable to any other person and it would be valid for a period of five years from the date of issue unless revoked by the Department. The Department would be authorized at any time to revoke the license issued to any retail dealer who is found guilty of violating or noncompliance with the requirements of the Tobacco Products Tax.

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.

House Bill 1120 and Senate Bill 852 would provide a new definition for “tobacco products” and broaden the definition of to include “cigarettes” and “electronic smoking devices.” Tobacco products would be subject to tax at rates of \$1.80 per pack of cigarettes or 39 percent of the wholesale price for all other tobacco products. Localities would be authorized to tax all tobacco products with no restriction on the tax rate.

House Bill 1283 would prohibit any person from selling any tobacco product at retail (i) without first obtaining a permit from the Department of Taxation and (ii) at a location within 1,000 feet of a youth-oriented facility, defined in the bill. The bill prohibits 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.

Senate Bill 484 and House Bill 785 would equalize city taxing authority and county taxing authority by granting a county the same authority available to impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds without limitation on the rate that may be imposed.

cc: Secretary of Finance

Date: 1/25/2020 SK
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