

DEPARTMENT OF TAXATION

2020 Fiscal Impact Statement

1. **Patron** Adam P. Ebbin

2. **Bill Number** SB 852

3. **Committee** Senate Finance and Appropriations

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Tobacco Products; Tax on All Tobacco Products, Penalties.

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide a new definition for “tobacco products” that would encompass “cigarettes” and “electronic smoking devices,” as well as cigars, smokeless tobacco, pipe tobacco, moist snuff, and loose leaf tobacco. 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. Current law imposes a tax of \$0.30 per pack of cigarettes. For other Tobacco Products, the rate is 10 percent of the wholesale price of certain tobacco products, and various weight-based rates that apply to moist snuff and loose leaf tobacco. Electronic smoking devices are not subject to the cigarette or tobacco products tax under current law.

The bill authorizes all localities to tax all tobacco products with no restriction on the tax rate. Under current law, cities may tax only cigarettes, and the Counties of Arlington and Fairfax are the only counties that may tax cigarettes and they are restricted from imposing a rate higher than the state rate.

The bill dedicates portions of the revenue accruing from the expanded tax to the Virginia Health Care Fund; the Department of Health for its costs related to Quit Now Virginia for the purpose of providing free information and coaching to residents who want to quit smoking or using tobacco; to the Virginia Foundation for Healthy Youth to fund initiatives to prevent or reduce youth tobacco use; the Department of Behavioral Health and Developmental Services to fund initiatives to educate merchants on the laws governing the sale of tobacco products; and to the general fund. Under current law, all cigarette tax and tobacco products revenue is dedicated to the Virginia Health Care Fund.

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.)

7b. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2019-20	\$85,000	0	GF
2020-21	\$17,000	0	GF

8. Fiscal implications:

Administrative Costs

This bill would result in administrative costs to the Department of Taxation of \$85,000 in Fiscal Year 2020 and \$17,000 in Fiscal Year 2021. These costs would be associated with creating new forms and updating current forms and computer programs to accommodate the changes to tobacco taxes.

Revenue Impact

Compared to current law, the increased tax rate on cigarettes would result in an overall positive revenue impact to the state of \$190.4 million in Fiscal Year 2021 and \$207.7 million annually in Fiscal Years 2022 through 2026.

Increase Cigarette Excise Tax from \$0.30 to \$1.80 Per Pack (\$ Millions)

	FY21	FY22	FY23	FY24	FY25	FY26
Cigarette Tax	\$230.0	\$251.0	\$251.0	\$251.0	\$251.0	\$251.0
Sales Tax	(\$39.6)	(\$43.2)	(\$43.2)	(\$43.2)	(\$43.2)	(\$43.2)
Impact Compared to Current Law	\$190.4	\$207.7	\$207.7	\$207.7	\$207.7	\$207.7

Compared to current law, the increased tax rate on other tobacco products would result in an overall positive revenue impact to the state of \$40.5 million in Fiscal Year 2021; \$48.4 million in Fiscal Year 2022; \$52.7 million in Fiscal Year 2023; \$54.0 million in Fiscal Year 2024; \$55.5 million in Fiscal Year 2025 and \$57.0 million in Fiscal Year 2026.

Increase OTP Tax Rate to 39% of the Manufacturer's Price (\$ Millions)

	FY21	FY22	FY23	FY24	FY25	FY26
OTP Tax	\$46.5	\$55.2	\$59.8	\$61.3	\$63.0	\$64.6
Sales Tax	(\$6.1)	(\$6.8)	(\$7.0)	(\$7.2)	(\$7.4)	(\$7.7)
Impact Compared to Current Law	\$40.5	\$48.4	\$52.7	\$54.0	\$55.5	\$57.0

New Distribution Formula

The revenues generated by the taxes on cigarettes would be distributed as follows:

- 16.67% to the Virginia Health Care Fund;
- 3.32% to the Department of Health for its costs related to Quit Now Virginia or any successor program with the purpose of providing free information and coaching to residents who want to quit smoking or using tobacco;
- 3.32% to the Virginia Foundation for Healthy Youth to fund initiatives to prevent or reduce youth tobacco use;
- 0.82% to the Department of Behavioral Health and Developmental Services to fund initiatives to educate merchants on the laws governing the sale of tobacco products; and
- The remainder to the General Fund.

The revenues generated by the taxes imposed on OTP would be allocated as follows:

- 25.64% to the Virginia Health Care Fund;
- 2.97% to the Department of Health for its costs related to Quit Now Virginia or any successor program with the purpose of providing free information and coaching to residents who want to quit smoking or using tobacco;
- 2.97% to the Virginia Foundation for Healthy Youth to fund initiatives to prevent or reduce youth tobacco use;
- 0.74% to the Department of Behavioral Health and Developmental Services to fund initiatives to educate merchants on the laws governing the sale of tobacco products; and
- The remainder to the General Fund.

Revenue Impact by Fund

The increases in the Cigarette and Other Tobacco Product Taxes proposed by this bill would increase revenues to the Health Care Fund, Department of Health, Virginia Foundation for Healthy Youth, Department of Behavioral Health and Developmental Services ("DBHDS"), and General Fund as follows:

Cigarette and OTP Tax Increases - Distribution by Fund (\$ Millions)

	FY21	FY22	FY23	FY24	FY25	FY26
Health Care Fund	\$50.3	\$56.0	\$57.2	\$57.5	\$58.0	\$58.4
Department of Health	\$9.0	\$10.0	\$10.1	\$10.2	\$10.2	\$10.3
Virginia Foundation for Healthy Youth	\$9.0	\$10.0	\$10.1	\$10.2	\$10.2	\$10.3
DBHDS	\$2.2	\$2.5	\$2.5	\$2.5	\$2.5	\$2.5
General Fund	\$206.0	\$227.8	\$230.8	\$231.9	\$233.0	\$234.2
Cigarette and OTP Impact compared to Current Law	\$276.6	\$306.2	\$310.7	\$312.2	\$313.9	\$315.6

Budget Impact

The Introduced Executive Budget increases the cigarette tax rate from \$0.30 per pack to \$0.60 per pack; doubles the tax rates imposed on other tobacco products; and imposes the tobacco products tax on liquid nicotine at the rate of \$0.066 per milliliter. Accordingly, revenues attributable to these changes are assumed in the Introduced Executive Budget. If this bill is adopted, budget amendments would be required to reflect the following adjustments:

Total Cigarette and OTP-Distribution by Fund (\$ Millions)

	FY21	FY22
Health Care Fund	(\$68.9)	(\$74.8)
Department of Health	\$9.0	\$10.0
Virginia Foundation for Healthy Youth	\$9.0	\$10.0
DBHDS	\$2.2	\$2.5
General Fund	\$206.0	\$227.8

In addition, the budget would need to be adjusted to reflect the following adjustments as a result of the estimated decrease in sales tax revenues attributable to the purchase of cigarettes and other tobacco products:

Retail Sales and Use Tax Revenues Attributable to Sales of Cigarettes and Other Tobacco Products (\$ Millions)

	FY21	FY22
State Sales and Use Tax (5.3%)	(\$42.6)	(\$46.6)
GF - Unrestricted	(\$18.3)	(\$20.0)
GF - Restricted	(\$9.0)	(\$9.8)
Transportation	(\$6.5)	(\$7.1)
Local Option	(\$8.1)	(\$8.8)
HMOF (GF transfer)	(\$0.8)	(\$0.9)
Regional	(\$3.1)	(\$3.4)
Hampton Roads (0.7%)	(\$0.9)	(\$1.0)
Northern Virginia (0.7%)	(\$1.9)	(\$2.1)
Historic Triangle (1.7%)	(\$0.3)	(\$0.3)
Total Sales and Use Tax	(\$45.7)	(\$50.1)

9. Specific agency or political subdivisions affected:

Department of Taxation
All localities

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. It is paid through the purchase of stamps, which must be affixed to each container in which cigarettes are sold.

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.

Under current law, all cigarette tax and tobacco products revenue is dedicated to the Virginia Health Care Fund.

Proposal

This bill would provide a new definition for "tobacco products" that would encompass "cigarettes" and "electronic smoking devices," as well as cigars, smokeless tobacco, pipe tobacco, moist snuff, and loose leaf tobacco. 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.

The bill authorizes all localities to tax all tobacco products with no restriction on the tax rate.

The bill dedicates portions of the taxes on tobacco products taxes to the Department of Health for its costs related to Quit Now Virginia for the purpose of providing free information and coaching to residents who want to quit smoking or using tobacco; to the Virginia Foundation for Healthy Youth to fund initiatives to prevent or reduce youth tobacco use; the Department of Behavioral Health and Developmental Services to fund initiatives to educate merchants on the laws governing the sale of tobacco products; and to the general fund.

Cigarettes

In this bill, cigarettes would be included in the definition of "tobacco product" and the tax on cigarettes would continue to be paid by stamping agents through affixing stamps

equaling the amount of the tax to each individual package, bag, box or can of cigarettes. Only manufacturers, wholesale dealers, and tobacco retailers would be permitted as stamping agents. The rate of tax would be raised to \$1.80 per pack of cigarettes from the current rate of \$0.30 per pack of cigarettes.

“Cigarette” would mean i) any roll for smoking containing tobacco wrapped in paper or in any substance other than tobacco leaf; (ii) any roll for smoking containing tobacco, wrapped in any substance, weighing four and a half pounds or less per thousand rolls, except those rolls wrapped entirely in tobacco leaf that do not have a filter; and (iii) any roll for smoking containing tobacco wrapped in any substance, however labeled or named, which because of its appearance, its size, the type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling is likely to be offered to, purchased by, or consumed by consumers as a cigarette as defined in clause (i) or (ii). The definition would not include an electronic smoking device or roll-your-own tobacco.

Revenue from the proposed tobacco products tax on cigarettes would be allocated as follows:

- 16.67 percent to the Virginia Health Care Fund established under § 32.1-366;
- 3.32 percent to the Department of Health for its costs related to Quit Now Virginia or any successor program with the purpose of providing free information and coaching to residents who want to quit smoking or using tobacco;
- 3.32 percent to the Virginia Foundation for Healthy Youth to fund initiatives to prevent or reduce youth tobacco use;
- 0.82 percent to the Department of Behavioral Health and Developmental Services to fund initiatives to educate merchants on the laws governing the sale of tobacco products; and
- The remainder to the general fund.

Tobacco Products Other Than Cigarettes

The tax on tobacco products other than cigarettes would be imposed on a “distributor” when such distributor (i) brings or causes to be brought into the Commonwealth from outside the Commonwealth tobacco products for sale; (ii) makes, manufactures, or fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or (iii) ships or transports tobacco products to tobacco retailers in the Commonwealth. The rate would be 39 percent of the wholesale price. The tax would be imposed only once on all tobacco products.

This bill would provide that:

“Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. It would include any

component, part, or accessory of the device, whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. It does not include any battery or battery charger when sold separately; and would also not include cigarettes.

"Tobacco product" means (i) any product containing, made of, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including a cigarette unless otherwise stated, and including a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes. However, this would not include drugs or devices, or combination products.

"Tobacco retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation that owns, operates, or manages any tobacco retail establishment.

Registration for Licenses

Under this bill, no person would be permitted to engage in the business of selling or dealing in tobacco products (other than cigarettes) as a distributor in the Commonwealth without first having received a separate license from the Department for each location or place of business.

The license process proposed in this bill would require the following:

- The Department would issue to the applicant a license authorizing the holder to sell and offer to sell tobacco products at retail. Each license, would be required to be prominently displayed in the place of business covered by the license, and no license would be transferable to any other person. The Department would compile and maintain a current list of licensed distributors, updated on a semiannual basis.
- Licenses would be valid for one year from the date of issue unless revoked by the Department.
- Any person that applies for a license and any license holder would be required to attest that they have conducted education and training for their 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 licenses, but the fee must not exceed the Department's administrative

and other costs of processing applications, conducting background investigations, and issuing licenses.

- The Department would be required to develop guidelines and such guidelines would be exempt from the provisions of the Administrative Process Act.

The Department would be permitted to establish an application or renewal fee not to exceed \$750 to be retained by the Department to be applied to the administrative and other costs of processing distributor's license applications, conducting background investigations, and issuing distributor's licenses. Any amount collected pursuant to this section in excess of such costs as of June 30 in even-numbered years would be reported to the State Treasurer and deposited into the state treasury.

Further, any person that imports, transports, or possesses tobacco products for resale upon which the tax has not been paid, would be required to pay any tax owed. In addition, if such person imports, transports, or possesses tobacco products to knowingly and intentionally evade or attempt to evade any tax would be required to pay a civil penalty of (i) \$2.50 per tobacco product, up to \$500, for the first violation by the person within a 36-month period; (ii) \$5 per tobacco product, up to \$1,000, for the second violation by the person within a 36-month period; and (iii) \$10 per tobacco product, up to \$50,000, for the third or subsequent violation by the person within a 36-month period.

The Department would be responsible to assess and collect the penalties as any other taxes are collected. In addition, where willful intent exists to defraud the Commonwealth of the tax levied, such person would be required to pay a civil penalty of \$25 per tobacco product, up to \$250,000.

Local Tobacco Taxes

The bill authorizes all localities to tax all tobacco products with no restriction on the tax rate.

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 is identical to this bill.

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.

House Bill 1372 would require any person that engages in the retail sale of vapor products to register with the Department of Taxation as a retail dealer.

Senate Bill 484 and **House Bill 785** would equalizes 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.

Senate Bill 588 would equalizes city taxing authority and county taxing authority by granting a county the same authority available to a city through the uniform charter powers.

cc: Secretary of Finance

Date: 1/26/2020 SK
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