

## Department of Planning and Budget 2024 Session Fiscal Impact Statement

**1. Bill Number:** HB1069

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Willett

**3. Committee:** General Laws

**4. Title:** Liquid nicotine and nicotine vapor products; certification and directory; penalties.

- 5. Summary:** Requires every manufacturer of liquid nicotine or nicotine vapor products that are sold for retail sale in the Commonwealth to certify to the Attorney General that (i) the manufacturer has received a marketing authorization or similar order for the liquid nicotine or nicotine vapor product from the U.S. Food and Drug Administration (FDA) or (ii) (a) the liquid nicotine or nicotine vapor product was marketed in the United States as of August 8, 2016, or (b) the manufacturer submitted a premarket tobacco product application for the liquid nicotine or nicotine vapor product to the FDA on or before September 9, 2020, and such application either remains under review by the FDA or a final decision on the application has not otherwise taken effect. The bill requires a manufacturer to submit such a form for each liquid nicotine or nicotine vapor product that such manufacturer sells for retail sale in the Commonwealth. Under the bill, any manufacturer that falsely represents any of the information required by the certification requirement is guilty of a Class 3 misdemeanor for each false representation.

The bill requires the Attorney General to establish and maintain a directory that lists all liquid nicotine or nicotine vapor product manufacturers and liquid nicotine and nicotine vapor products for which current and accurate certification forms have been submitted. The bill requires the Attorney General to remove or exclude from such directory any such product that is not in compliance and to notify the manufacturer of such noncompliance. The bill allows a 10-business-day period for a manufacturer to establish compliance. The bill requires that any such products that are removed from the list be sold or removed from retail sale within 30 days or become subject to seizure and requires a manufacturer, wholesaler, or retail dealer to notify each purchaser of a removed product that it has been removed from the directory at the time of delivery of such product. The bill entitles such a purchaser to a refund of the purchase price and creates a cause of action to recover such refund.

The bill prohibits the sale, distribution, importation, or offer for sale of any liquid nicotine or nicotine vapor product that is not listed in the directory. The bill provides for a civil penalty of \$1,000 per day for each product offered for sale in violation of the bill's provisions until the offending product is removed from the market or until the offending product is properly listed on the directory.

The bill requires any person that receives, stores, sells, handles, or transports liquid nicotine or nicotine vapor products to preserve all records relating to the purchase, sale, exchange, receipt, or transportation of all liquid nicotine or nicotine vapor products for a period of three years. The bill provides that all such records are subject to audit or inspection at any time by any duly authorized representative of the Attorney General. Any person who violates the recordkeeping provisions of the bill is guilty of a Class 2 misdemeanor.

Additionally, the bill provides that the Department of Taxation, the Attorney General, any other law-enforcement agency of the Commonwealth, or any federal law-enforcement agency conducting a criminal investigation involving the trafficking of liquid nicotine or nicotine vapor products may access at any time such records. The bill requires the Department of Taxation to impose a penalty of \$1,000 for each day that a person fails or refuses to allow or cooperate with an audit, inspection, or investigation of such records. Each retailer shall have 60 days from the date that the Attorney General first makes the directory available for inspection on its public website to sell any products that were in its inventory and not included in the directory or to remove from inventory and return such products to the manufacturer for disposal and each distributor or wholesaler shall have 60 days from the date that the Attorney General first makes the directory available for inspection on its public website to remove any products intended for sale in the Commonwealth from its inventory and return such products to the manufacturer for disposal.

The bill authorizes the Attorney General, and with the concurrence of the Attorney General, any attorney for the Commonwealth, or the attorney for any city, county, or town to cause an action to enjoin any violation of the provisions of the bill. The circuit courts are authorized by the bill to (i) issue temporary or permanent injunctions to restrain and prevent violations of the provisions of the bill and (ii) order forfeiture on any property seized for such a violation. The bill authorizes the Attorney General to issue a civil investigative demand.

Under the bill, any retailer and wholesaler that sells or distributes any liquid nicotine or nicotine vapor product in the Commonwealth is subject to scheduled or unscheduled compliance checks carried out by the Attorney General for enforcement purposes.

The bill requires the Attorney General to provide an annual report to the General Assembly regarding the status of the directory, manufacturers and products included in the directory, and revenues and expenditures related to and enforcement activities undertaken pursuant to the requirements of the bill.

Finally, the bill makes a violation of its provisions a prohibited practice under the Consumer Protection Act.

- 6. Budget Amendment Necessary:** Yes, Item 51.
- 7. Fiscal Impact Estimates:** Preliminary, See Item 8.
- 8. Fiscal Implications:** The fiscal impact estimate is preliminary and will be updated as information becomes available.

### Department of Taxation

The Department of Taxation considers implementation of this bill to be routine and does not require additional funding. This bill may result in an unknown positive state revenue impact to the extent that the Department of Taxation is able to assess and collect penalties authorized by this bill.

### Office of the Attorney General and Department of Law

This bill requires the Office of the Attorney General and Department of Law (OAG) to create and publish a liquid nicotine and nicotine vapor product directory. The sale of a liquid nicotine or vapor product not listed in the directory is a violation of the Consumer Protection Act. OAG will collect and retain a fee of \$2,000 for every first submission and resubmission of a product to the directory and a \$500 annual fee each year thereafter. The estimated annual revenue for device registration is unknown at this time, however, OAG indicates there will be approximately 10,000 products. Based on preliminary calculations, it is estimated that the annual device registration fee revenue will offset the fiscal impact of the enforcement activities and litigation requirements of this bill for OAG after the first two years of implementation.

OAG indicates this bill will require the Financial Laws and Transactions (FLAGS) section to create a new unit to help leverage the existing infrastructure and knowledge of the section to get the Electronic Nicotine Delivery Systems (ENDS) unit set up. This new unit would require one section chief and at least three experienced attorneys at an annual cost of approximately \$644,554. In addition, the unit will need four investigators, which is commensurate with the tobacco enforcement section at an annual cost of approximately \$465,921. The unit will also need two auditors at a cost of approximately \$228,304 per year as well as two legal secretaries and an administrative staff at a cost of approximately \$308,082 per year.

### Other

Any person who violates the record keeping provisions of this bill is guilty of a Class 2 misdemeanor. Any manufacturer that falsely represents information is guilty of a Class 3 misdemeanor.

Anyone convicted of a Class 2 misdemeanor is subject to a sentence of up to six months in jail and a fine of not more than \$1,000, either or both.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays localities \$5.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

A Class 3 misdemeanor is punishable by a fine of up to \$500. These offenses carry no jail time. All revenue collected from such fines is deposited into the Literary Fund. However, it is not possible to estimate either the number of convictions that may result or the amount of each fine that may be assessed under this legislation. Therefore, the impact of this bill cannot be determined.

Virginia State Police indicates this bill does not have a fiscal impact to their agency. The impact to the Circuit Courts and other law enforcement agencies is unknown at this time.

**9. Specific Agency or Political Subdivisions Affected:** Office of the Attorney General and Department of Law, Department of Taxation, Circuit Courts, Law Enforcement Agencies

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** This bill may require a new fund code for the liquid nicotine and vapor product fees collected. Fees collected for submission of a product in the directory should not be deposited into the Electronic Nicotine Delivery System fund as those funds are from device settlements.

Date: 2/8/2024