

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. **Bill Number:** HB1509 H1

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron:** Seibold

3. **Committee:** Appropriations

4. **Title:** Restrictions on the sale of nicotine vapor products containing liquid nicotine and hemp products and defines certain terms associated with the chapter.

5. **Summary:** The substitute bill renames Chapter 32.2, which is currently Liquid Nicotine as Nicotine Vapor Products Containing Liquid Nicotine and Hemp Products. The bill establishes § 59.1-293.12, which outlines general requirements for the retail sale of nicotine vapor products containing liquid nicotine and hemp products intended for smoking, sets rules for required signage, labeling, and shop location, etc.

The bill provides that if the Virginia Alcoholic Beverage Control Authority (ABC) and the Virginia Department of Agriculture and Consumer Services (VDACS), as applicable, determine that a person, or such person's agent or employee violate certain provisions, such persons are subject to penalties of:

- For the first violation in a 36-month period, a penalty of no less than \$1,000;
- For a second violation in a 36-month period, a penalty of no less than \$5,000; and
- For a third violation in a 36-month period, a penalty of no less than \$10,000 and a prohibition from selling nicotine vapor products containing liquid nicotine or hemp products intended for smoking for a period of three years from the date of the most recent violation.

The bill establishes that Agents of ABC designated pursuant to § 4.1-105 or VDACS, as applicable, may issue a summons for any violation of the chapter. The bill requires ABC and VDACS, as applicable, to collaborate with the Department of Taxation and local law enforcement as necessary to enforce the provisions of this chapter and §§ 4.1-103.01 (Additional powers; access to certain tobacco sales records; inspections; penalty) and 18.2-371.2 (prohibits purchase, possession, and sale of tobacco, nicotine, and hemp products to people under 21 years of age, sets civil penalties for violations).

The bill provides that any attorney for the county, city, or town in which an alleged violation of this chapter occurred may enforce this chapter by civil action to recover a civil penalty not to exceed \$500. The civil penalty must be paid into the local treasury. The bill provides that no filing fee or other fee or cost can be charged to the county, city, or town which instituted the action.

6. **Budget Amendment Necessary:** Yes, Items 49, 92, and 380. Also, see Item 8 below.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** The total number of retail outlets that would be affected by this bill is not currently known. However, the Virginia Department of Agriculture and Consumer Services (VDACS) estimates that there are 8,000 tobacco retailers in Virginia, and between 2,000 and 6,000 establishments selling hemp products; the Virginia Alcoholic Beverage Control Authority (ABC) estimates that there are between 5,000 and 8,000 tobacco or nicotine outlets in Virginia.

Although the bill allows both ABC and VDACS to issue summons for violations and directs both agencies to collaborate with the Department of Taxation and local law enforcement on enforcement efforts, it is not clear which agency would lead these activities. Both agencies provided cost estimates for additional enforcement resources. Depending on the intentions of the bill, the costs described below may be duplicative and may therefore overstate the actual need.

Virginia Department of Agriculture and Consumer Services (VDACS)

Currently, VDACS is charged with investigation and enforcement activities related to hemp product violations at food product establishments regulated by the agency and with registration and inspection of facilities selling certain hemp products. VDACS Office of Hemp Enforcement consists of 15 positions, nine of which are currently filled, the rest of which are under recruitment; all are expected to be filled by the end of FY2024. VDACS' current annual budget for these activities is \$2.2 million general fund.

VDACS estimates that staffing a similar office for tobacco enforcement to perform the enforcement activities established in this bill would require a total of 15 positions: one manager; two supervisors; five compliance and technical specialists; five inspectors; and two registration specialists for a total of \$1,461,522 (salary and benefits) and \$638,478 for equipment, technology systems, overhead, and other operating expenses. VDACS reports that the agency has six existing vacancies that could be used for this office but would need funding for all the positions identified. Therefore, VDACS estimates that they would need up to nine positions and a total of \$2.1 million from the general fund in the first year and nearly as much annually thereafter to establish this new office.

Virginia Alcoholic Beverage Control Authority (ABC)

Based upon an assumption of 5,000 retail establishments, ABC estimates that it would need up to 12 new special agents at a cost of \$1,440,000 (salary and benefits) ongoing and \$566,016 in one-time equipment costs to conduct investigations, respond to complaints, and to enforce provisions with civil penalties. Since the bill is silent on which, if any, agency would receive revenue from the civil penalties assessed, it is assumed that ABC would need general fund support for the enforcement activities.

Other Agencies

The impact this bill would have on the Department of Taxation or on local law enforcement agencies is not known at this time.

According to the Office of the Attorney General, this bill would require up to one additional attorney, at an estimated cost of \$136,951 (salary and benefits) per year to address consumer protection issues.

Revenue Impact

The impact this bill may have on state and local revenue is not known at this time. If additional information becomes available, this statement will be revised.

9. Specific Agency or Political Subdivisions Affected: Alcoholic Beverage Control Authority, Virginia Department of Agriculture and Consumer Services, Department of Taxation, Office of the Attorney General, and localities

10. Technical Amendment Necessary: No

11. Other Comments: None