

DEPARTMENT OF TAXATION

2024 Fiscal Impact Statement

1. **Patron** Patrick A. Hope

3. **Committee** House General Laws

4. **Title** Registration of tobacco products retailers;
retail tobacco products and liquid nicotine
tax; penalties

2. **Bill Number** HB 790

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This impact statement is limited to taxes administered by the Department of Taxation (“the Department”).

This bill would provide a definition for “Retail Tobacco Product” that would encompass:

- Any product containing, made of, or derived from tobacco or that contains nicotine, including a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and
- Any component, part, or accessory of such products, whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes.

This definition also includes any nicotine vapor product.

The bill would also impose the Tobacco Products Tax, beginning July 1, 2024:

- Upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter;
- Upon liquid nicotine in open systems at the rate of 10% of the wholesale price.

Additionally, the bill would establish that no tobacco retailer can operate a tobacco retail establishment, unless such tobacco retailer has obtained a license for each location or place of business from the Department. Each license application shall be accompanied by a fee.

The bill would also allow the Department to impose the following penalties on any retail establishment that

- Sells, gives, or furnishes a tobacco product to a person who has not attained the legal age for purchase liquid nicotine or nicotine vapor products, or
- Makes a sale without a valid license,
 - No less than \$1,000 for the first violation in a 36-month period;
 - No less than \$5,000, and a 30-day suspension of the license;
 - No less than \$10,000, revocation of the license, and shall be ineligible to possess the license for a period of 3 years from the date of the most recent violation.

This bill would require the Department, in collaboration with the Virginia Alcoholic Beverage Control Authority and local law enforcement, to conduct a compliance check every 24 months on any retailer selling retail tobacco products and to use a person younger than 21 years of age to conduct such checks.

The bill would provide that the Department would be required to enforce and administer the tax and licensing of liquid nicotine and nicotine vapor products. This would include enforcement of age verification, product verification, advertising restrictions, licensing, and collection of the tax.

In addition, the bill would also create the Tobacco Retail Permit Fund. Permit application and renewal fees would be deposited into the Tobacco Retail Permit Fund. Moneys in the fund shall be used solely for the purposes of funding the Department's direct and indirect costs of the license administration and enforcement program, including the administrative costs of permitting administration, education and training, retail inspections, and unannounced compliance checks.

Under current law, the Tobacco Products Tax is imposed on cigars, smokeless tobacco, pipe tobacco, loose leaf tobacco, liquid nicotine, and heated tobacco products. Beginning July 1, 2020, a tax is imposed on liquid nicotine at the rate of \$0.066 per milliliter.

If enacted during the regular session of the 2024 General Assembly this bill would become effective July 1, 2024.

6. Budget amendment necessary: Yes. (See Line 8, Administrative Costs.)

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>
2023-24	\$658,000	4	GF
2024-25	\$771,000	4	GF
2025-26	\$296,000	4	GF
2026-27	\$296,000	4	GF
2027-28	\$296,000	4	GF
2028-29	\$296,000	4	GF
2029-30	\$296,000	4	GF

8. Fiscal implications:

Administrative Costs

This bill would result in administrative costs to the Department of Taxation of \$658,000 in Fiscal Year 2024, \$771,000 in Fiscal Year 2025, \$296,000 in Fiscal Year 2026 and thereafter. These costs include four full time employees and the necessary systems, processing and forms changes.

These costs would be paid from the Tobacco Retail Permit Fund (“Fund”) established by this bill. As the Department would incur substantial costs in Fiscal Year 2024 to implement

this bill before any application or reapplication fees paid by distributors are deposited into the Fund, a budget amendment to allow the Department to obtain a treasury loan would be necessary. The treasury loan would be repaid when there are sufficient revenues in the Fund.

Revenue Impact

The revenue impact of the changes proposed by the bill to the excise tax on liquid nicotine in open systems is unknown. In Fiscal Year 2023, the Department collected \$20.1 million from the excise tax on all liquid nicotine. Since there is no data on the amount of tax collected on open systems versus closed systems, it is unknown how such collections would change.

In addition, this bill may result in an unknown positive state revenue impact to the extent that the Department is able to assess and collect the penalties authorized by this bill.

9. Specific agency or political subdivisions affected:

Department of Taxation, Virginia Alcoholic Beverage Control Authority, and local law enforcement

10. Technical amendment necessary: No.

11. Other comments:

Retail Sales and Use Tax on Cigarettes

Under current law, retailers purchasing cigarettes for resale are required to pay sales tax on stamped cigarettes unless they have been issued a Cigarette Retail Sales and Use Tax Exemption Certificate (Form ST-10C) by the Department. This exemption certificate process is not retail licensing. It simply allows retailers to purchase cigarettes exempt from sales tax. The exemption certificate does not give the retailer authorization to sell cigarettes. Any person can purchase and sell cigarettes without an exemption certificate. The Department plays no role in the enforcement of state and federal laws banning the sale of cigarettes to minors.

Tobacco Products Tax

Under current law, the Tobacco Products Tax is imposed on cigars, smokeless tobacco, pipe tobacco, loose leaf tobacco, liquid nicotine, and heated tobacco products. Effective July 1, 2020, the 2020 Appropriation Act doubled the tobacco products tax rates on all products subject to the tax and imposed the tax on liquid nicotine at the rate of \$0.066 per milliliter. Most tobacco products, other than moist snuff, loose leaf tobacco, and liquid nicotine are subject to the tax at the rate of 20% of the manufacturer's sales price. This includes cigars and pipe tobacco.

The tobacco products tax is generally paid by licensed distributors based on the "manufacturer's sales price," which is the actual price for which a manufacturer,

manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

Under Item 3-5.19 of the Appropriation Act, a distributor of tobacco products is deemed to have sufficient activity within the Commonwealth to require registration, if such distributor:

- Receives more than \$100,000 in gross revenue, or other minimum amount as may be required by federal law, from sales of tobacco products in the Commonwealth in the previous or current calendar year; or
- Engages in 200 or more separate tobacco products sales transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year.

Licensing

No person may engage in the business of selling tobacco products as a distributor in the Commonwealth without first having received a separate license from the Department for each place of business. The Department conducts a background investigation of the applicant and such of its officers and employees as deemed necessary by the Department. This licensing process is for the purpose of administering the Tobacco Products Tax. The Department plays no role in the enforcement of state and federal laws banning the sale of tobacco products to youths.

Every application for a license must be made on a form prescribed by the Department, and the following information must be provided:

- The name and address of the applicant. If the applicant is a corporation, it must also provide the name and address of its principal officers. If the applicant is any other type of legal entity, it must also provide the name and address of each of its members;
- The address of the applicant's principal place of business;
- The location where the business to be licensed is to be conducted; and
- Such other information as the Department may require.

Proposal

This bill would provide a definition for "Retail Tobacco Product" that would encompass:

- Any product containing, made of, or derived from tobacco or that contains nicotine, including a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and
- Any component, part, or accessory of such products, whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes

This definition also includes any nicotine vapor product.

The bill would also impose a tax, beginning July 1, 2024:

- Upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter;
- Upon liquid nicotine in open systems at the rate of 10% of the wholesale price

A closed system would be defined as a nicotine vapor product capable of utilizing a disposable container that is:

- Prefilled with liquid nicotine and sealed by the manufacturer;
- Not easily refillable or intended or designed to be refillable; and
- Intended or used to dispense liquid nicotine for use in a nicotine vapor product that is intended or designed for reuse.

An open system would be defined as a as a nicotine vapor product designed and intended by the manufacturer to be reusable and refilled with liquid nicotine of the end user's choice.

Additionally, the bill would establish that no tobacco retailer can operate a tobacco retail establishment, unless such tobacco retailer has obtained a license for each location or place of business from the Department. Each license application shall be accompanied by a fee.

The bill would also allow the Department to impose the following penalties on any retail establishment that:

- Sells, gives, or furnishes a tobacco product to a person who has not attained the legal age for purchase liquid nicotine or nicotine vapor products, or
- Makes a sale without a valid license:
 - No less than \$1,000 for the first violation in a 36-month period;
 - No less than \$5,000, and a 30-day suspension of the license for the second violation in a 36-month period;
 - No less than \$10,000, revocation of the license, and shall be ineligible to possess the license for a period of 3 years from the date of the most recent violation for the third violation in a 36-month period.

This bill would require the Department, in collaboration with the Virginia Alcoholic Beverage Control Authority and local law enforcement, to conduct a compliance check every 24 months on any retailer selling retail tobacco products and to use a person younger than 21 years of age to conduct such checks.

The bill would provide that the Department would be required to enforce and administer the tax and licensing of liquid nicotine and nicotine vapor products. This would include enforcement of age verification, product verification, advertising restrictions, licensing, and collection of the tax.

In addition, the bill would also create the Tobacco Retail Permit Fund. Moneys in the fund shall be used solely for the purposes of funding the Department's direct and indirect costs of the license administration and enforcement program, including the administrative costs of permitting administration, education and training, retail inspections, and unannounced compliance checks.

If enacted during the regular session of the 2024 General Assembly this bill would become effective July 1, 2024.

Similar Legislation

Senate Bill 582 is identical to this bill.

cc : Secretary of Finance

Date: 2/5/2024 KS
HB790F161