

DEPARTMENT OF TAXATION

2024 Fiscal Impact Statement

1. **Patron** Adam P. Ebbin

2. **Bill Number** SB 582

3. **Committee** Passed House and Senate

House of Origin:
 Introduced
 Substitute
 Engrossed

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

Second House:
 In Committee
 Substitute
 X Enrolled

5. **Summary/Purpose:**

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

The bill would broaden the definition of “retail dealer” to also include any person that holds an approved Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or an Other Tobacco Products (“OTP”) Distributor’s License issued by the Department.

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 penalties on:

- Any retail establishment that
 - Sells liquid nicotine or nicotine vapor products to a person who has not attained the legal age for that purchase, and
 - Makes a sale without a valid liquid nicotine and nicotine vapor products license, and
- Any retail dealer that sells retail tobacco product to a person under 21 years of age who has not attained the legal age.

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 Enforcement Fund (“Fund”). Revenues generated by the penalties above would be deposited into the Fund. Moneys in the fund would be allowed to be used solely for the purposes of funding the Department's direct and indirect costs of the license administration and enforcement program, and the administrative costs of 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.)
- 7. Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
- 8. Fiscal implications:**

Administrative Costs

This bill would result in administrative costs to the Department of \$658,000 in Fiscal Year 2025, \$771,000 in Fiscal Year 2026, and \$296,000 in Fiscal Year 2027 and thereafter. These costs include four full time employees and the necessary systems, processing, and forms changes. These costs are solely for administering the tax aspects of the bill.

As the bill requires the Department to collaborate with Virginia Alcohol Beverage Control Authority (“Virginia ABC”) and local law enforcement in enforcing the provisions pertaining to the unannounced investigations every 24 months to verify that retail dealers are not selling tobacco products to persons under age 21 years of age and the Department does not have law enforcement authority, the Department’s costs assume that Virginia ABC or local law enforcement would work to conduct such investigations. If the intent is for the Department to conduct such investigations, the Department’s costs would be significantly higher and would require an indeterminate, but likely significant, number of additional staff. Since the Department does not have law enforcement authority, it is unclear how the Department would conduct such investigations.

Revenue Impact

The revenue impact of the changes proposed by the bill to the excise tax on liquid nicotine in open systems would be 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
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

The bill would broaden the definition of "retail dealer" to also include any person that holds an approved Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or an Other Tobacco Products ("OTP") Distributor's License issued by the Department.

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.

Penalties would be on certain retail establishments and retailer dealers that fail to comply with this bill's requirements.

Penalties on Certain Retailer Establishments

The bill would allow the Department to impose the following penalties on any retail establishment that: (i) sells liquid nicotine or nicotine vapor products to a person who has not attained the legal age for that purchase, and (ii) makes a sale without a valid liquid nicotine and nicotine vapor products license:

- For the first violation in a 36-month period, a penalty of no less than \$1,000;
- For the second violation in a 36-month period,
 - A penalty of no less than \$5,000 and
 - A 30-day suspension of the liquid nicotine and nicotine vapor products license.
 - A requirement that the person must verify that any consumer who appears to be under 30 years of age is of legal age by verifying such consumer's

- government-issued photographic identification using fraud detection software, technology, or a scanner that confirms the authenticity of such identification;
- For the third violation in a 36-month period,
 - A penalty of no less than \$10,000,
 - Revocation of the liquid nicotine and nicotine vapor products license, and
 - Ineligibility to possess a liquid nicotine and nicotine vapor products license for a period of three years from the date of the most recent violation.

Penalties on Certain Retailer Dealers

The bill would also allow the Department to impose the following penalties on any retail dealer that sells retail tobacco product to a person under 21 years of age who has not attained the legal age:

- For the first violation in a 36-month period, a penalty of no less than \$1,000;
- For the second violation in a 36-month period,
 - A penalty of no less than \$5,000 and
 - A requirement that the person must verify that any consumer who appears to be under 30 years of age is of legal age by verifying such consumer's government-issued photographic identification using fraud detection software, technology, or a scanner that confirms the authenticity of such identification;
- For the third violation in a 36-month period,
 - A penalty of no less than \$10,000, and
 - A 30-day suspension of the Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or an OTP Distributor's License.
- For the fourth violation in a 36-month period,
 - Revocation of the Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or an OTP Distributor's License, and
 - Ineligibility to possess that license for a period of three years from the date of the most recent violation.

Other Provisions of this Bill

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 Fund. Revenues generated by the penalties above would be deposited into the Fund. Moneys in the fund would be allowed to be used solely for the purposes of funding the Department's direct and indirect costs of the license administration and enforcement program, and the administrative costs of 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

House Bill 790 is identical to this bill.

cc : Secretary of Finance

Date: 3/25/2024 KS
SB582FER161