

# DEPARTMENT OF TAXATION

## 2024 Fiscal Impact Statement

1. **Patron** Adam P. Ebbin

3. **Committee** House General Laws

4. **Title** Retail Tobacco Products; penalties

2. **Bill Number** SB 582

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

**Second House:**

  X   **In Committee**

           **Substitute**

           **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.

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 allow the Virginia Alcoholic Beverage Control Authority (“Virginia ABC”) to impose the following penalties on any retail dealer 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:

- 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 the Department would be required to issue a 30-day suspension of the retail dealer’s Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or OTP Distributor’s License;
- For a third violation in a 36-month period, a penalty of no less than \$10,000, and the Department would be required to:

- Revoke the retail dealer's exemption certificate or license and
- Not allow such retailer dealer to possess an exemption certificate or license for a period of three years from the date of the most recent violation.

The bill would require that Virginia ABC or the Virginia Department of Agriculture and Consumer Services, as applicable, report any violations to the Department to allow for the suspensions described above.

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 would be allowed to be used solely for the purposes of funding the Department's direct and indirect costs including the administrative costs of unannounced compliance checks, retail inspections, and education and training.

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

**6. Budget amendment necessary: Yes.**

Item 380: Virginia Alcoholic Beverage Control Authority

**7. Fiscal Impact Estimates are: Preliminary (See Line 8.)**

**7a. Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2025	\$3,232,520	19	GF
2026	\$2,525,000	19	GF
2027	\$2,525,000	19	GF
2028	\$2,525,000	19	GF
2029	\$2,525,000	19	GF
2030	\$2,525,000	19	GF

**8. Fiscal implications:**

Administrative Costs

The Department considers implementation of this bill to be routine and does not require additional funding.

The Virginia Alcoholic Beverage Control Authority ("Virginia ABC") expects to incur costs of \$3,232,520 in Fiscal Year 2025, and \$2,525,000 in each fiscal year thereafter to administer the provisions of this bill. Such costs primarily include costs for hiring fifteen new special agents and their equipment, to conduct compliance checks and respond to complaints, and four additional legal/administrative employees to implement and administer the new civil penalty program created by this bill.

Revenue Impact

This bill would have no impact on state or local revenues.

In addition, Virginia ABC considers that this bill may result in an unknown revenue impact to the extent that it is able to assess and collect the penalties authorized by this bill. However, according to Virginia ABC, those revenues would be insufficient to fund the enforcement expenditures required.

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
Virginia Alcoholic Beverage Control Authority  
Virginia Department of Agriculture and Consumer Services  
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 2023 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.

### 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.

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 allow the Virginia Alcoholic Beverage Control Authority (“Virginia ABC”) to impose the following penalties on any retail dealer 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:

- 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 the Department would be required to issue a 30-day suspension of the retail dealer’s Retail Sales and Use Tax Exemption Certification for Stamped Cigarettes Purchased for Resale or OTP Distributor’s License;
- For a third violation in a 36-month period, a penalty of no less than \$10,000, and the Department would be required to:
  - Revoke the retail dealer’s exemption certificate or license and
  - Not allow such retailer dealer to possess an exemption certificate or license for a period of three years from the date of the most recent violation.

The bill would require that Virginia ABC or the Virginia Department of Agriculture and Consumer Services, as applicable, report any violations to the Department to allow for the suspensions described above.

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 would be allowed to be used solely for the purposes of funding the Department’s direct

and indirect costs including the administrative costs of unannounced compliance checks, retail inspections, and education and training.

This bill would require that Virginia ABC, the Virginia Department of Agriculture and Consumer Services, and the Department collaborate on the development of an implementation plan and recommendations related to the administration of the provisions of the first enactment of this act. Such plan and recommendations would be required to be reported to the General Assembly no later than November 1, 2024.

This bill would provide that the Department would evaluate and report no later than November 1, 2024, the prospective taxing of liquid nicotine based on its placement in closed and open systems on:

- Whether and how other states tax liquid nicotine, and
- Options for tax rates on those products.

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

#### Similar Legislation

**House Bill 790** as engrossed is similar to this bill but would have several differences, including having the Department administer the penalties related to sales to minors rather than Virginia ABC and changing the tax treatment of liquid nicotine. It is subject to a reenactment clause.

cc : Secretary of Finance

Date: 2/25/2024 KS  
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