

**DEPARTMENT OF TAXATION
2023 Fiscal Impact Statement**

1. **Patron** Patrick A. Hope

3. **Committee** Senate Rules

4. **Title** Tobacco Products Tax; Liquid Nicotine and
Nicotine Vapor Products; Licensing

2. **Bill Number** HB 2296

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would require the Secretary of Finance to assess a potential licensing scheme for manufacturers, distributors, and retail dealers of liquid nicotine in the Commonwealth, and the most appropriate manner and entity to enforce and administer licensing, age verification, product verification, and advertising restrictions related to the sale of liquid nicotine. The Secretary would be required to report his findings and any recommendations to the Chairmen of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations by November 1, 2023.

If enacted during the regular session of the 2023 General Assembly, this bill would become effective July 1, 2023.

6. Budget amendment necessary: No.

7. No Fiscal Impact (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department of Taxation considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

There would be no revenue impact to the state as a result of this bill.

9. Specific agency or political subdivisions affected:

Secretary of Finance

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, Item 3-5.21 of House Bill 30 (the 2020 Appropriation Act) imposed a tax on liquid nicotine at the rate of \$0.066 per milliliter beginning July 1, 2020. It also doubled the tobacco products tax rates on all products subject to the tax. Most tobacco products, other than moist snuff, loose leaf tobacco, and liquid nicotine are currently subject to the tax at the rate of 20% of the manufacturer's sales price.

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. Revenues generated from the tobacco products tax are dedicated to the Virginia Health Care Fund.

Under 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, provided that in determining the amount of a dealer's gross revenues the sales made by all commonly controlled persons as defined in subsection D of *Va. Code* § 58.1-612 shall be aggregated; 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, provided that in determining the total number of a dealer's retail sales transactions the sales made by all commonly controlled persons as defined in subsection D of *Va. Code* § 58.1-612 shall be aggregated.

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.

2021 Report on Retail Tobacco Licensing

In 2021, the Department of Taxation published a report at the request of the Chairman of the House Committee on Appropriations regarding a licensure program for tobacco retailers. As the licensing of tobacco retailers is not directly related to the taxation of such products, the Virginia Alcoholic Beverage Control Authority (“ABC”) and the Virginia Department of Behavioral Health and Developmental Services (“DBHDS”) provided input regarding the feasibility and costs associated with the creation of licensure for tobacco retailers to prevent the selling of tobacco products to underage individuals. See 2021 Report Document 766.

Proposal

This bill would require the Secretary of Finance to assess a potential licensing scheme for manufacturers, distributors, and retail dealers of liquid nicotine in the Commonwealth, and the most appropriate manner and entity to enforce and administer licensing, age verification, product verification, and advertising restrictions related to the sale of liquid nicotine.

The Secretary would be required to report his findings and any recommendations to the Chairmen of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations by November 1, 2023.

Under current law, effective July 1, 2020, Item 3-5.21 of House Bill 30 (the 2020 Appropriation Act) imposed a tax on liquid nicotine at the rate of \$0.066 per milliliter beginning July 1, 2020. Revenues generated from the tobacco products tax are dedicated to the Virginia Health Care Fund. Currently, the Department of Taxation (“Department”) plays no role in the enforcement of state and federal laws banning the sale of tobacco products to minors.

If enacted during the regular session of the 2023 General Assembly, this bill would become effective July 1, 2023.

Similar Legislation

Senate Bill 1350 is substantively identical to this bill.

cc : Secretary of Finance

Date: 2/9/2023 SK
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