

REPORT OF THE SALES AND INCOME TAX SUBCOMMITTEE

(Allison, Simrill, G.M. Smith, Hosey & Stavrinakis- Staff Contact: Katie Owen)

HOUSE BILL 4074

H. 4074 -- Reps. White, Cobb-Hunter, K.R. Crawford, Clemmons, Simrill, Owens, Harrell, Howard, Sellers, Rutherford, Bannister, Mitchell, Delleney, Hardwick, G.M. Smith, Lucas, Bingham, Allison, Barfield, Finlay, Forrester, Gagnon, Hamilton, Henderson, Herbkersman, Ott, Pitts, J.R. Smith and Stringer: A BILL TO AMEND ARTICLE 5, CHAPTER 21, TITLE 12, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TOBACCO, AMMUNITION, AND PLAYING CARDS, SO AS TO LEVY, ASSESS, AND COLLECT FIVE CENTS ON CERTAIN PRODUCTS CONTAINING NICOTINE THAT ARE COMMONLY USED IN ELECTRONIC CIGARETTES, TO LIMIT THE RATE TO NO MORE THAN TEN PERCENT OF THE EXCISE TAX AND SURCHARGE ON A PACK OF CIGARETTES, TO REQUIRE THAT AN INVOICE FOR SUCH PRODUCTS CLEARLY STATES THE AMOUNT OF PRODUCT INCLUDED, AND TO MAKE CONFORMING CHANGES.

Summary of Bill:

This bill provides for the excise tax on tobacco vapor products and tobacco derived products at five cents per milliliter and five cents per ounce accordingly. It also provides that this tax shall not exceed 10% of the tax imposed on cigarettes.

Introduced: 01/10/2013

Received by Ways and Means: 4/30/2013

Estimated Fiscal Impact:

This bill is expected to increase General Fund business license tax revenue by an estimated \$2,571,429 in FY 13-14.

Subcommittee Recommendation:

Favorable

Full Committee Recommendation:

Pending

Other Notes/Comments:

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Statement of Estimated State Revenue Impact

Date: May 14, 2013

Bill Number: H.B. 4074

Authors: White, Cobb-Hunter, K.R. Crawford, Clemmons, Simrill, *et al.*

Committee Requesting Impact: House Ways & Means Committee

Bill Summary

A bill to amend Article 5, Chapter 21, Title 12, of the Code of Laws of South Carolina, 1976, relating to tobacco, ammunition, and playing cards, so as to levy, assess, and collect five cents on certain products containing nicotine that are commonly used in electronic cigarettes, to limit the rate to no more than ten percent of the excise tax and surcharge on a pack of cigarettes, to require that an invoice for such products clearly states the amount of product included, and to make conforming changes.

REVENUE IMPACT ^{1/}

This bill is expected to increase General Fund business license tax revenue by an estimated \$2,571,429 in FY2013-14.

Explanation

This bill would amend Section 12-21-620 to levy, assess, collect, and pay on all vapor products five cents per milliliter of consumable material in the vapor product and all fractional parts of a milliliter. The rate per milliliter, however, may never exceed ten percent of the tax imposed on a pack of twenty cigarettes. The current rate of tax on a pack of twenty cigarettes is fifty-seven cents per pack. A vapor product is commonly referred to as an electronic cigarette (e-cigarette).

E-cigarettes were invented by a Chinese pharmacist in 2000 and were first marketed overseas by 2003. E-cigarettes became widely available in Europe in 2006 and in the United States in 2007. Many of the major tobacco manufacturers have at least one version of an e-cigarette in their product line. E-cigarettes are designed to mimic cigarettes. They are constructed of metal tubes designed to look like real cigarettes and contain a cartridge filled with a nicotine-laced liquid that is vaporized by a battery-powered heating element. The nicotine vapor is inhaled by smokers when they draw on the device. They come in a variety of flavors, nicotine levels, and varieties, and are generally used as a substitute or in conjunction with, regular cigarettes for those individuals attempting to cease or limit smoking. Manufacturers are not required to disclose the ingredients in e-cigarette liquid, or the substances present in the vapor inhaled and exhaled by the user. E-cigarettes are currently an unregulated product by the Food and Drug Administration.

According to information from the Tobacco Vapor Electronic Cigarette Association, annual sales of electronic cigarettes are forecast to approach \$1,000,000,000 nationally in 2013. This translates into annual e-cigarette sales of \$15,000,000 in South Carolina in 2013. A survey of national e-cigarette supply distributors yielded an average retail price of \$1.75 for

Statement of Estimated State Revenue Impact

one nicotine-filled cartridge. Replacement cartridges are usually sold in packages of five cartridges. Each cartridge contains nicotine, water, food flavorings, and propylene glycol. The amount of nicotine per cartridge can range from zero to 48 milligrams. For comparison, the typical regular strength cigarette contains 24 milligrams of nicotine. To aid in the analysis, we need to state several conversion factors. On a cigarette pack equivalent basis:

- One milliliter of nicotine-filled fluid equals one pack of cigarettes, or 20 cigarettes.
- Ten milliliters of nicotine-filled fluid, therefore, equals 10 packs of cigarettes, or 200 cigarettes, or one carton of cigarettes.
- A 30 milliliter bottle of e-liquid nicotine is equal to 600 cigarettes, or five pre-filled nicotine cartridges.

The proposed tax on electronic cigarettes is five cents per one milliliter, or one pack of 20 cigarettes. Dividing \$15,000,000 of annual e-cigarette sales in South Carolina by an average price of \$1.75 per nicotine-laced cartridge equals an estimated 8,571,429 nicotine-laced cartridges sold in South Carolina. Multiplying 8,571,429 nicotine-laced cartridges by an average cartridge containing six milliliters of nicotine-laced solution per cartridge equals an estimated 51,428,571 milliliters of nicotine-laced solution, and applying a five cents per milliliter tax rate yields an increase in General Fund business license tax revenue by an estimated \$2,571,429 in FY2013-14.

This act takes effect July 1, 2013.



Frank A. Rainwater
Chief Economist

Analyst: Martin

¹¹ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact of Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

South Carolina General Assembly
120th Session, 2013-2014

H. 4074

STATUS INFORMATION

General Bill

Sponsors: Reps. White, Cobb-Hunter, K.R. Crawford, Clemmons, Simrill, Owens, Harrell, Howard, Sellers, Rutherford, Bannister, Mitchell, Delleney, Hardwick, G.M. Smith, Lucas, Bingham, Barfield, Finlay, Gagnon, Hamilton, Henderson, Herbkersman, Ott, Pitts, J.R. Smith, Stringer, Sandifer and Gambrell

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Introduced in the House on April 30, 2013

Currently residing in the House Committee on **Ways and Means**

Summary: Electronic cigarettes

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
4/30/2013	House	Introduced and read first time (House Journal-page 186)
4/30/2013	House	Referred to Committee on Ways and Means (House Journal-page 186)
5/14/2013	House	Member(s) request name removed as sponsor: Allison, Forrester
5/15/2013	House	Member(s) request name added as sponsor: Sandifer, Gambrell

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VERSIONS OF THIS BILL

4/30/2013

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A BILL

10

11 TO AMEND ARTICLE 5, CHAPTER 21, TITLE 12, CODE OF
12 LAWS OF SOUTH CAROLINA, 1976, RELATING TO
13 TOBACCO, AMMUNITION, AND PLAYING CARDS, SO AS
14 TO LEVY, ASSESS, AND COLLECT FIVE CENTS ON
15 CERTAIN PRODUCTS CONTAINING NICOTINE THAT ARE
16 COMMONLY USED IN ELECTRONIC CIGARETTES, TO
17 LIMIT THE RATE TO NO MORE THAN TEN PERCENT OF
18 THE EXCISE TAX AND SURCHARGE ON A PACK OF
19 CIGARETTES, TO REQUIRE THAT AN INVOICE FOR SUCH
20 PRODUCTS CLEARLY STATES THE AMOUNT OF
21 PRODUCT INCLUDED, AND TO MAKE CONFORMING
22 CHANGES.

23

24 Be it enacted by the General Assembly of the State of South
25 Carolina:

26

27 SECTION 1. Article 5, Chapter 21, Title 12 of the 1976 Code is
28 amended to read:

29

"Article 5

30

31 Tobacco, Ammunition and Playing Cards

32

33
34 Section 12-21-610. Every person doing business within the
35 State and engaging in the business of selling such articles or
36 commodities as are named in this article shall, for the privilege of
37 carrying on such business, and every person, firm, corporation,
38 club or association within the State importing, receiving or
39 acquiring from without the State or from any other source any such
40 articles for use or consumption within the State shall for the
41 privilege of so doing be subject to the payment of a license tax

1 which shall be measured by and graduated in accordance with the
2 volume of sales or acquisitions of such person within the State.

3
4 Section 12-21-615. (A) Any invoice for vapor products or
5 tobacco-derived products must include the actual fluid ounces, or
6 its metric equivalent, of the consumable material contained in
7 vapor products and the actual pounds or ounces of tobacco-derived
8 products, as applicable.

9 (B) A copy of all invoices for the purchase or sale of any
10 tobacco products, vapor products, or tobacco-derived products
11 must be retained by any party that issues or receives the invoice for
12 a period of three years, subject to the examination by the
13 Department of Revenue.

14
15 Section 12-21-620. (A) There shall be levied, assessed,
16 collected, and paid in respect to the articles containing tobacco
17 enumerated in this section the following amounts:

18 (1) upon all cigarettes made of tobacco or any substitute for
19 tobacco, three and one-half mills on each cigarette;

20 (2) upon all tobacco products, as defined in Section
21 12-21-800, five percent of the manufacturer's price;

22 (3) upon all vapor products five cents per milliliter of
23 consumable material in the vapor product. A proportionate tax at
24 the same rate shall be levied, assessed, and collected on all
25 fractional parts of a milliliter. However, the rate per milliliter may
26 never exceed ten percent of the tax imposed on a pack of
27 cigarettes, containing twenty cigarettes, imposed pursuant to item
28 (1) and Section 12-21-625;

29 (4) upon all tobacco-derived products, five cents per ounce.
30 A proportionate tax at the same rate shall be levied, assessed, and
31 collected on all fractional parts of an ounce. However, the rate per
32 ounce may never exceed ten percent of the tax imposed on a pack
33 of cigarettes, containing twenty cigarettes, imposed pursuant to
34 item (1) and Section 12-21-625.

35 Manufacturer's price as used in this section is the established
36 price at which a manufacturer sells to a wholesaler.

37 (B) As used in this section, 'cigarette' means:

38 (1) any roll for smoking containing tobacco or any substitute
39 for tobacco wrapped in paper or in any substance other than a
40 tobacco leaf; or

41 (2) any roll for smoking containing tobacco or any substitute
42 for tobacco, wrapped in any substance, weighing three pounds per
43 thousand or less, however labeled or named, which because of its

1 appearance, size, type of tobacco used in the filler, or its
2 packaging, pricing, marketing, or labeling, is likely to be offered
3 to, or purchased by, consumers as a cigarette described in item (1)
4 of this subsection.

5

6 Section 12-21-625. (A) Effective July 1, 2010, there is
7 imposed a surtax on cigarettes subject to the tax imposed pursuant
8 to Section 12-21-620(1) in an amount equal to two and one-half
9 cents on each cigarette.

10 (B) Notwithstanding another provision of law providing for the
11 crediting of the revenues of license or other taxes, the revenue of
12 the surtax imposed pursuant to this section must be credited as
13 follows:

14 (1) five million dollars annually to the Medical University of
15 South Carolina Hollings Cancer Center to be used for
16 tobacco-related cancer research;

17 (2) five million dollars annually to the Smoking Prevention
18 and Cessation Trust Fund created pursuant to Section
19 11-11-230(A);

20 (3) the remaining annual revenue shall be deposited in the
21 South Carolina Medicaid Reserve Fund created pursuant to Section
22 11-11-230(B).

23 (C) For all purposes of reporting, payment, collection, and
24 enforcement, the surtax imposed by this section is deemed to be
25 imposed pursuant to Section 12-21-620.

26 (D) For purposes of this section, 'cigarette' means:

27 (1) any roll for smoking containing tobacco or any substitute
28 for tobacco wrapped in paper or in any substance other than a
29 tobacco leaf; or

30 (2) any roll for smoking containing tobacco or any substitute
31 for tobacco, wrapped in any substance, weighing three pounds per
32 thousand or less, however labeled or named, which because of its
33 appearance, size, type of tobacco used in the filler, or its
34 packaging, pricing, marketing, or labeling, is likely to be offered
35 to, or purchased by, consumers as a cigarette described in item (1).

36

37 Section 12-21-650. Whenever in this article:

38 (1) Reference is made to manufactured tobacco products,
39 vapor products, or tobacco-derived products manufactured or
40 imported to sell at a certain price, as the basis for computing the
41 tax, it is intended to mean the ordinary, customary or usual price
42 paid by the consumer for each individual cigar, package of

1 cigarettes, package of smoking tobacco, vapor products,
2 tobacco-derived products, or other tobacco product;

3 (2) The retail or selling price is referred to as the basis for
4 computing the amount of stamps required on any article, it is
5 intended to mean the ordinary, customary or usual price paid by
6 the consumer for each article less the amount of tax added thereto;
7 and

8 (3) When any articles or commodities subject to tax under this
9 article are given as prizes on punchboards, shooting galleries and
10 under similar circumstances the tax shall be based on the ordinary
11 selling price of such articles.

12

13 Section 12-21-660. Every person engaged in the business of
14 purchasing, selling or distributing cigars, cheroots, stogies,
15 cigarettes, snuff, ~~or~~ smoking or chewing tobacco, vapor products,
16 or tobacco-derived products at wholesale or through vending
17 machines within the State and all cigarette, cigar, vapor products,
18 tobacco-derived products and tobacco product manufacturers'
19 sales representatives who conduct business in this State shall file
20 with the Department of Revenue an application for a license
21 permitting him to engage in such business. When such business is
22 conducted at two or more separate places, a separate license for
23 each place of business shall be required. A person whose business
24 is conducted through vending machines needs to obtain only one
25 license but shall maintain an up-to-date list of the location of each
26 vending machine operated under this license and each
27 manufacturer's sales representative needs to obtain only one
28 license. The provisions of this section shall not apply to persons
29 who own and stock vending machines for use on their own
30 premises.

31 Nothing in this section shall be construed as requiring a license
32 for the privilege of buying, selling or distributing leaf tobacco nor
33 shall this section apply to churches, schools or charitable
34 organizations operating booths at state, county, or community fairs
35 or to school or church entertainments.

36

37 Section 12-21-670. The application must be filed on a blank
38 to be furnished by the department for that purpose and shall
39 contain a statement including the name of the individual,
40 partnership, (and in the case of each individual partner) or
41 corporation, the post-office address and the nature of the business.
42 Upon receipt of an application for a license to engage in any
43 business as set forth in Section 12-21-660, the department shall

1 issue to the applicant a permanent license permitting the purchase,
2 sale, and distribution of the articles designated therein. The license
3 must be displayed at all times in some conspicuous place at or in
4 the place of business where it may be easily seen by the public.
5 The license provided for in this section must be obtained before
6 engaging in the business in this State and is only valid for the
7 person in whose name it is issued and only for the transaction of
8 business at the place designated in the license.

9
10 Section 12-21-680. The department may reclassify a person as
11 a wholesaler or retailer as may be just and proper according to the
12 business done.

13
14 Section 12-21-690. No license issued permitting the sale and
15 distribution of tobacco products shall be transferable and any
16 license issued to any person who shall afterwards retire from
17 business shall be null and void. But anyone may be allowed to
18 operate for ten days after purchase of stock in bulk, pending
19 granting of a license upon application made promptly upon such
20 purchase.

21
22 Section 12-21-735. Each person or distributor of cigarettes,
23 vapor products, or tobacco-derived products taxable under this
24 article, first receiving untaxed cigarettes, vapor products, or
25 tobacco-derived products for sale or distribution in this State, is
26 subject to the tax imposed in Section 12-21-620. Each distributor
27 required to pay the tax shall make a report to the department, in the
28 form the department prescribes, of all cigarettes, vapor products, or
29 tobacco-derived products sold or disposed of in this State, and pay
30 taxes due thereon not later than the twentieth day of the month
31 next succeeding the month of the sale or disposition. However,
32 any person or distributor making shipments of cigarettes, vapor
33 products, or tobacco-derived products to retail locations in and out
34 of this State shall apply to the department for a license which
35 enables them to purchase cigarettes, vapor products, or
36 tobacco-derived products free of tax, and report and pay tax as
37 provided in this section on sales of cigarettes, vapor products, or
38 tobacco-derived products sold to locations in this State.

39 The department shall require bonds or statements of financial
40 stability satisfactory to the department to cover possible losses
41 resulting from failure to remit taxes due. When the return required
42 by this section is timely filed and the taxes shown to be due are

1 paid by the date specified in this section, the person or distributor
2 may deduct three and one-half percent of the tax due.

3
4 Section 12-21-750. All retail dealers in manufactured tobacco
5 products, vapor products, tobacco-derived products, shells,
6 cartridges or playing cards purchasing or receiving such
7 commodities from without the State, whether they shall have been
8 ordered through a wholesaler or jobber in this State, by drop
9 shipment or otherwise, shall, within five days after receipt of them,
10 mail a duplicate invoice of all such purchases or receipts to the
11 department. Failure to furnish duplicate invoices as required shall
12 be a misdemeanor and, upon conviction, be punishable by a fine of
13 not more than one hundred dollars for each offense or
14 imprisonment for a period not exceeding thirty days.

15
16 Section 12-21-760. It is the intent of this article to require all
17 manufacturers within this State, wholesale dealers, jobbers,
18 distributors and retail dealers to affix the stamps provided for in
19 this article to taxable commodities, but when the stamps have been
20 affixed as required in this article no further or other stamp shall be
21 required under the provisions of this chapter regardless of how
22 often such articles may be sold or resold within this State.

23
24 Section 12-21-770. Every person, firm, corporation, club or
25 association who sells, stores or receives for the purpose of
26 distribution to any person, firm, corporation, club or association
27 any shotgun or other shells, cartridges, manufactured tobacco
28 products, vapor products, tobacco-derived products, or playing
29 cards otherwise taxable under the provisions of this chapter shall
30 pay the tax at the rates provided in this article for the sale of such
31 articles.

32
33 Section 12-21-780. Every distributor, on or before the
34 twentieth day of each month, shall file with the South Carolina
35 Department of Revenue a return on forms to be prescribed and
36 furnished by the department showing the quantity and wholesale
37 price of all tobacco products, vapor products, and tobacco-derived
38 products transported or caused to be transported into the State by
39 him or manufactured or fabricated in the State for sale in this State.
40 Every distributor authorized by the department to make returns and
41 pay the tax on tobacco products, vapor products, or
42 tobacco-derived products sold, shipped, or delivered by him to any
43 person in the State shall file a return showing the quantity and

1 wholesale price of all products so sold, shipped, or delivered
2 during the preceding calendar month. These returns must contain
3 such further information as the department may require. Every
4 distributor shall pay to the department with the filing of the return
5 the tax on tobacco products, vapor products, and tobacco-derived
6 products for the month imposed under this article. When the
7 distributor or dealer files the return and pays the tax within the
8 time specified in this section, he may deduct therefrom three and
9 one-half percent of the tax due.

10
11 Section 12-21-785. Notwithstanding the provisions of
12 Sections 12-21-735 and 12-21-780, the department may require
13 returns and payments of this tax for other than monthly periods.

14
15 Section 12-21-800. As used in Sections 12-21-620 and
16 12-21-780, 'tobacco products' means cigars, cheroots, stogies,
17 periques, granulated, plug cut, crimp cut, ready rubbed, and other
18 smoking tobacco, snuff, snuff flour, cavendish, plug and twist
19 tobacco, fine-cut, and other chewing tobacco, shorts, refuse scraps,
20 clippings, cuttings and sweepings of tobacco, and other kinds and
21 forms of tobacco, prepared in a manner to be suitable for chewing
22 or smoking in a pipe or otherwise, or both for chewing or smoking,
23 but does not include cigarettes, vapor products, or tobacco-derived
24 products.

25
26 Section 12-21-810. As used in Section 12-21-780,
27 'distributor' means:

28 (A) Any person engaged in the business of selling tobacco
29 products, vapor products, or tobacco-derived products in this State
30 who brings or causes to be brought into this State from without the
31 State any tobacco products, vapor products, or tobacco-derived
32 products for sale;

33 (B) Any person who makes, manufacturers, or fabricates
34 tobacco products, vapor products, or tobacco-derived products in
35 this State for sale in this State;

36 (C) Any person engaged in the business of selling tobacco
37 products, vapor products, or tobacco-derived products without this
38 State who ships or transports tobacco products, vapor products, or
39 tobacco-derived products to retailers in this State to be sold by
40 those retailers.

41
42 Section 12-21-820. As used in this article:

1 (1) ‘Consumable material’ means any liquid nicotine solution
2 or other material containing nicotine that is depleted as a vapor
3 product is used.

4 (2) ‘Tobacco-derived product’ means any noncombustible
5 product derived from tobacco that contains nicotine and is intended
6 for human consumption, whether chewed, absorbed, dissolved or
7 ingested by any other means, but does not include a vapor product
8 or any product regulated by the United States Food and Drug
9 Administration under Chapter V of the Food, Drug and Cosmetic
10 Act.

11 (3) ‘Vapor product’ means a noncombustible tobacco-derived
12 product containing nicotine, such as an electronic cigarette, that
13 employs a mechanical heating element, battery or electronic
14 circuit, regardless of shape or size, that can be used to heat a liquid
15 nicotine solution contained in a vapor cartridge. ‘Vapor product’
16 includes any vapor cartridge that can be used with or in a vapor
17 product and containing liquid nicotine solution, but does not
18 include any product regulated by the United States Food and Drug
19 Administration under Chapter V of the Food, Drug and Cosmetic
20 Act.”

21
22 SECTION 2. This act takes effect July 1, 2013.

23 ----XX----

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