



# VERMONT LEGISLATIVE Joint Fiscal Office

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## Fiscal Note

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### **S.198 – An act relating to the regulation of tobacco products and tobacco substitutes**

**As recommended by the Senate Committee on Finance, Draft 1.1<sup>1</sup>**

#### **Bill Summary**

**T**his bill, as recommended, would make many different changes to tobacco licenses, regulations, fines and penalties, and allocations of license and other revenues, including the following provisions with a fiscal impact:

- decoupling liquor and tobacco licensing so that all retailers who sell liquor and tobacco would need to pay license fees for both products (currently, retailers selling both products only pay for a liquor license);
- increasing fees for tobacco retailer licenses from \$110 to \$150 and tobacco substitute endorsements from \$50 to \$75;
- moving wholesale dealer permits from the Department of Taxes to the Department of Liquor and Lottery (DLL) and changing the fee for a license from \$0 to \$1,245;
- increasing penalties for sales to individuals under the age of 21;
- directing revenue from violations, settlements, and fee revenues generated by changes to tobacco licenses and tobacco substitute endorsements to the Tobacco Trust Fund;
- creating an investigator position at DLL to enforce and investigate potential violations of Vermont laws relating to direct-to-consumer sales and delivery of alcohol and tobacco products; and
- creating a report on the taxation of tobacco substitutes and use of tax stamps.

**S.198 would increase tobacco license fees and allocate revenues to the Tobacco Trust Fund.**

#### **Fiscal Impact**

The primary impact of the bill results from proposed changes to tobacco licensing. Requiring all tobacco licensees to pay licensing fees, and increasing those fees and the cost of tobacco substitute endorsements, would increase revenues to the Tobacco Trust Fund established in 18 V.S.A. § 9502 as shown in Table 1 on the following page.

*Table 1: Tobacco License Fee Revenue Changes*

<sup>1</sup> *The Joint Fiscal Office (JFO) is a nonpartisan legislative office dedicated to producing unbiased fiscal analysis – this fiscal note is meant to provide information for legislative consideration, not to provide policy recommendations.*

	Approximate Total Number of Licensees	Current Law Fee Amount	Current Law Fee Revenue	Proposed Fee Amount	Proposed Fee Revenue	Difference
Tobacco License	780; of which 730 have no assessed fee under current law	\$110	\$5,500	\$150	\$117,000	\$111,500
Tobacco Substitute Endorsement	520	\$50	\$26,000	\$75	\$39,000	\$13,000
<b>Total</b>			<b>\$31,500</b>		<b>\$156,000</b>	<b>\$124,500</b>

The bill would also move wholesale dealer licensure from the Department of Taxes to the DLL and require an annual fee of \$1,245, which is in line with current wholesale liquor licenses at DLL. The wholesale dealer license is currently free. Based on the current number of wholesale dealers in Vermont, a \$1,245 fee would result in approximately \$50,000 in annual revenue for the Liquor Control Enterprise Fund.

In addition, the bill contains two additional changes that contain a fiscal impact. First, this bill would allocate fine and penalty, settlement, and license revenues that exceed the amounts necessary to regulate tobacco to the Tobacco Trust Fund. The Joint Fiscal Office (JFO) does not forecast revenues associated with fines or penalties, but the amount of revenue currently generated by tobacco licenses is approximately \$30,000 per year. This provision would reduce revenues to the Liquor Control Fund, where license revenues are deposited under current law. It would also divert an unknown amount of revenues from the General Fund and potentially from the Complex Litigation Special Fund at the Office of the Attorney General to the Tobacco Trust Fund. Combined with the changes to license revenues above, the Tobacco Trust Fund could receive up to an estimated \$125,000 annually, assuming a similar number of licenses and endorsements are issued under the higher fees.

Second, the bill would create an investigator position at DLL that would be funded from the Tobacco Litigation Settlement Fund in fiscal year 2027 and would be intended to be funded through the Fund in fiscal year 2028 before being placed in DLL's budget starting in fiscal year 2029. Revenues from fines and other revenues generated by the position are intended to provide offsetting revenue for the position once it would become a part of DLL's budget, though it is not clear whether the position would be self-sustaining.

## Background and Details

The following sections have a fiscal impact.

### Section 1: Amendments to Tobacco Products Statutes

Currently, retailers who sell both tobacco and liquor products must apply for and maintain licenses for both products but only pay the license fee for liquor products. Retailers must get a tobacco substitute endorsement to sell those products and must pay the \$50 fee regardless of whether they have a liquor license. Most tobacco licensees already have a liquor license, and fee revenue associated with tobacco licenses is limited. Information from DLL indicates that only approximately 50 tobacco licensees of 780 pay the tobacco license fee of \$110. Under this bill, all tobacco license holders would be required to pay for their tobacco licenses at the higher proposed fee schedule.

### Sections 2 - 3: Complex Litigation Special Fund and Tobacco Trust Fund

The Complex Litigation Special Fund is established in 3 V.S.A. § 167a to pay nonroutine expenses, not otherwise budgeted, incurred in the investigation, prosecution, and defense of complex civil and criminal litigation. The Fund receives settlement monies other than consumer restitution collected by the Office of the Attorney General, except for those recoveries that by law are transferred or appropriated for other uses pursuant to 9 V.S.A. § 2458(b)(4). The Fund has an unencumbered balance cap of \$1,000,000. Under current

law, settlement money from tobacco enforcement actions could flow to the Fund.

Sections 1 and 3 propose to direct revenues from penalties and settlement amounts for violations or alleged violations of tobacco laws and tobacco licensing fees that exceed the amounts necessary for administration and enforcement of tobacco regulations to the Tobacco Trust Fund. The Tobacco Trust Fund was designed to create a self-sustaining, perpetual fund for tobacco cessation and prevention that is not dependent on tobacco sales volume. The Trust Fund can receive transfers from the General Assembly and disbursements are only made through appropriations that shall not exceed 7% of the fair market value of Fund at the end of the prior fiscal year. In fiscal year 2025, the Tobacco Trust Fund received \$1,200 in interest income and ended with a fund balance of \$28,725.

### **Section 10: Investigator Position at the Department of Liquor and Lottery**

Section 10 would create a permanent classified investigator position in DLL to enforce, and to investigate potential violations of, Vermont laws relating to online sales and other direct-to-consumer sales and delivery of alcohol and tobacco products. The bill appropriates \$160,000 to DLL from the Tobacco Litigation Settlement Fund in fiscal year 2027 to fund this position. The intent of the General Assembly would be that this position be funded from the Tobacco Litigation Settlement Fund in fiscal years 2027 and 2028, and from DLL's budget starting in fiscal year 2029 using offsetting revenues generated by the investigator's enforcement activities. If the revenue generated by the investigator's activities becomes insufficient to cover the cost of the position in the future, DLL would be required to propose eliminating the position as part of the following budget or budget adjustment presentation to the General Assembly. JFO does not forecast fine and penalty revenue, and it is unclear whether the position would be self-sustaining.

### **Section 11: Report**

Section 11 would require a report by the Department of Taxes, in collaboration with DLL and the Office of the Attorney General and in consultation with other stakeholders on taxation of tobacco substitutes, on the use of tax stamps and ways to efficiently and effectively impose taxes on tobacco substitutes based on the concentration of nicotine they contain. The report would be due on or before January 15, 2027 to the House Committees on Human Services and on Ways and Means and the Senate Committees on Economic Development, Housing and General Affairs; on Finance; and on Health and Welfare.

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<sup>i</sup> The full fiscal note history is available on the fiscal tab of the bill page on the General Assembly website and can be pulled up through a bill number search on the JFO page.