

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1565**

**As Engrossed: 3/5/2019**

**Bill Subtitle: TO PROVIDE FUNDING FOR A NATIONAL CANCER INSTITUTE-DESIGNATED CANCER CENTER IN THE STATE THROUGH CHANGES IN THE LAWS RELATING TO THE SALE AND TAXATION OF TOBACCO PRODUCTS, CIGARETTE PAPER, AND E-CIGARETTES.**

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### Basic Change :

**Sponsors: Representatives A. Davis and M. Gray; Senators J. Dismang and Irvin**

**HB1565, engrossed 03-05-19 --- House Amendment 1 ---** Amends the bill to add Senator Irvin and Representative M. Gray as cosponsors of the bill. This amendment also removes the provisions in the original bill that would have levied an E-Liquid Excise Tax of ten cents (10¢) per one milliliter (1mL) of e-liquid sold in the state.

The amended bill also repeals the current border zone tax rate provisions for sales of cigarettes in designated border zone areas in Arkansas. Cigarettes sold by retailers that are located within border zone areas are subject to reduced Arkansas taxes if the neighboring state has cigarette tax rates lower than Arkansas. At present, border zone reduced tax rates apply for Missouri, Tennessee and Louisiana. Retailers in cities that border the state line, retailers not located in a city but within 300 feet of a state line or cities separated by a navigable river from a city in the other state that adjoins a state line are eligible for the reduced Arkansas tax rates.

**Original Bill ---** This proposal would provide funding for a National Cancer Institute-Designated Cancer Center in the State through increases in the taxation of cigarette papers and the levy of a new special excise tax on E-Liquids used in E-Cigarettes. The bill also amends provisions within the Unfair Cigarette Sales Act and the Arkansas Tobacco Products Tax Act. This bill amends the age at which a person may purchase tobacco products, cigarette paper, alternative nicotine products, and e-cigarettes. Increased tax receipts from cigarette papers and e-Liquids will be deposited to the University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund. This bill directs the General Revenue produced by the marijuana special privilege tax under section 17(c) of the Arkansas Medical Marijuana Amendment of 2016 to the University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund.

This bill specifies a minor may not purchase or possess cigarettes, tobacco products, vapor products, alternative nicotine products, or e-liquid products. Any minor found to be in possession of any of these products is subject to the products being confiscated by a certified law enforcement officer or school official and the products are subject to immediate destruction. A minor is defined as a person under twenty-one (21) years of age. Minor does not include a person who is under twenty-one (21) of age if the person presents a military identification card establishing that he or she is a member of the United States Armed Forces or has attained the age of nineteen (19) as of December 31, 2019. This bill amends various Arkansas Tobacco Control Board statutes to change the language defining a "minor" as specified in the bill.

**Additional Cigarette Paper Tax ---** The bill levies an additional tax of fifty cents (50¢) per package of approximately thirty-two (32) sheets of cigarette paper sold in the state. The tax will be in addition to the current cigarette paper of twenty-five cents (25¢) per package. The revenue from the additional levy is designated as special revenue and is to be credited to the University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund.

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**E-Liquid Excise Tax** --- The bill creates the E-Liquid Excise Tax Act which levies an excise tax on e-liquid sold in this state. The tax would be levied at the rate of ten cents (10¢) per one milliliter (1mL) of e-liquid sold. The tax will apply to the inventory and stocks of e-liquid held by a wholesaler or retailer on the effective date of the act. The tax would be administered in the same manner as taxes on tobacco products with the revenue collected being special revenue for deposit to the University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund. The tax is to be separately stated on each invoice from the manufacturer or wholesaler as the "E-Liquid Excise Tax." The Director of the Department of Finance and Administration and the Arkansas Tobacco Control Board will adopt rules to implement and to allow for the enforcement of the E-Liquid Excise Tax.

**Increased Cost to the Retailer on Cigarette Prices** --- The bill amends the Unfair Cigarette Sales Act by changing the definition of the "cost to the retailer" of cigarettes by raising the cost of doing business from seven and one-half percent (7.5%) to nine and five tenths percent (9.5%) of the basic cost of cigarettes to the retailer. The increase will result in an increased sales price by the retailer when selling cigarettes to consumers. Retailers may provide proof to the Tobacco Control Board of a lesser or higher cost of doing business and request a variance from the presumed cost of doing business that will be changed to nine and five tenths percent (9.5%) by the bill.

**County and Municipal Preemption Tobacco Regulation** --- The bill provides for the preemption of the enactment and enforcement of any county, municipal or other local regulation of the manufacture, sale, storage, or distribution of tobacco products that is more restrictive than the state provisions or rules. Any county, municipal, or other local regulation that exists as of the effective date of this act is not preempted.

**Reduced Cigarette Taxes on Modified Risk Products** --- The bill provides for a fifty percent (50%) reduced Arkansas tax rate for any product for which a modified risk tobacco product order has been issued by the United States Secretary of Health and Human Services under 21 U.S.C. § 387k(g)(1) and a twenty-five percent (25%) reduced tax rate for any product for which a modified risk tobacco product order has been issued under 21 U.S.C. § 387k(g)(2).

The act would be effective on the on the first day of the second calendar month following the effective date of the act (September 1, 2019).

### **Revenue Impact :**

#### **FY2020**

**\$2.4 Million Gain in Cigarette Paper Tax Revenue** --- Special Revenue for University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund.

**\$1.15 Million Gain in State Sales Tax** --- Increased retail cigarette prices resulting from increased cost of doing business by the retailer from seven and one-half percent (7.5%) to nine and one-half percent (9.5%) of the basic cost of cigarettes to the retailer. Increased average price per cigarette pack = \$.12 applicable to 148,000,000 packs annually. Total 6.5% State Sales Tax -- \$1.15 Million; General Revenue only -- \$775,000; Special Revenues -- \$240,000 to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional

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Officers. \$380,000 Annual gain in city and county sales tax revenues.

\$170,000 Gain in State Sales Tax Resulting from Border Zone Repeal -- Increased retail cigarette sales prices resulting from increased cigarette tax in Border Zone Areas. Total 6.5% State Sales Tax -- \$170,000; General Revenue -- \$114,000; Special Revenues -- \$56,000 to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional Officers. \$56,000 Annual gain in city and county sales tax revenues.

\$2.8 Million Gain in Cigarette Taxes Resulting from Border Zone Repeal -- Arkansas cigarette tax rate would be collected in border zone areas. Total Cigarette Tax Revenue -- \$2.9 Million; General Revenue -- \$2.71 Million; Special Revenue -- \$.085 Million to Aging/Adult Services Fund; Meals on Wheels; AR Prostate Cancer Foundation; Breast Cancer Control Fund; Breast Cancer Research Fund; and UAMS Center Fund.

-\$4.7 Million Total Loss - Cigarette and Tobacco Products Taxes Resulting from Reduced Consumption by Consumers under the age of 21. Total Cigarette Tax Revenue -- \$4.7 Million loss; General Revenue --\$4.53 Million Loss; Special Revenue -- \$.14 Million Loss to Aging/Adult Services Fund; Meals on Wheels; AR Prostate Cancer Foundation; Breast Cancer Control Fund; Breast Cancer Research Fund; and UAMS Center Fund.

-\$1.1 Million Total Loss - State Sales Tax on Cigarette and Tobacco Products Resulting from Reduced Consumption by Consumers under the age of 21. Total 6.5% State Sales Tax -- \$1.1 Million Loss; General Revenue -- \$760,000; Special Revenues -- \$350,000 to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional Officers. \$380,000 Loss in city and county sales tax revenues.

### **FY2021**

\$2.5 Million Gain in Cigarette Paper Tax Revenue --- Special Revenue for University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund.

\$1.15 Million Gain in State Sales Tax --- Increased retail cigarette prices resulting from increased cost of doing business by the retailer from seven and one-half percent (7.5%) to nine and one-half percent (9.5%) of the basic cost of cigarettes to the retailer. Increased average price per cigarette pack = \$.12 applicable to 148,000,000 packs annually. Total 6.5% State Sales Tax -- \$1.325 Million; General Revenue only -- \$775,000; Special Revenues -- \$240,000 to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional Officers. \$380,000 Annual gain in city and county sales tax revenues.

\$205,000 Gain in State Sales Tax Resulting from Border Zone Repeal -- Increased retail cigarette sales prices resulting from increased cigarette tax in Border Zone Areas. Total 6.5% State Sales Tax -- \$205,000; General Revenue -- \$120,000; Special Revenues -- \$85,000 to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional Officers. \$70,000 Annual gain in city and county sales tax revenues.

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\$3.1 Million Gain in Cigarette Taxes Resulting from Border Zone Repeal -- Arkansas cigarette tax rate would be collected in border zone areas. Total Cigarette Tax Revenue -- \$3.1 Million; General Revenue -- \$2.95 Million; Special Revenue -- \$.1 Million to Aging/Adult Services Fund; Meals on Wheels; AR Prostate Cancer Foundation; Breast Cancer Control Fund; Breast Cancer Research Fund; and UAMS Center Fund.

-\$5.0 Million Total Loss - Cigarette and Tobacco Products Taxes Resulting from Reduced Consumption by Consumers under the age of 21. Total Cigarette Tax Revenue -- \$5.0 Million loss; General Revenue --\$4.85 Million Loss; Special Revenue -- \$.14 Million Loss to Aging/Adult Services Fund; Meals on Wheels; AR Prostate Cancer Foundation; Breast Cancer Control Fund; Breast Cancer Research Fund; and UAMS Center Fund.

-\$1.325 Million Total Loss - State Sales Tax on Cigarette and Tobacco Products Resulting from Reduced Consumption by Consumers under the age of 21. Total 6.5% State Sales Tax -- \$1.325 Million Loss; General Revenue -- \$770,000; Special Revenues -- \$355,000 to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional Officers. \$440,000 Loss in city and county sales tax revenues.

### **FY2022**

\$2.5 Million Gain in Cigarette Paper Tax Revenue --- Special Revenue for University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund.

\$1.15 Million Gain in State Sales Tax --- Increased retail cigarette prices resulting from increased cost of doing business by the retailer from seven and one-half percent (7.5%) to nine and one-half percent (9.5%) of the basic cost of cigarettes to the retailer. Increased average price per cigarette pack = \$.12 applicable to 148,000,000 packs annually. Total 6.5% State Sales Tax -- \$1.325 Million; General Revenue only -- \$775,000; Special Revenues -- \$240,000 to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional Officers. \$380,000 Annual gain in city and county sales tax revenues.

\$205,000 Gain in State Sales Tax Resulting from Border Zone Repeal -- Increased retail cigarette sales prices resulting from increased cigarette tax in Border Zone Areas. Total 6.5% State Sales Tax -- \$205,000; General Revenue -- \$115,000; Special Revenues -- \$90,000 to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional Officers. \$70,000 Annual gain in city and county sales tax revenues.

\$3.1 Million Gain in Cigarette Taxes Resulting from Border Zone Repeal -- Arkansas cigarette tax rate would be collected in border zone areas. Total Cigarette Tax Revenue -- \$3.1 Million; General Revenue -- \$2.95 Million; Special Revenue -- \$.1 Million to Aging/Adult Services Fund; Meals on Wheels; AR Prostate Cancer Foundation; Breast Cancer Control Fund; Breast Cancer Research Fund; and UAMS Center Fund.

-\$7.3 Million Total Loss - Cigarette and Tobacco Products Taxes Resulting from Reduced Consumption by Consumers under the age of 21. Total Cigarette Tax Revenue -- \$7.3 Million loss;

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General Revenue --\$7.1 Million Loss; Special Revenue -- \$.2 Million Loss to Aging/Adult Services Fund; Meals on Wheels; AR Prostate Cancer Foundation; Breast Cancer Control Fund; Breast Cancer Research Fund; and UAMS Center Fund.

-\$1.93 Million Total Loss - State Sales Tax on Cigarette and Tobacco Products Resulting from Reduced Consumption by Consumers under the age of 21. Total 6.5% State Sales Tax -- \$1.93 Million Loss; General Revenue -- \$1.15 Million Loss; Special Revenues -- \$.78 Million Loss to Educational Adequacy; Property Tax Relief Trust Fund; Conservation Tax; Highway Fund; State Central Services; and Constitutional Officers. \$640,000 Loss in city and county sales tax revenues.

Unknown Loss of State General Revenue from Sales of Modified Risk Tobacco Products --- Modified Risk Tobacco Products are currently not sold in the United States although sold in many foreign countries. Applications are pending before the United States Food and Drug Administration for certification of products to be declared a Modified Risk Tobacco Product for sale in the United States. If these products are granted Modified Risk status and are sold in Arkansas, the bill provides for a fifty percent (50%) reduction or a twenty-five percent (25%) reduction in the current Arkansas excise taxes levied on these tobacco products.

### **Taxpayer Impact :**

Consumers purchasing cigarette papers, medical marijuana, and cigarettes will pay additional taxes on their purchases.

### **Resources Required :**

None.

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

Update forms and computer systems for new tax rates.

### **Other Comments :**

None.

### **Legal Analysis :**

HB1565-H1 makes several substantial changes to the original bill. First, the bill adds additional modifications to existing law prohibiting the enjoyment of tobacco, vapor, alternative nicotine, e-liquid, and cigarette paper products by any person under the age of 21.

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Next, the bill eliminates the border zone tax rates for cigarettes. Current law allows for a special border zone rate of tax on cigarettes where there is a border city outside of the state of Arkansas that offers a lower rate of tax. This modification will impose the same rate of tax through the state, regardless of whether a city is a border city.

The bill then removes the original portion of the bill that created a tax on e-liquid products. It also eliminates the provision of the bill that required rulemaking on a specified deadline.

The original bill modified and established taxation for a number of tobacco and marijuana products and creates additional funding for the University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund ("Fund").

Other provisions of the bill:

- The bill raises the retailer's presumed "cost of doing business" from 7.5% to 9.5%. This will raise the minimum cigarette price in the state and reflects an amount to be retained by the retailer.
- Raises the minimum age to purchase, use, or possess tobacco, vapor, alternative tobacco, or e-liquid products to twenty-one (21).
- Restricts local regulation of the manufacture, sale, storage, or distribution of tobacco products. Accordingly, local regulation that becomes effective after this bill cannot be more restrictive than the requirements of § 26-57-259.
- Reduces tobacco tax rates by 50% or 25% for certain "modified risk tobacco products".
- Levies an additional rate of tax on cigarette paper. § 26-57-801 already provides for a 25¢ tax per 32-sheet package. This bill will add an addition 50¢ per 32-sheet package tax. These revenues will be credited to the Fund as special revenues.
- Credits an amount to the Fund equal to the total amount of sales and privilege tax on the sale of medical marijuana deposited into General Revenue. This amount would be the excess revenues after special privilege and sales tax revenue are applied as required by Amendment 98, § 17 to the Arkansas Constitution.