

SENATE BILL NO. 386—COMMITTEE ON REVENUE

MARCH 25, 2011

Referred to Committee on Revenue

SUMMARY—Makes various changes concerning the taxation of certain tobacco products. (BDR 32-869)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; increasing the amount of taxes levied on cigarettes and products made from or containing tobacco, other than cigarettes; revising the allocation of total revenue from taxes on cigarettes and products made from or containing tobacco, other than cigarettes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Sections 2 and 4** of this bill increase the amount of tax levied upon the
2 purchase or possession of cigarettes by a consumer in the State of Nevada or upon
3 the use of cigarettes in the State of Nevada from the rate of 40 mills per cigarette to
4 100 mills per cigarette. **Section 1** of this bill revises the definition of the term
5 “cigarette” for the purposes of the taxes imposed on cigarettes. **Section 6** of this bill
6 increases the amount of tax on products made from or containing tobacco, other
7 than cigarettes, from 30 percent of the wholesale price to 60 percent of the
8 wholesale price. **Section 5** of this bill defines “products made from or containing
9 tobacco, other than cigarettes” for the purposes of the taxes imposed on such
10 products. **Section 11** of this bill revises the credit for unsold amounts of such
11 products to correspond to the increase in **section 6**.

12 **Sections 3 and 12** of this bill revise the allocation of tax revenue from
13 cigarettes and products made from or containing tobacco to include a 10 percent
14 allocation of tax revenue to the Department of Health and Human Services for
15 programs for prevention and cessation of tobacco use and related research.

16 **Section 15** of this bill requires payment of the increased amounts of taxes
17 imposed by this bill on inventories of tobacco products and revenue stamps held by
18 dealers.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 370.010 is hereby amended to read as follows:
370.010 "Cigarette" means all rolled tobacco or substitutes therefor wrapped in paper or any substitute other than *a substance consisting primarily of* tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated or mixed with any other ingredient ~~H~~, *and includes, without limitation, any other roll for smoking containing tobacco that weighs not more than 4 1/2 pounds per thousand unless it is wrapped in whole tobacco leaf and does not have a cellulose acetate filter or other, similar filter.*

Sec. 2. NRS 370.165 is hereby amended to read as follows:
370.165 There is hereby levied a tax upon the purchase or possession of cigarettes by a consumer in the State of Nevada at the rate of ~~140~~ 100 mills per cigarette. The tax may be represented and precollected by the affixing of a revenue stamp or other approved evidence of payment to each package, packet or container in which cigarettes are sold. The tax must be precollected by the wholesale or retail dealer, and must be recovered from the consumer by adding the amount of the tax to the selling price. Each person who sells cigarettes at retail shall prominently display on the premises a notice that the tax is included in the selling price and is payable under the provisions of this chapter.

Sec. 3. NRS 370.260 is hereby amended to read as follows:
370.260 1. All taxes and license fees imposed by the provisions of NRS 370.001 to 370.430, inclusive, less any refunds granted as provided by law, must be paid to the Department in the form of remittances payable to the Department.

2. The Department shall:

(a) As compensation to the State for the costs of collecting the taxes and license fees, transmit each month the sum the Legislature specifies from the remittances made to it pursuant to subsection 1 during the preceding month to the State Treasurer for deposit to the credit of the Department. The deposited money must be expended by the Department in accordance with its work program.

(b) From the remittances made to it pursuant to subsection 1 during the preceding month, less the amount transmitted pursuant to paragraph (a), transmit each month the portion of the tax which is equivalent to ~~135~~ 80 mills per cigarette to the State Treasurer for deposit to the credit of the Account for the Tax on Cigarettes in the State General Fund.

(c) *From the remittances made to it pursuant to subsection 1 during the preceding month, transmit each month the portion of*



1 *the tax which is equivalent to 10 mills per cigarette to the State*
2 *Treasurer for deposit to the credit of the Department of Health*
3 *and Human Services to make allocations to evidence-based*
4 *programs for prevention and cessation of tobacco use and basic*
5 *science, clinical and translational research studying cancer and*
6 *other diseases related to tobacco for the purpose of partially*
7 *offsetting the negative health impact of tobacco use in the State of*
8 *Nevada. In making allocations pursuant to this paragraph, the*
9 *Health Division of the Department of Health and Human Services*
10 *shall allocate the money, by contract and grant:*

11 (1) *To the district board of health in each county whose*
12 *population is 100,000 or more for expenditure for such programs*
13 *in the county;*

14 (2) *For such programs in counties whose population is less*
15 *than 100,000;*

16 (3) *For statewide programs for tobacco cessation; and*

17 (4) *For statewide evaluations of programs which receive an*
18 *allocation of money pursuant to this paragraph, as determined*
19 *necessary by the Health Division of the Department of Health and*
20 *Human Services and the district boards of health, for the effective*
21 *and efficient operation of the programs.*

22 (d) Transmit the balance of the payments each month to the
23 State Treasurer for deposit in the Local Government Tax
24 Distribution Account created by NRS 360.660.

25 ~~(d)~~ (e) Report to the State Controller monthly the amount of
26 collections.

27 3. The money deposited pursuant to paragraph ~~(d)~~ (d) of
28 subsection 2 in the Local Government Tax Distribution Account is
29 hereby appropriated to Carson City and to each of the counties in
30 proportion to their respective populations and must be credited to
31 the respective accounts of Carson City and each county.

32 **Sec. 4.** NRS 370.350 is hereby amended to read as follows:

33 370.350 1. Except as otherwise provided in subsection 3, a
34 tax is hereby levied and imposed upon the use of cigarettes in this
35 state.

36 2. The amount of the use tax is ~~40~~ 100 mills per cigarette.

37 3. The use tax does not apply where:

38 (a) Nevada cigarette revenue stamps have been affixed to
39 cigarette packages as required by law.

40 (b) Tax exemption is provided for in this chapter.

41 **Sec. 5.** NRS 370.440 is hereby amended to read as follows:

42 370.440 As used in NRS 370.440 to 370.503, inclusive, unless
43 the context otherwise requires:

44 1. *“Products made from or containing tobacco, other than*
45 *cigarettes” include, without limitation:*



1 (a) Tobacco used in roll-your-own cigarettes or cigars and any
2 other loose tobacco meant for smoking;

3 (b) Cigars, including any roll for smoking containing tobacco
4 that is not a cigarette;

5 (c) Any tobacco product other than cigarettes or cigars that is
6 offered in single-use lozenges, pouches, pills, capsules or any
7 other single-dose or single-use units; and

8 (d) Any smokeless tobacco product, including any tobacco
9 product intended or expected to be consumed without being
10 combusted.

11 2. "Retail dealer" means any person who is engaged in selling
12 products made from **or containing** tobacco, other than cigarettes, to
13 customers.

14 ~~1-2~~ 3. "Sale" means any transfer, exchange, barter, gift, offer
15 for sale, or distribution for consideration of products made from **or**
16 **containing** tobacco, other than cigarettes.

17 ~~1-3~~ 4. "Ultimate consumer" means a person who purchases a
18 product made from **or containing** tobacco, other than cigarettes, for
19 his or her household or personal use and not for resale.

20 ~~1-4~~ 5. "Wholesale dealer" means any person who:

21 (a) Brings or causes to be brought into this State products made
22 from tobacco, other than cigarettes, purchased from the
23 manufacturer or a wholesale dealer and who stores, sells or
24 otherwise disposes of those products within this State;

25 (b) Manufactures or produces products made from **or**
26 **containing** tobacco, other than cigarettes, within this State and who
27 sells or distributes those products within this State to other
28 wholesale dealers, retail dealers or ultimate consumers; or

29 (c) Purchases products made from **or containing** tobacco, other
30 than cigarettes, solely for the purpose of bona fide resale to retail
31 dealers or to other persons for the purpose of resale only.

32 ~~1-5~~ 6. "Wholesale price" means:

33 (a) Except as otherwise provided in paragraph (b), the
34 established price for which a manufacturer sells a product made
35 from **or containing** tobacco, other than cigarettes, to a wholesale
36 dealer before any discount or other reduction is made.

37 (b) For a product made from **or containing** tobacco, other than
38 cigarettes, sold to a retail dealer or an ultimate consumer by a
39 wholesale dealer described in paragraph (b) of subsection ~~1-4~~ 5, the
40 established price for which the product is sold to the retail dealer or
41 ultimate consumer before any discount or other reduction is made.

42 **Sec. 6.** NRS 370.450 is hereby amended to read as follows:

43 370.450 1. Except as otherwise provided in subsection 2,
44 there is hereby imposed upon the purchase or possession of products
45 made from **or containing** tobacco, other than cigarettes, by a



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1 customer in this State a tax of ~~30~~ 60 percent of the wholesale price
2 of those products.

3 2. The provisions of subsection 1 do not apply to those
4 products which are:

5 (a) Shipped out of the State for sale and use outside the State;

6 (b) Displayed or exhibited at a trade show, convention or other
7 exhibition in this State by a manufacturer or wholesale dealer who is
8 not licensed in this State; or

9 (c) Acquired free of charge at a trade show, convention or other
10 exhibition or public event in this State, and which do not have
11 significant value as determined by the Department by regulation.

12 3. This tax must be collected and paid by the wholesale dealer
13 to the Department, in accordance with the provisions of NRS
14 370.465, after the sale or distribution of those products by the
15 wholesale dealer. The wholesale dealer is entitled to retain 0.25
16 percent of the taxes collected to cover the costs of collecting and
17 administering the taxes if the taxes are paid in accordance with the
18 provisions of NRS 370.465.

19 4. Any wholesale dealer who sells or distributes any of those
20 products without paying the tax provided for by this section is guilty
21 of a misdemeanor.

22 **Sec. 7.** NRS 370.460 is hereby amended to read as follows:

23 370.460 It is unlawful for any person to sell or offer to sell any
24 products made from *or containing* tobacco, other than cigarettes, on
25 which the tax is not paid as provided for in NRS 370.450.

26 **Sec. 8.** NRS 370.465 is hereby amended to read as follows:

27 370.465 1. A wholesale dealer shall, not later than 20 days
28 after the end of each month, submit to the Department a report on a
29 form prescribed by the Department setting forth each sale of
30 products made from *or containing* tobacco, other than cigarettes,
31 that the wholesale dealer made during the previous month.

32 2. Each report submitted pursuant to this section on or after
33 August 20, 2001, must be accompanied by the tax owed pursuant to
34 NRS 370.450 for products made from *or containing* tobacco, other
35 than cigarettes, that were sold by the wholesale dealer during the
36 previous month.

37 3. The Department may impose a penalty on a wholesale dealer
38 who violates any of the provisions of this section as follows:

39 (a) For the first violation within 7 years, a fine of \$1,000.

40 (b) For a second violation within 7 years, a fine of \$5,000.

41 (c) For a third or subsequent violation within 7 years, revocation
42 of the license of the wholesale dealer.

43 **Sec. 9.** NRS 370.470 is hereby amended to read as follows:

44 370.470 A wholesale dealer must obtain from each
45 manufacturer or wholesale dealer who is not licensed in this State



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1 itemized invoices of all products made from **or containing** tobacco,
2 other than cigarettes, purchased from and delivered by the
3 manufacturer or wholesale dealer who is not licensed in this State.
4 The wholesale dealer must obtain from the manufacturer or
5 wholesale dealer who is not licensed in this State separate invoices
6 for each purchase made. The invoice must include:

- 7 1. The name and address of the manufacturer or wholesale
8 dealer who is not licensed in this State;
- 9 2. The name and address of the wholesale dealer;
- 10 3. The date of the purchase; and
- 11 4. The quantity and wholesale price of those products.

12 **Sec. 10.** NRS 370.480 is hereby amended to read as follows:

13 370.480 1. Every wholesale dealer must keep at its place of
14 business complete and accurate records for that place of business,
15 including copies of all invoices of products made from **or**
16 **containing** tobacco, other than cigarettes, which the wholesale
17 dealer holds, purchases and delivers, distributes or sells in this State.
18 All records must be preserved for at least 3 years after the date of
19 purchase or after the date of the last entry made on the record.

20 2. Every retail dealer shall keep at its place of business
21 complete and accurate records for that place of business, including
22 copies of all itemized invoices or purchases of such products
23 purchased and delivered from wholesale dealers. The invoices must
24 show the name and address of the wholesale dealer and the date of
25 the purchase. All records must be preserved for at least 3 years after
26 the date of the purchase.

27 **Sec. 11.** NRS 370.490 is hereby amended to read as follows:

28 370.490 1. The Department shall allow a credit of ~~30~~ **60**
29 percent of the wholesale price, less a discount of 0.25 percent for the
30 services rendered in collecting the tax, for products made from **or**
31 **containing** tobacco, other than cigarettes, upon which the tax has
32 been paid pursuant to NRS 370.450 and that may no longer be sold.
33 If the products have been purchased and delivered, a credit memo of
34 the manufacturer is required for proof of returned merchandise.

35 2. A credit must also be granted for any products made from **or**
36 **containing** tobacco, other than cigarettes, shipped from this State
37 and destined for retail sale and consumption outside the State on
38 which the tax has previously been paid. A duplicate or copy of the
39 invoice is required for proof of the sale outside the State.

40 3. A wholesale dealer may claim a credit by filing with the
41 Department the proof required by this section. The claim must be
42 made on a form prescribed by the Department.



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Sec. 12. NRS 370.500 is hereby amended to read as follows:

370.500 1. All amounts of tax required to be paid to the State pursuant to NRS 370.440 to 370.490, inclusive, must be paid to the Department in the form of remittances payable to the Department.

2. The Department shall ~~{deposit these}~~ :

(a) From the remittances made to it pursuant to subsection 1 during the preceding month, transmit each month the portion of the tax which is equivalent to 10 percent of the total tax revenue from products made from or containing tobacco to the State Treasurer for deposit to the credit of the Department of Health and Human Services to make allocations to evidence-based programs for tobacco prevention and cessation of tobacco use and basic science, clinical and translational research studying cancer and other diseases related to tobacco for the purpose of partially offsetting the negative health impact of tobacco use in the State of Nevada. In making allocations pursuant to this paragraph, the Health Division of the Department of Health and Human Services shall allocate the money, by contract or grant:

(1) To the district board of health in each county whose population is 100,000 or more for expenditure for such programs in the county;

(2) For such programs in counties whose population is less than 100,000;

(3) For statewide programs for tobacco cessation; and

(4) For statewide evaluations of programs which receive an allocation of money pursuant to this paragraph, as determined necessary by the Health Division of the Department of Health and Human Services and the district boards of health for the effective and efficient operation of the programs.

*(b) Transmit the balance of the payments ~~{with}~~ each month to the State Treasurer for credit to the Account for the Tax on Products Made From **or Containing** Tobacco, Other Than Cigarettes, in the State General Fund.*

Sec. 13. NRS 370.501 is hereby amended to read as follows:

370.501 1. The governing body of an Indian reservation or Indian colony may impose an excise tax on any product made from **or containing** tobacco, other than cigarettes, sold on the reservation or colony.

2. If an excise tax is imposed, the governing body may establish procedures for collecting the excise tax from any retail dealer authorized to do business on the reservation or colony.

Sec. 14. NRS 370.503 is hereby amended to read as follows:

370.503 1. Upon proof satisfactory to the Department and subject to the requirements of NRS 360.236, a refund must be allowed for the taxes paid pursuant to NRS 370.450, upon products



1 made from **or containing** tobacco other than cigarettes, that are sold
2 to:

3 (a) The United States Government for the purposes of the Army,
4 Air Force, Navy or Marine Corps and are shipped to a point within
5 this State to a place which has been lawfully ceded to the United
6 States Government for the purposes of the Army, Air Force, Navy
7 or Marine Corps;

8 (b) Veterans' hospitals for distribution or sale to service
9 personnel with disabilities or ex-service personnel with disabilities
10 interned therein, but not to civilians or civilian employees;

11 (c) Any person if sold and delivered on an Indian reservation or
12 colony where an excise tax has been imposed which is equal to
13 or greater than the rate of the tax imposed pursuant to NRS 370.501;
14 or

15 (d) An Indian if sold and delivered on an Indian reservation or
16 colony where no excise tax has been imposed or the excise tax is
17 less than the rate of the tax imposed pursuant to NRS 370.501.

18 2. Any refund must be paid as other claims against the State
19 are paid.

20 **Sec. 15.** 1. A wholesale or retail dealer shall pay the
21 difference of the tax rate of 100 mills per cigarette and the tax rate
22 of 40 mills per cigarette for all cigarettes on which a tax has already
23 been paid pursuant to chapter 370 of NRS and all revenue stamps
24 that have not yet been affixed to a cigarette package for all
25 cigarettes and all revenue stamps in his or her possession on July 1,
26 2011.

27 2. A wholesale dealer shall pay the difference of the tax rate of
28 60 percent of the wholesale price and the tax rate of 30 percent of
29 the wholesale price for all products made from or containing
30 tobacco, other than cigarettes, on which a tax has already been paid
31 pursuant to chapter 370 of NRS for all products made from or
32 containing tobacco, other than cigarettes, in his or her possession on
33 July 1, 2011.

34 3. Payments made pursuant to subsections 1 and 2 must be
35 made to the Department of Taxation on or before July 31, 2011, and
36 shall be submitted along with a report, in the form prescribed by the
37 Department, describing the products affected by the tax rate increase
38 and showing the payments due pursuant to subsections 1 and 2.

39 4. A wholesale dealer or retail dealer who makes payments
40 pursuant to subsections 1 and 2, later than July 31, 2011, shall also
41 pay interest at the rate of 2 percent per month or fraction of a month
42 from the date that the payment was due until the date that the
43 payment is received by the Department of Taxation.



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- 1 5. A wholesale or retail dealer may reduce payments made
- 2 pursuant to subsections 1 and 2 by 1 percent if the payment is
- 3 received on or before July 21, 2011.
- 4 **Sec. 16.** This act becomes effective on July 1, 2011.

