

Amendment No. 954

Senate Amendment to Senate Bill No. 79	(BDR 32-307)
Proposed by: Senate Committee on Revenue and Economic Development	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	
Adoption of this amendment will REMOVE the 2/3s majority vote requirement from S.B. 79.	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BJF/BJE



Date: 5/31/2015

S.B. No. 79—Provides for the regulation and taxation of liquid nicotine.
(BDR 32-307)



SENATE BILL NO. 79—COMMITTEE ON REVENUE
AND ECONOMIC DEVELOPMENT

(ON BEHALF OF THE DEPARTMENT OF TAXATION)

PREFILED DECEMBER 20, 2014

Referred to Committee on Revenue and
Economic Development

SUMMARY—~~Provides for the regulation and taxation of liquid nicotine.~~ Revises provisions governing the taxation of alternative nicotine products and vapor products. (BDR 32-307)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 ~~nicotine products; providing for the regulation and taxation of liquid nicotine; providing penalties;~~ taxation; distinguishing alternative nicotine products and vapor products from other tobacco products for purposes of regulations and taxation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Department of Taxation to regulate and collect a tax on cigarettes and other tobacco products. (Chapter 370 of NRS) ~~This bill~~ Sections 1.3, 1.7, 4.5, 6 and 8 of this bill ~~provides for the regulation and taxation of liquid nicotine. This bill~~ provide that certain alternative nicotine products and vapor products are not regulated and taxed as other tobacco products. Sections 8-16 and 18 of this bill further ~~revises~~ revise provisions governing the regulation and taxation of cigarettes and other tobacco products to clarify that the undefined term “product made from tobacco, other than cigarettes” is synonymous with the defined term “other tobacco product” by replacing each instance of the former term with the latter throughout the provisions governing the regulation and taxation of cigarettes and other tobacco products.

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

Section 1. Chapter 370 of NRS is hereby amended by adding thereto ~~the new~~
~~section to read as follows:~~ the provisions set forth as sections 1.3 and 1.7 of this
act.

Sec. 1.3. ~~“Liquid”~~ “Alternative nicotine” ~~product” means any liquid or~~
~~other solution containing any form of nicotine, including, without limitation, any~~
~~salt or complex thereof, regardless of whether the nicotine is naturally or~~
~~synthetically derived;~~ noncombustible product containing nicotine that is
intended for human consumption, whether chewed, absorbed, dissolved or
ingested by any other means. The term does not include:

1. A vapor product;
2. A product made or derived from tobacco; or
3. Any product regulated by the United States Food and Drug
Administration under subchapter V of the Federal Food, Drug, and Cosmetic
Act, 21 U.S.C. §§ 351 et seq.

Sec. 1.7. “Vapor product”:

1. Means any noncombustible product containing nicotine that employs a
heating element, power source, electronic circuit or other electronic, chemical or
mechanical means, regardless of the shape or size thereof, that can be used to
produce vapor from nicotine in a solution or other form.

2. Includes, without limitation:

(a) An electronic cigarette, cigar, cigarillo or pipe or a similar product or
device; and

(b) A vapor cartridge or other container of nicotine in a solution or other
form that is intended to be used with or in an electronic cigarette, cigar, cigarillo
or pipe or a similar product or device.

3. Does not include any product regulated by the United States Food and
Drug Administration pursuant to subchapter V of the Federal Food, Drug, and
Cosmetic Act, 21 U.S.C. §§ 351 et seq.

Sec. 2. NRS 370.001 is hereby amended to read as follows:

370.001 As used in NRS 370.001 to 370.430, inclusive, ~~and section 1.3~~
~~sections 1.3 and 1.7 of this act, and 370.505 to 370.530, inclusive,~~ unless the
context otherwise requires, the words and terms defined in NRS 370.005 to
370.055, inclusive, ~~and section 1.3~~ sections 1.3 and 1.7 of this act have the
meanings ascribed to them in those sections.

Sec. 3. ~~NRS 370.025 is hereby amended to read as follows:~~

~~370.025 “Contraband tobacco products” means any:~~

- ~~1. Counterfeit cigarettes;~~
- ~~2. Other counterfeit tobacco product;~~
- ~~3. Cigarettes or “roll your own” tobacco offered for sale in this State by a~~
~~manufacturer, or cigarettes or “roll your own” tobacco of a brand family, that is not~~
~~listed in the directory created pursuant to NRS 370.675;~~
- ~~4. Cigarettes bearing a tribal stamp issued by the Department which are sold~~
~~or offered for sale at a retail location that is not located on qualified tribal land; or~~
- ~~5. Cigarettes, [or] other tobacco product [.] or liquid nicotine;~~
- ~~(a) Exported from or imported into this State, or mailed, shipped, delivered,~~
~~sold, exchanged, transported, distributed or held for distribution within the borders~~
~~of this State by any person in violation of any of the provisions of this chapter;~~

~~(b) In any way held in the possession or constructive possession of any person not authorized under this chapter to possess or constructively possess the cigarettes, [or] other tobacco product [.] or liquid nicotine; or~~

~~(c) Being offered for sale in any form other than in an unopened package in violation of subsection 1 of NRS 202.2492. (Deleted by amendment.)~~

Sec. 4. ~~NRS 370.0317 is hereby amended to read as follows:~~

~~370.0317 "Other counterfeit tobacco product" means any other tobacco product, liquid nicotine or tobacco product package bearing a false manufacturing label. (Deleted by amendment.)~~

Sec. 4.5. NRS 370.0318 is hereby amended to read as follows:

370.0318 "Other tobacco product" means any tobacco of any description or any product made from tobacco, other than cigarettes ~~or~~ , alternative nicotine products and vapor products.

Sec. 5. ~~NRS 370.052 is hereby amended to read as follows:~~

~~370.052 "Tobacco product package" means the individual pack, box or other container that contains any other tobacco product [.] or liquid nicotine. The term does not include a container that itself contains other containers. (Deleted by amendment.)~~

Sec. 6. NRS 370.085 is hereby amended to read as follows:

370.085 The Department shall create and maintain on its Internet website and otherwise make available for public inspection a list of all:

1. Currently valid licenses and the identity of the licensees holding those licenses; and

2. Indian tribes on whose reservations or colonies cigarettes ~~or~~ or other tobacco products ~~made from tobacco~~ are for liquid nicotine is sold and, pursuant to NRS 370.515, from which the Department does not collect the tax imposed by this chapter on such cigarettes ~~or~~ or other tobacco products ~~made from tobacco or liquid nicotine~~ sold on the reservations or colonies.

➤ The Department shall update the list at least once each month.

Sec. 7. ~~NRS 370.415 is hereby amended to read as follows:~~

~~370.415 1. The Department, its agents, sheriffs within their respective counties and all other peace officers of the State of Nevada shall seize any counterfeit stamps and any contraband tobacco products and machinery used to manufacture contraband tobacco products, found or located in the State of Nevada.~~

~~2. A sheriff or other peace officer who seizes stamps, contraband tobacco products or machinery pursuant to this section shall provide written notification of the seizure to the Department not later than 5 working days after the seizure. The notification must include the reason for the seizure.~~

~~3. After consultation with the Department, the sheriff or other peace officer shall transmit the contraband tobacco products to the Department if:~~

~~(a) The contraband tobacco products consist of cigarettes and:~~

~~(1) Except for revenue stamps or metered machine impressions being properly affixed as required by this chapter, the cigarettes comply with all state and federal statutes and regulations; and~~

~~(2) The Department approves the transmission of the cigarettes; or~~

~~(b) The contraband tobacco products consist of any other tobacco products or liquid nicotine and the Department approves the transmission of the other tobacco products [.] or liquid nicotine.~~

~~4. Upon the receipt of any:~~

~~(a) Cigarettes pursuant to subsection 3, the Department shall dispose of the cigarettes as provided in subsection 4 of NRS 370.270; or~~

~~(b) Other tobacco products or liquid nicotine pursuant to subsection 3, the Department shall:~~

~~(1) Sell the other tobacco products or liquid nicotine to the highest bidder among the licensed wholesale dealers in this State after due notice to all licensed Nevada wholesale dealers has been given by mail to the addresses contained in the Department's records; or~~

~~(2) If there is no bidder, or in the opinion of the Department the quantity of the other tobacco products or liquid nicotine is insufficient, or for any other reason such disposition would be impractical, destroy or dispose of the other tobacco products or liquid nicotine as the Department may see fit.~~

~~The proceeds of all sales pursuant to this paragraph must be classed as revenues derived under the provisions of NRS 370.440 to 370.503, inclusive.~~

~~5. The sheriff or other peace officer who seizes any stamps, contraband tobacco products or machinery pursuant to this section shall:~~

~~(a) Destroy the stamps and machinery; and~~

~~(b) If he or she does not transmit the contraband tobacco products to the Department, destroy the contraband tobacco products.] (Deleted by amendment.)~~

Sec. 8. NRS 370.440 is hereby amended to read as follows:

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

1. ~~"Liquid"~~ "Alternative nicotine product" has the meaning ascribed to it in section 1.3 of this act.

2. "Other tobacco product" has the meaning ascribed to it in NRS 370.0318.

3. "Retail dealer" means any person who is engaged in selling other tobacco products. ~~made from tobacco, other than cigarettes, to customers.~~

~~2. or liquid nicotine.]~~

4. "Sale" means any transfer, exchange, barter, gift, offer for sale, or distribution for consideration of other tobacco products. ~~made from tobacco, other than cigarettes.~~

~~3. or liquid nicotine.]~~

5. "Ultimate consumer" means a person who purchases ~~an other tobacco product made from tobacco, other than cigarettes, or liquid nicotine~~ one or more other tobacco products for his or her household or personal use and not for resale.

~~4.]~~ 6. "Wholesale dealer" means any person who:

(a) Brings or causes to be brought into this State other tobacco products ~~made from tobacco, other than cigarettes, or liquid nicotine~~ purchased from the manufacturer or a wholesale dealer and who stores, sells or otherwise disposes of ~~those~~ such other tobacco products ~~for liquid nicotine~~ within this State;

(b) Manufactures or produces other tobacco products ~~made from tobacco, other than cigarettes, or liquid nicotine~~ within this State and who sells or distributes ~~those~~ such other tobacco products ~~for liquid nicotine~~ within this State to other wholesale dealers, retail dealers or ultimate consumers; or

(c) Purchases other tobacco products ~~made from tobacco, other than cigarettes, or liquid nicotine~~ solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only.

~~5.]~~ 7. "Wholesale price" means:

(a) Except as otherwise provided in paragraph (b), the established price for which ~~an other tobacco product made from tobacco, other than cigarettes, or liquid nicotine is~~ other tobacco products are sold to a wholesale dealer before any discount or other reduction is made.

(b) For ~~an other tobacco product made from tobacco, other than cigarettes, or liquid nicotine~~ other tobacco products sold to a retail dealer or an ultimate consumer by a wholesale dealer described in paragraph (b) of subsection ~~4.]~~ 6, the established price for which the other tobacco product ~~for liquid nicotine~~ is sold to

the retail dealer or ultimate consumer before any discount or other reduction is made.

Sec. 9. NRS 370.450 is hereby amended to read as follows:

370.450 1. Except as otherwise provided in subsection 2, there is hereby imposed upon the purchase or possession of *other tobacco* products ~~made from tobacco, other than cigarettes, and liquid nicotine~~ by a customer in this State a tax of 30 percent of the wholesale price of those ~~such other tobacco~~ products and liquid nicotine.

2. The provisions of subsection 1 do not apply to those ~~other tobacco~~ products ~~for liquid nicotine~~ which are: ~~first~~

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

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

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

3. This tax must be collected and paid by the wholesale dealer to the Department, in accordance with the provisions of NRS 370.465, after the sale or distribution of ~~those~~ *the other tobacco* products ~~for liquid nicotine~~ by the wholesale dealer. The wholesale dealer is entitled to retain 0.25 percent of the taxes collected to cover the costs of collecting and administering the taxes if the taxes are paid in accordance with the provisions of NRS 370.465.

4. Any wholesale dealer who sells or distributes ~~any of those~~ *other tobacco* products ~~for liquid nicotine~~ without paying the tax provided for by this section is guilty of a misdemeanor.

Sec. 10. NRS 370.460 is hereby amended to read as follows:

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

Sec. 11. NRS 370.465 is hereby amended to read as follows:

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

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

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

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

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

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

Sec. 12. NRS 370.470 is hereby amended to read as follows:

370.470 A wholesale dealer must obtain from each manufacturer or wholesale dealer who is not licensed in this State itemized invoices of all *other tobacco* products ~~made from tobacco, other than cigarettes, and liquid nicotine~~ purchased from and delivered by the manufacturer or wholesale dealer who is not licensed in this State. The wholesale dealer must obtain from the manufacturer or wholesale dealer who is not licensed in this State separate invoices for each purchase made. The invoice must include:

1. The name and address of the manufacturer or wholesale dealer who is not licensed in this State;

2. The name and address of the wholesale dealer;

3. The date of the purchase; and

4. The quantity and wholesale price of ~~those~~ *the other tobacco* products and liquid nicotine.

Sec. 13. NRS 370.480 is hereby amended to read as follows:

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

2. Every retail dealer shall keep at its place of business complete and accurate records for that place of business, including copies of all itemized invoices or purchases of ~~such~~ *other tobacco* products ~~and liquid nicotine~~ purchased and delivered from wholesale dealers. The invoices must show the name and address of the wholesale dealer and the date of the purchase. All records must be preserved for at least 3 years after the date of the purchase.

Sec. 14. NRS 370.490 is hereby amended to read as follows:

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

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

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

Sec. 15. 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 *other tobacco* product ~~made from tobacco, other than cigarettes, or liquid nicotine~~ 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. 16. 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~~ *on other tobacco* products ~~made from tobacco other than cigarettes, and liquid nicotine~~ that are sold to:

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

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

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

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

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

Sec. 17. ~~NRS 370.505 is hereby amended to read as follows:~~

~~370.505 1. A retail dealer shall pay a wholesale dealer for all cigarettes, [and] other tobacco products and liquid nicotine purchased from the wholesale dealer:~~

~~(a) If the cigarettes, [or] other tobacco products [were] or liquid nicotine was delivered to the retail dealer on or after the 1st day of the month but before the 16th day of the month, on or before the 20th day of the same month; and~~

~~(b) If the cigarettes or other tobacco products were delivered to the retail dealer on or after the 16th day of the month but before the 1st day of the next month, on or before the 14th day of the next month.~~

~~2. A wholesale dealer shall not extend credit or otherwise allow a retail dealer to violate the provisions of subsection 1.~~

~~3. The Department may impose a penalty on a wholesale dealer who violates the provisions of subsection 2 as follows:~~

~~(a) For the first violation, a penalty of \$500.~~

~~(b) For a second or subsequent violation, if paragraph (c) does not apply, a penalty of \$1,000.~~

~~(c) For a third or subsequent violation within any 12 month period, a penalty of \$5,000 or suspension or revocation of the license of the wholesale dealer, or both.~~

~~4. Pursuant to a written complaint or upon its own motion, the Department shall investigate an alleged violation of subsection 2. The Department shall give notice to the alleged violator and conduct a hearing, if warranted by the investigation. The Department may assess a penalty pursuant to subsection 3, if it determines that the wholesale dealer violated the provisions of subsection 2.~~

(Deleted by amendment.)

Sec. 18. NRS 370.515 is hereby amended to read as follows:

370.515 The Department shall not collect the tax imposed by this chapter on cigarettes ~~for~~ or other tobacco products ~~made from tobacco or liquid nicotine~~ sold on an Indian reservation or Indian colony if:

1. The governing body of the reservation or colony imposes an excise tax pursuant to NRS 370.0751 or 370.501;

2. The excise tax imposed is equal to or greater than the tax imposed pursuant to this chapter; and

3. The governing body of the colony or reservation submits a copy of the ordinance imposing the excise tax to the Department.

Sec. 19. This act becomes effective on July 1, 2015.