

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—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 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:

1 Existing law authorizes the Department of Taxation to regulate and collect a tax
2 on cigarettes and other tobacco products. (Chapter 370 of NRS) **Sections 1.3, 1.7,**
3 **4.5, 6 and 8** of this bill provide that certain alternative nicotine products and vapor
4 products are not regulated and taxed as other tobacco products. **Sections 8-16 and**
5 **18** of this bill further revise provisions governing the regulation and taxation of
6 cigarettes and other tobacco products to clarify that the undefined term “product
7 made from tobacco, other than cigarettes” is synonymous with the defined term
8 “other tobacco product” by replacing each instance of the former term with the
9 latter throughout the provisions governing the regulation and taxation of cigarettes
10 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 provisions set forth as sections 1.3 and 1.7 of this act.

Sec. 1.3. *“Alternative nicotine product” means any 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 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 sections 1.3 and 1.7 of this act* have the meanings ascribed to them in those sections.

Sec. 3. (Deleted by amendment.)

Sec. 4. (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 **H**, *alternative nicotine products and vapor products.*

Sec. 5. (Deleted by amendment.)



1 **Sec. 6.** NRS 370.085 is hereby amended to read as follows:
2 370.085 The Department shall create and maintain on its
3 Internet website and otherwise make available for public inspection
4 a list of all:

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

7 2. Indian tribes on whose reservations or colonies cigarettes or
8 other **tobacco** products ~~{made from tobacco}~~ are sold and, pursuant
9 to NRS 370.515, from which the Department does not collect the tax
10 imposed by this chapter on such cigarettes or other **tobacco** products
11 ~~{made from tobacco}~~ sold on the reservations or colonies.

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

13 **Sec. 7.** (Deleted by amendment.)

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

15 370.440 As used in NRS 370.440 to 370.503, inclusive, unless
16 the context otherwise requires:

17 1. ***“Alternative nicotine product” has the meaning ascribed to***
18 ***it in section 1.3 of this act.***

19 2. ***“Other tobacco product” has the meaning ascribed to it in***
20 ***NRS 370.0318.***

21 3. “Retail dealer” means any person who is engaged in selling
22 **other tobacco** products . ~~{made from tobacco, other than cigarettes,~~
23 ~~to customers.~~

24 —2.}

25 4. “Sale” means any transfer, exchange, barter, gift, offer for
26 sale, or distribution for consideration of **other tobacco** products .
27 ~~{made from tobacco, other than cigarettes.~~

28 —3.}

29 5. “Ultimate consumer” means a person who purchases ~~{a~~
30 ~~product made from tobacco, other than cigarettes,}~~ **one or more**
31 **other tobacco products** for his or her household or personal use and
32 not for resale.

33 ~~{4.}~~ 6. “Wholesale dealer” means any person who:

34 (a) Brings or causes to be brought into this State **other tobacco**
35 products ~~{made from tobacco, other than cigarettes,}~~ purchased from
36 the manufacturer or a wholesale dealer and who stores, sells or
37 otherwise disposes of ~~{those}~~ **such other tobacco** products within
38 this State;

39 (b) Manufactures or produces **other tobacco** products ~~{made~~
40 ~~from tobacco, other than cigarettes,}~~ within this State and who sells
41 or distributes ~~{those}~~ **such other tobacco** products within this State
42 to other wholesale dealers, retail dealers or ultimate consumers; or

43 (c) Purchases **other tobacco** products ~~{made from tobacco, other~~
44 ~~than cigarettes,}~~ solely for the purpose of bona fide resale to retail
45 dealers or to other persons for the purpose of resale only.



~~15.1~~ 7. "Wholesale price" means:

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

(b) For ~~the product made from tobacco, other than cigarettes,~~ **other tobacco products** sold to a retail dealer or an ultimate consumer by a wholesale dealer described in paragraph (b) of subsection ~~4.1~~ 6, the established price for which the **other tobacco** product 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,~~ by a customer in this State a tax of 30 percent of the wholesale price of those products.

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

(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 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 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,~~ 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,}~~ 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,}~~ 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,}~~ 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.

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,}~~ 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 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~~ 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 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,~~ 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,~~ 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,~~ 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. (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 or other *tobacco* products ~~made from tobacco~~ 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.

