

ASSEMBLY BILL NO. 535—COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE OFFICE OF FINANCE  
IN THE OFFICE OF THE GOVERNOR)

MAY 20, 2019

Referred to Committee on Taxation

SUMMARY—Revises provisions relating to cigarettes and other tobacco products. (BDR 32-1242)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Executive Budget.

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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 tobacco products; increasing the annual license fee for a license to engage in business as a wholesale dealer of cigarettes; establishing an annual license fee for a license to engage in certain other businesses related to cigarettes or other tobacco products; revising provisions governing the imposition and payment of the tax on other tobacco products; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires a manufacturer of cigarettes, a wholesale dealer of cigarettes, a retail dealer of cigarettes, a wholesale dealer of other tobacco products and a retail dealer of other tobacco products to obtain a license to sell cigarettes or other tobacco products. (NRS 370.080, 370.445) Under existing law, a wholesale dealer of cigarettes is required to pay an annual license fee of \$150 but there is no fee for a license as a manufacturer of cigarettes, a retail dealer of cigarettes, a wholesale dealer of other tobacco products or a retail dealer of other tobacco products. (NRS 370.150, 370.445) **Sections 1 and 3** of this bill: (1) increase from \$150 to \$650 the annual license fee for a wholesale dealer of cigarettes; and (2) establish an annual license fee of \$1,000 for a license as a manufacturer of cigarettes, an annual license fee of \$50 for a license as a retail dealer of cigarettes, an annual license fee of \$650 for a license as a wholesale dealer of other tobacco products and an annual license fee of \$50 for a license as a retail dealer of other tobacco products. **Section 6** of this bill requires the annual license fees established by **section 3** for wholesale dealers of other tobacco products and retail dealers of tobacco products to be distributed in the same manner as the tax imposed by existing law on other tobacco products. **Section 8** of this bill provides that the



\* A B 5 3 5 \*

provisions of this bill related to the annual license fees become effective on October 1, 2019.

Existing law imposes a tax upon the purchase or possession of other tobacco products by a customer in this State at a rate of 30 percent of the wholesale price of those products. (NRS 370.450) Under existing law, the tax is required to be collected and paid by the wholesale dealer of other tobacco products after the sale or distribution of such products by the wholesale dealer, and the wholesale dealer is required to submit a report to the Department of the other tobacco products that were sold by the wholesale dealer during the previous month. (NRS 370.465) **Section 2** of this bill: (1) revises the definition of "wholesale dealer" for the purpose of determining whether a person is a wholesale dealer of other tobacco products; and (2) revises the definition of "wholesale price" for the purpose of calculating the amount of the tax on other tobacco products by specifically providing that certain amounts are not subtracted from the wholesale price on which the tax is required to be paid. **Section 4** of this bill revises provisions governing the collection and payment of the tax on other tobacco products to require the tax to be imposed: (1) at the time the other tobacco products are first possessed or received for sale or disposition in this State by a wholesale dealer who maintains a place of business in this State; (2) at the time the other tobacco products are sold by a wholesale dealer who does not maintain a place of business in this State to a retail dealer or ultimate consumer in this State; or (3) for other tobacco products manufactured, produced, fabricated, assembled, processed, labeled or finished in this State, at the time the other tobacco products are sold in this State to a wholesale dealer, a retail dealer or ultimate consumer. Under **sections 4 and 5** of this bill, the tax is required to be paid to the Department not later than 20 days after the end of the month in which the tax is imposed.

**Sections 7 and 8** of this bill provide that the revisions to the provisions of existing law governing the imposition and payment of the tax on other tobacco products become effective on January 1, 2020, and apply to any other tobacco products purchased, received or sold by a wholesale dealer before January 1, 2020, if the tax on those products has not been paid before January 1, 2020. Under **section 8**, a wholesale dealer is required to remit the tax on those products to the Department at the time that the wholesale dealer remits to the Department the taxes due for the January 2020 period.

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

**Section 1.** NRS 370.150 is hereby amended to read as follows:  
370.150 1. Each license issued by the Department is valid only for the calendar year for which it is issued, and must be renewed annually.

2. ~~{The}~~ *Except as otherwise provided in subsection 3, the* Department shall ~~{not}~~ charge ~~{any license fees for a manufacturer's or retail dealer's license.~~

~~—3.—An} :~~

(a) *For a license as a manufacturer, an annual license fee of \$1,000.*

(b) *For a license as a wholesale dealer, an annual license fee of ~~{\$150 must be charged for each wholesale dealer's license.}~~ \$650.*



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(c) *For a license as a retail dealer, an annual license fee of \$50.*

3. If ~~[such]~~ a license is issued at any time during the year other than on January 1, except for the renewal of a delinquent license pursuant to subsection 5, the licensee shall pay a proportionate part of the annual fee for the remainder of the year, but not less than 25 percent of the annual license fee.

4. The fees for a ~~[wholesale-dealer's]~~ license are due and payable on January 1 of each year. If the annual license fee is not paid by January 15, the license is cancelled automatically.

5. A ~~[wholesale-dealer's]~~ license which is cancelled for nonpayment of the annual license fee may be renewed at any time by the payment of the fee plus a 5 percent penalty thereon.

**Sec. 2.** 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. "Alternative nicotine product" has the meaning ascribed to it in NRS 370.003.

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.

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

5. "Ultimate consumer" means a person who purchases one or more other tobacco products for his or her household or personal use and not for resale.

6. "Wholesale dealer" means any person who:

(a) ~~[Brings or causes to be brought into]~~ *Maintains a place of business in this State , purchases* other tobacco products ~~[purchased]~~ from the manufacturer or a wholesale dealer , and ~~[who stores,]~~ *possesses, receives,* sells or otherwise disposes of such other tobacco products *to wholesale dealers or retail dealers* within this State;

(b) *Does not maintain a place of business in this State and sells or otherwise disposes of other tobacco products by any means, including, without limitation, through an Internet website, to wholesale dealers, retail dealers or ultimate consumers within this State; or*

(c) Manufactures , ~~[or]~~ produces , *fabricates, assembles, processes, labels or finishes* other tobacco products within this State . ~~[and who sells or distributes such other tobacco products within this State to other wholesale dealers, retail dealers or ultimate consumers; or~~



~~—(c) Purchases other tobacco products solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only.]~~

7. “Wholesale price” means ~~[-~~

~~—(a) Except as otherwise provided in paragraph (b), the established price]~~ *the total amount* for which other tobacco products are sold to a wholesale dealer ~~[before]~~, *valued in money, without any deduction on account of any of the following:*

*(a) A trade discount, cash discount, special discount or deal, cash rebate or any other reduction [is made.] from the regular selling price.*

*(b) [For] The cost of materials used, labor or service cost, interest charged, losses or any other expenses.*

*(c) The cost of transportation of the* other tobacco products ~~[sold to a retail dealer or an ultimate consumer by a wholesale dealer described in paragraph (b) of subsection 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.]~~ *their purchase.*

*(d) Any services that are part of the sale, including, without limitation, shipping, freight, warehousing, customer service or any other service related to the sale.*

*(e) The amount of any tax, not including any excise tax, imposed by the United States upon or with respect to other tobacco products.*

**Sec. 3.** NRS 370.445 is hereby amended to read as follows:

370.445 1. The Department shall issue a license as a wholesale dealer or a license as a retail dealer to a person who submits a complete application on a form prescribed by the Department and who otherwise complies with the applicable provisions of this chapter and any regulations adopted by the Department. ~~[The]~~ *Except as otherwise provided in subsections 5 and 7, the* Department shall ~~[not]~~ charge ~~[any fee for the issuance of a license pursuant to this subsection.]~~ :

*(a) For a license as a wholesale dealer, an annual license fee of \$650.*

*(b) For a license as a retail dealer, an annual license fee of \$50.*

2. Except as otherwise provided in subsection 3, a person shall not engage in the business of a wholesale dealer or retail dealer in this State unless the person first obtains a license as a wholesale dealer or retail dealer from the Department. A person may be licensed as a wholesale dealer and as a retail dealer.

3. A person who wishes to engage in the business of a retail dealer is not required to obtain a license as a retail dealer pursuant to



1 this section if the person is licensed as a retail cigarette dealer  
2 pursuant to NRS 370.001 to 370.430, inclusive.

3 4. The Department may refuse to issue or renew, or may  
4 suspend or revoke, a license issued pursuant to this section for any  
5 violation of the provisions of NRS 370.440 to 370.503, inclusive.

6 5. *If a license is issued at any time during the year other than*  
7 *on January 1, except for the renewal of a delinquent license*  
8 *pursuant to subsection 7, the licensee shall pay a proportionate*  
9 *part of the annual fee for the remainder of the year, but not less*  
10 *than 25 percent of the annual license fee.*

11 6. *The fees for a license are due and payable on January 1 of*  
12 *each year. If the annual license fee is not paid by January 15, the*  
13 *license is cancelled automatically.*

14 7. *A license which is cancelled for nonpayment of the annual*  
15 *license fee may be renewed at any time by the payment of the fee*  
16 *plus a 5 percent penalty thereon.*

17 8. The Department may adopt regulations prescribing the form  
18 and contents of an application for, or which are otherwise necessary  
19 for the issuance of, a license pursuant to this section.

20 ~~{6-}~~ 9. Any person who violates any of the provisions of this  
21 section is guilty of a misdemeanor.

22 **Sec. 4.** NRS 370.450 is hereby amended to read as follows:

23 370.450 1. Except as otherwise provided in ~~{subsection 2,}~~  
24 *this section*, there is hereby imposed upon the *receipt*, purchase or  
25 ~~{possession}~~ *sale* of other tobacco products ~~{by a customer}~~ in this  
26 State a tax of 30 percent of the wholesale price of those products.

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

29 (a) ~~{Shipped out of the State for sale and use outside the State;~~  
30 ~~—(b)}~~ Displayed or exhibited at a trade show, convention or other  
31 exhibition in this State by a manufacturer or wholesale dealer who is  
32 not licensed in this State; or

33 ~~{(c) Acquired}~~

34 (b) *Distributed* free of charge at a trade show, convention or  
35 other exhibition or public event in this State ~~{, and which do not~~  
36 ~~have significant value as determined by the Department by~~  
37 ~~regulation.}~~ *if the distributor has obtained a license from the*  
38 *Department to distribute other tobacco products free of charge at*  
39 *the trade show, convention or other exhibition.*

40 3. This tax ~~{must be collected and}~~ :

41 (a) *Is imposed:*

42 (1) *At the time the other tobacco products are first*  
43 *possessed or received by a wholesale dealer who maintains a place*  
44 *of business in this State for sale or disposition in this State;*



(2) *At the time the other tobacco products are sold by a wholesale dealer who does not maintain a place of business in this State to a retail dealer or ultimate consumer in this State; or*

(3) *For other tobacco products manufactured, produced, fabricated, assembled, processed, labeled or finished in this State, at the time the other tobacco products are sold in this State to a wholesale dealer, retail dealer or ultimate consumer.*

(b) *Must be* paid by the wholesale dealer to the Department, in accordance with the provisions of NRS 370.465 . ~~[, after the sale or distribution of 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 other tobacco products without paying the tax provided for by this section is guilty of a misdemeanor.

**Sec. 5.** 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~~ *such information as the Department may prescribe concerning* other tobacco products ~~[that the wholesale dealer made]~~ *on which the tax was imposed pursuant to NRS 370.450* 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 that were sold by the wholesale dealer during the previous month.

3. The Department may impose a *civil* 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]~~ *civil penalty* of \$1,000.

(b) For a second violation within 7 years, a ~~[fine]~~ *civil penalty* of \$5,000.

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

**Sec. 6.** NRS 370.500 is hereby amended to read as follows:

370.500 1. All amounts of tax *and all license fees* 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 payments with the State Treasurer for credit to the Account for the Tax on Products Made From Tobacco, Other Than Cigarettes, in the State General Fund.



**Sec. 7.** NRS 370.450, as amended by section 4 of this act, applies to other tobacco products purchased, received or sold in this State before January 1, 2020, if the tax imposed by NRS 370.450, as that section existed before January 1, 2020, has not been paid before January 1, 2020. A wholesale dealer shall include other tobacco products described in this section in the report filed by the wholesale dealer with the Department of Taxation pursuant to NRS 370.465, as amended by section 5 of this act, for the January 2020 reporting period and remit the tax required to be paid by this section with that report.

**Sec. 8.** 1. This section and sections 1, 3 and 6 of this act become effective on October 1, 2019.

2. Sections 2, 4, 5 and 7 of this act become effective on January 1, 2020.

