

1 SENATE BILL 235

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Martin Hickey

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10 AN ACT

11 RELATING TO TAXATION; INCREASING THE RATE OF TAX ON TOBACCO
12 PRODUCTS; INCLUDING NICOTINE, REGARDLESS OF SOURCE, IN THE
13 DEFINITION OF "TOBACCO PRODUCT" IN THE TOBACCO PRODUCTS TAX
14 ACT; DISTRIBUTING REVENUE FROM THE TAX TO A NEW NICOTINE USE
15 PREVENTION AND CONTROL FUND; MAKING AN APPROPRIATION.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the Tax Administration Act is
19 enacted to read:

20 "[NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS
21 TAX--NICOTINE USE PREVENTION AND CONTROL.--A distribution
22 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the
23 nicotine use prevention and control fund in an amount equal to
24 the net receipts attributable to the tobacco products tax."

25 SECTION 2. [NEW MATERIAL] NICOTINE USE PREVENTION AND
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1 CONTROL FUND.--The "nicotine use prevention and control fund"
2 is created in the state treasury. The fund consists of
3 appropriations, donations, interest from investment of the fund
4 and other money distributed to the fund. The fund shall be
5 administered by the department of health, and money in the fund
6 is subject to appropriation by the legislature to provide funds
7 to that department to, in collaboration with the public
8 education department and the higher education department,
9 develop programs, educational materials and social and
10 traditional media advertising on nicotine use prevention and
11 control for persons age five to twenty-five years of age.
12 Disbursements from the fund shall be made by warrant of the
13 secretary of finance and administration pursuant to vouchers
14 signed by the secretary of health or the secretary's designee.
15 Any unexpended balance remaining at the end of a fiscal year
16 shall revert to the general fund.

17 SECTION 3. Section 7-12A-2 NMSA 1978 (being Laws 1986,
18 Chapter 112, Section 3, as amended) is amended to read:

19 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
20 Tax Act:

21 A. "department" means the taxation and revenue
22 department, the secretary or any employee of the department
23 exercising authority lawfully delegated to that employee by the
24 secretary;

25 B. "cigar" means a roll for smoking made wholly or

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1 in part of tobacco and weighing greater than four and one-half
2 pounds per thousand;

3 C. "distribute" means to sell or to give;

4 D. "closed system cartridge" means a single-use,
5 pre-filled disposable cartridge containing five milliliters or
6 less of e-liquid for use in an e-cigarette;

7 E. "e-cigarette" means any ~~[electronic oral device,~~
8 ~~whether composed of a heating element and battery or an~~
9 ~~electronic circuit, that provides a vapor of nicotine or any~~
10 ~~other substance the use or inhalation of which simulates~~
11 ~~smoking and includes any such device, or any part thereof,~~
12 ~~whether manufactured, distributed, marketed or sold as an~~
13 ~~e-cigarette, e-cigar, e-pipe or any other product, name or~~
14 ~~descriptor; "E-cigarette" does not include any product~~
15 ~~regulated as a drug or device by the United States food and~~
16 ~~drug administration under the Federal Food, Drug, and Cosmetic~~
17 Act] device that can be used to deliver aerosolized or
18 vaporized nicotine to the person inhaling from the device and
19 includes any component, part or accessory of such a device that
20 is used during the operation of the device but does not include
21 a battery or battery charger;

22 F. "e-liquid" means liquid or other substance
23 intended for use in an e-cigarette ~~[not including any substance~~
24 ~~containing cannabis or oil derived from cannabis];~~

25 G. "engaging in business" means carrying on or

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1 causing to be carried on any activity with the purpose of
2 direct or indirect benefit;

3 H. "first purchaser" means a person engaging in
4 business in New Mexico that manufactures tobacco products or
5 that purchases or receives on consignment tobacco products from
6 any person outside of New Mexico, which tobacco products are to
7 be distributed in New Mexico in the ordinary course of
8 business;

9 I. "little cigar" means a roll for smoking made
10 wholly or in part of tobacco, using an integrated cellulose
11 acetate or other similar filter, and weighing not more than
12 four and one-half pounds per thousand;

13 J. "person" means any individual, estate, trust,
14 receiver, cooperative association, club, corporation, company,
15 firm, partnership, joint venture, syndicate, limited liability
16 company, limited liability partnership, other association or
17 gas, water or electric utility owned or operated by a county or
18 municipality or other entity of the state; "person" also means,
19 to the extent permitted by law, a federal, state or other
20 governmental unit or subdivision or an agency, department or
21 instrumentality;

22 K. "product value" means the amount paid, net of
23 any discounts taken and allowed, for tobacco products or, in
24 the case of tobacco products received on consignment, the value
25 of the tobacco products received or, in the case of tobacco

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1 products manufactured and sold in New Mexico, the proceeds from
2 the sale by the manufacturer of the tobacco products; and

3 L. "tobacco product":

4 (1) means:

5 [~~(1)~~] (a) any product, other than
6 cigarettes, [~~eigars and little eigars~~] made from or containing
7 tobacco or nicotine, whether natural or synthetic, that is
8 intended for human consumption or is likely to be consumed,
9 whether smoked, heated, chewed, absorbed, dissolved or inhaled;

10 [~~(2)~~] (b) e-liquid;

11 [~~(3)~~] (c) e-cigarettes; and

12 [~~(4)~~] (d) closed system cartridges; and

13 (2) does not mean any product regulated as a
14 drug or device by the United States food and drug
15 administration pursuant to the Federal Food, Drug, and Cosmetic
16 Act."

17 SECTION 4. Section 7-12A-3 NMSA 1978 (being Laws 1986,
18 Chapter 112, Section 4, as amended) is amended to read:

19 "7-12A-3. IMPOSITION AND RATES OF TAX--~~[REDUCTION OF RATE~~
20 ~~FOR CERTAIN TOBACCO PRODUCTS]~~ DENOMINATION AS "TOBACCO PRODUCTS
21 TAX"--DATE PAYMENT OF TAX DUE.--

22 A. For the manufacture or acquisition of tobacco
23 products in New Mexico [~~not including eigars, little eigars, e-~~
24 ~~liquid, e-cigarettes or closed system cartridges]~~ to be
25 distributed in the ordinary course of business and for the

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1 consumption of tobacco products in New Mexico, there is imposed
2 an excise tax at the rate of [~~twenty-five~~] thirty-one percent
3 of the [~~product value~~] wholesale price of the tobacco products;
4 provided that for each little cigar, the rate shall be equal to
5 the rate imposed on a cigarette pursuant to Section 7-12-3 NMSA
6 1978.

7 ~~[B. For the manufacture or acquisition of cigars in~~
8 ~~New Mexico to be distributed in the ordinary course of business~~
9 ~~and for the consumption of cigars in New Mexico, there is~~
10 ~~imposed an excise tax at a rate equal to twenty-five percent of~~
11 ~~the product value of the cigar, not to exceed fifty cents~~
12 ~~(\$.50) per cigar.~~

13 ~~C. For the manufacture or acquisition of little~~
14 ~~cigars in New Mexico to be distributed in the ordinary course~~
15 ~~of business and for the consumption of little cigars in New~~
16 ~~Mexico, there is imposed an excise tax at a rate equal to the~~
17 ~~rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978~~
18 ~~per package of little cigars.~~

19 ~~D. For the manufacture or acquisition of e-liquid~~
20 ~~in New Mexico to be distributed in the ordinary course of~~
21 ~~business and for the consumption of e-liquid in New Mexico,~~
22 ~~there is imposed an excise tax at a rate equal to twelve and~~
23 ~~one-half percent of the product value of the e-liquid.~~

24 ~~E. For the manufacture or acquisition of closed~~
25 ~~system cartridges in New Mexico to be distributed in the~~

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1 ~~ordinary course of business, there is imposed an excise tax at~~
2 ~~a rate of fifty cents (\$.50) per closed system cartridge.~~

3 H.] B. The taxes imposed by this section may be
4 referred to as the "tobacco products tax".

5 [F.] C. The tobacco products tax shall be paid by
6 the first purchaser on or before the twenty-fifth day of the
7 month following the month in which the taxable event occurs."

8 SECTION 5. APPROPRIATION.--Five hundred thousand dollars
9 (\$500,000) is appropriated from the general fund to the
10 regulation and licensing department for expenditure in fiscal
11 year 2024 to expand the department's licensure and enforcement
12 duties in regard to nicotine sales and use. Any unexpended or
13 unencumbered balance remaining at the end of fiscal year 2024
14 shall revert to the general fund.

15 SECTION 6. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2023.