

1 SENATE BILL 121

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

4 Martin Hickey

10 AN ACT

11 RELATING TO TAXATION; INCREASING THE RATE OF THE TOBACCO
12 PRODUCTS TAX; AMENDING DEFINITIONS IN THE TOBACCO PRODUCTS TAX
13 ACT; DISTRIBUTING THE REVENUE FROM THE INCREASE IN THE TOBACCO
14 PRODUCTS TAX TO A NEW NICOTINE USE PREVENTION AND CONTROL FUND.

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

17 **SECTION 1.** [NEW MATERIAL] NICOTINE USE PREVENTION AND
18 CONTROL FUND.--The "nicotine use prevention and control fund"
19 is created in the state treasury. The fund consists of
20 appropriations, donations, interest from investment of the fund
21 and other money distributed to the fund. The fund shall be
22 administered by the department of health, and money in the fund
23 is subject to appropriation by the legislature to provide funds
24 to that department to, in collaboration with the public
25 education department and the higher education department,

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1 develop programs, educational materials and social and
2 traditional media advertising on nicotine use prevention and
3 control for persons five to twenty-five years of age.
4 Disbursements from the fund shall be made by warrant of the
5 secretary of finance and administration pursuant to vouchers
6 signed by the secretary of health or the secretary's designee.
7 Any unexpended balance remaining at the end of a fiscal year
8 shall revert to the general fund.

9 **SECTION 2.** A new section of the Tax Administration Act is
10 enacted to read:

11 " [NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS TAX--
12 NICOTINE USE PREVENTION AND CONTROL FUND.--A distribution
13 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the
14 nicotine use prevention and control fund in an amount equal to
15 thirty-five percent of the net receipts attributable to the
16 tobacco products tax."

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] a 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. "nicotine" means a form of the chemical
14 nicotine, including any salt or complex, regardless of whether
15 the chemical is naturally or synthetically derived, and
16 includes nicotinic alkaloids and nicotine analogs;

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

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1 [K. "product value" means the amount paid, net of
2 any discounts taken and allowed, for tobacco products or, in
3 the case of tobacco products received on consignment, the value
4 of the tobacco products received or, in the case of tobacco
5 products manufactured and sold in New Mexico, the proceeds from
6 the sale by the manufacturer of the tobacco products; and]

7 L. "tobacco product":

8 (1) means:

9 [(1) any] (a) a product, other than
10 cigarettes, [cigars and little cigars] made from or containing
11 tobacco or nicotine, whether natural or synthetic, that is
12 intended for human consumption or is likely to be consumed,
13 whether smoked, heated, chewed, absorbed, dissolved or inhaled;

14 [(2)] (b) e-liquid;

15 [(3)] (c) e-cigarettes; and

16 [(4)] (d) closed system cartridges; and

17 (2) does not mean a product regulated as a
18 drug or device by the United States food and drug
19 administration pursuant to the Federal Food, Drug, and Cosmetic
20 Act; and

21 M. "wholesale price" means the amount paid, net of
22 any discounts taken and allowed, for tobacco products or, in
23 the case of tobacco products received on consignment, the value
24 of the tobacco products received or, in the case of tobacco
25 products manufactured and sold in New Mexico, the proceeds from

the sale by the manufacturer of the tobacco products."

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

"7-12A-3. IMPOSITION AND RATES OF TAX--REDUCTION OF RATE FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

A. For the manufacture or acquisition of tobacco products in New Mexico [not including cigars, little cigars, e-liquid, e-cigarettes or closed system cartridges] to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the rate of [twenty five] forty percent of the [product value] wholesale price of the tobacco products; provided that for the following tobacco products, the rate shall be:

(1) for cigars, twenty-five percent, not to exceed fifty cents (\$.50) per cigar; and

(2) for little cigars, the rate equal to the rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978.

[B. For the manufacture or acquisition of cigars in New Mexico to be distributed in the ordinary course of business and for the consumption of cigars in New Mexico, there is imposed an excise tax at a rate equal to twenty-five percent of the product value of the cigar, not to exceed fifty cents.

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1 ~~(\$.50) per cigar.~~

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

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

13 ~~E. For the manufacture or acquisition of closed~~
14 ~~system cartridges in New Mexico to be distributed in the~~
15 ~~ordinary course of business, there is imposed an excise tax at~~
16 ~~a rate of fifty cents (\$.50) per closed system cartridge.~~

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

19 ~~[I.] C.~~ The tobacco products tax shall be paid by
20 the first purchaser on or before the twenty-fifth day of the
21 month following the month in which the taxable event occurs."

22 SECTION 5. Section 7-12A-4 NMSA 1978 (being Laws 1986,
23 Chapter 112, Section 5, as amended) is amended to read:

24 "7-12A-4. EXEMPTION--TOBACCO PRODUCTS TAX.--

25 A. Exempted from the tobacco products tax is the

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[product value] wholesale price of tobacco products sold:

(1) to or by the United States or any agency or instrumentality thereof;

(2) to the governing body or any enrolled tribal member licensed by the governing body of an Indian nation, tribe or pueblo to be distributed on the reservation or pueblo grant of that Indian nation, tribe or pueblo; or

(3) to the state of New Mexico or any political subdivision thereof.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities."

SECTION 6. Section 7-12A-5 NMSA 1978 (being Laws 1986, Chapter 112, Section 6) is amended to read:

"7-12A-5. DEDUCTION--INTERSTATE SALES.--The [product value] wholesale price of tobacco products sold and shipped or given and shipped to a person in another state may be deducted from the [product value] wholesale price subject to the tax imposed by the Tobacco Products Tax Act; provided that the department may require the person to submit proof satisfactory to the department that the tobacco products have been sold and shipped or given and shipped to a person in another state."

SECTION 7. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2026.

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