

1 SENATE TAX, BUSINESS AND TRANSPORTATION COMMITTEE SUBSTITUTE  
2 FOR SENATE BILL 72

3 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

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10 AN ACT

11 RELATING TO TAXATION; INCREASING THE RATE OF THE TOBACCO  
12 PRODUCTS TAX ON E-LIQUID AND E-CIGARETTES; INCLUDING NICOTINE,  
13 REGARDLESS OF SOURCE, IN THE DEFINITION OF "TOBACCO PRODUCT" IN  
14 THE TOBACCO PRODUCTS TAX ACT; PROVIDING EXCEPTIONS FOR CERTAIN  
15 PRODUCTS; TEMPORARILY DISTRIBUTING REVENUE FROM THE TAX TO A  
16 NEW NICOTINE USE PREVENTION AND CONTROL FUND; PROVIDING A  
17 DELAYED REPEAL.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

22 "[NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS  
23 TAX--NICOTINE USE PREVENTION AND CONTROL.--A distribution  
24 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the  
25 nicotine use prevention and control fund in an amount equal to  
.227771.3

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1 the following percentages of the net receipts attributable to  
2 the tobacco products tax:

- 3 A. prior to July 1, 2026, fifty percent;
- 4 B. beginning July 1, 2026 and prior to July 1,  
5 2027, eighty percent; and
- 6 C. beginning July 1, 2027 and prior to July 1,  
7 2028, one hundred percent."

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

25 SECTION 3. Section 7-12A-2 NMSA 1978 (being Laws 1986,  
.227771.3

1 Chapter 112, Section 3, as amended) is amended to read:

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

4 A. "department" means the taxation and revenue  
5 department, the secretary or any employee of the department  
6 exercising authority lawfully delegated to that employee by the  
7 secretary;

8 B. "cigar" means a roll for smoking made wholly or  
9 in part of tobacco and weighing greater than four and one-half  
10 pounds per thousand;

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

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

15 E. "e-cigarette" means any ~~[electronic oral device,~~  
16 ~~whether composed of a heating element and battery or an~~  
17 ~~electronic circuit, that provides a vapor of nicotine or any~~  
18 ~~other substance the use or inhalation of which simulates~~  
19 ~~smoking and includes any such device, or any part thereof,~~  
20 ~~whether manufactured, distributed, marketed or sold as an~~  
21 ~~e-cigarette, e-cigar, e-pipe or any other product, name or~~  
22 ~~descriptor; "E-cigarette" does not include any product~~  
23 ~~regulated as a drug or device by the United States food and~~  
24 ~~drug administration under the Federal Food, Drug, and Cosmetic~~  
25 ~~Act] device that can be used to deliver aerosolized or~~

.227771.3

1 vaporized nicotine by heating a liquid solution;

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

5 G. "engaging in business" means carrying on or  
6 causing to be carried on any activity with the purpose of  
7 direct or indirect benefit;

8 H. "first purchaser" means a person engaging in  
9 business in New Mexico that manufactures tobacco products or  
10 that purchases or receives on consignment tobacco products from  
11 any person outside of New Mexico, which tobacco products are to  
12 be distributed in New Mexico in the ordinary course of  
13 business;

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

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

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1 instrumentality;

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

8 L. "tobacco product":

9 (1) means:

10 [~~(1)~~] (a) any product, other than  
11 cigarettes [~~cigars and little cigars~~] and the products  
12 described in Subparagraph (a) of Paragraph (2) of this  
13 subsection, made [~~from~~] of or containing tobacco or nicotine,  
14 whether natural or synthetic, that is intended for human  
15 consumption or is likely to be consumed, whether smoked,  
16 heated, chewed, dissolved or inhaled;

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

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

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

20 (2) does not mean:

21 (a) a noncombustible product that  
22 contains nicotine, is not made of and does not contain tobacco  
23 and is not e-liquid; and

24 (b) any product regulated as a drug or  
25 device by the United States food and drug administration

.227771.3

1 pursuant to the Federal Food, Drug, and Cosmetic Act."

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

4 "7-12A-3. IMPOSITION AND RATES OF TAX--REDUCTION OF RATE  
5 FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO PRODUCTS  
6 TAX"--DATE PAYMENT OF TAX DUE.--

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

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

17 (2) for little cigars, the rate equal to the  
18 rate imposed on cigarettes pursuant to Section 7-12-3 NMSA  
19 1978;

20 (3) for e-liquid, forty-four percent;

21 (4) for e-cigarettes, forty-four percent; and

22 (5) for closed system cartridges, fifty cents  
23 (\$.50) per closed system cartridge.

24 [~~B. For the manufacture or acquisition of cigars in~~  
25 ~~New Mexico to be distributed in the ordinary course of business~~

1 ~~and for the consumption of cigars in New Mexico, there is~~  
 2 ~~imposed an excise tax at a rate equal to twenty-five percent of~~  
 3 ~~the product value of the cigar, not to exceed fifty cents~~  
 4  ~~(\$.50) per cigar.~~

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

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

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

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

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

25 SECTION 5. DELAYED REPEAL.--Section 1 of this act is

.227771.3

1 repealed effective July 1, 2028.

2 SECTION 6. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2024.

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