

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1050*

AMENDMENT NO. A4
(to be filled in by
Principal Clerk)

H1050-ATD-131 [v.1]

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Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____, 2014

Representative Fulghum

1 moves to amend the bill on page 51, line 21, through page 56, line 3, by rewriting those lines to
2 read:

3 "SECTION 15.1(a) G.S. 105-113.4 reads as rewritten:

4 "§ 105-113.4. Definitions.

5 The following definitions apply in this Article:

6 ...

7 (1k) Consumable product. – Any nicotine liquid solution or other material
8 containing nicotine that is depleted as a vapor product is used.

9 ...

10 (11a) Tobacco product. – A cigarette, a cigar, or any other product that contains
11 tobacco and is intended for inhalation or oral use. The term includes a vapor
12 product.

13 (12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

14 (13) Use. – The exercise of any right or power over cigarettes, incident to the
15 ownership or possession thereof, other than the making of a sale thereof in
16 the course of engaging in a business of selling cigarettes. The term includes
17 the keeping or retention of cigarettes for use.

18 (13a) Vapor product. – Any noncombustible product that employs a mechanical
19 heating element, battery, or electronic circuit regardless of shape or size and
20 that can be used to produce vapor from nicotine in a solution. The term
21 includes any vapor cartridge or other container of nicotine in a solution or
22 other form that is intended to be used with or in an electronic cigarette,
23 electronic cigar, electronic cigarillo, electronic pipe, or similar product or
24 device. The term does not include any product regulated by the United States
25 Food and Drug Administration under Chapter V of the federal Food, Drug,
26 and Cosmetic Act.

27 ..."

28 SECTION 15.1.(b) G.S. 105-113.35 reads as rewritten:

29 "§ 105-113.35. Tax on tobacco products other than cigarettes.

30 (a) ~~Tax.~~ Tax on Tobacco Products. – An excise tax is levied on tobacco products other
31 than cigarettes and vapor products at the rate of twelve and eight-tenths percent (12.8%) of the
32 cost price of the products. ~~This tax does not apply to the following:~~



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- (1) ~~A tobacco product sold outside the State.~~
- (2) ~~A tobacco product sold to the federal government.~~
- (3) ~~A sample tobacco product distributed without charge.~~

(a1) Tax on Vapor Products. – An excise tax is levied on vapor products at the rate of five cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by manufacturers must state the amount of consumable product in milliliters.

(a2) Limitation. – The taxes imposed under this section do not apply to the following:

- (1) A tobacco product sold outside the State.
- (2) A tobacco product sold to the federal government.
- (3) A sample tobacco product distributed without charge.

..."

SECTION 15.1.(c) G.S. 105-113.37(b) reads as rewritten:

"(b) Designation of Exempt Sale. – A wholesale dealer who sells a tobacco product to a person who has notified the wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under ~~G.S. 105-113.35(a)(1) or (2)~~G.S. 105-113.35(a3)(1) or (2) may, when filing a monthly report under subsection (a), designate the quantity of tobacco products sold to the person for resale. A wholesale dealer shall report a designated sale on a form provided by the Secretary.

A wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The wholesale dealer shall pay the tax due on all other sales in accordance with this section. A wholesale dealer or a customer of a wholesale dealer may not delay payment of the tax due on a tobacco product by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of tobacco products that will be resold in a transaction exempt under ~~G.S. 105-113.35(a)(1) or (2)~~G.S. 105-113.35(a3)(1) or (2).

A person who does not sell a tobacco product in a transaction exempt under ~~G.S. 105-113.35(a)(1) or (2)~~G.S. 105-113.35(a3)(1) or (2) after a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary determines that a tobacco product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A wholesale dealer who does not pay tax on a tobacco product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item."

SECTION 15.1.(d) G.S. 105-113.39(a) reads as rewritten:

"§ 105-113.39. Discount; refund.

(a) Discount. – A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this ~~Part~~Part on tobacco products but not including vapor products, who files a timely report under G.S. 105-113.37, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Part and the expense of furnishing a bond."

SECTION 15.1.(e) This section becomes effective February 1, 2015.

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SECTION 15.2.(a) G.S. 148-23.1(d) reads as rewritten:

"(d) As used in this section, the following terms mean:

- (1) State correctional facility. – All buildings and grounds of a State correctional institution operated by the Division of Adult Correction of the Department of Public Safety.
- (2) Tobacco products. – Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use. The term includes vapor products.
- (3) Vapor products. – Noncombustible products that employ a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge. The term includes electronic cigarettes, electronic cigars, electronic cigarillos, and electronic pipes. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act."

SECTION 15.2.(b) G.S. 14-258.1 reads as rewritten:

"§ 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities; furnishing tobacco products including vapor products or products; or furnishing mobile phones to inmates.

...
(c) Any person who knowingly gives or sells any tobacco including vapor product, as defined in G.S. 148-23.1, to an inmate in the custody of the Division of Adult Correction of the Department of Public Safety and on the premises of a correctional facility or to an inmate in the custody of a local confinement facility, or any person who knowingly gives or sells any tobacco products including vapor product to a person who is not an inmate for delivery to an inmate in the custody of the Division of Adult Correction of the Department of Public Safety and on the premises of a correctional facility or to an inmate in the custody of a local confinement facility, other than for authorized religious purposes, is guilty of a Class 1 misdemeanor.

...
(e) Any inmate of a local confinement facility who possesses any tobacco products including vapor product, as defined in G.S. 148-23.1, other than for authorized religious purposes, or who possesses a mobile telephone or other wireless communications device or a component of one of those devices, is guilty of a Class 1 misdemeanor."

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1 **SECTION 15.2.(c)** Subsection (a) of this section becomes effective July 1, 2014.
2 Subsection (b) of this section becomes effective December 1, 2014, and applies to offenses
3 committed on or after that date. The remainder of this section is effective when it becomes
4 law."
5

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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and vote information, is available in the
House Principal Clerk's Office**