

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Tax Vapor/Prohibit in Jails.

(Public)

Sponsors: Senator (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO IMPOSE AN EXCISE TAX ON VAPOR PRODUCTS, TO MAKE IT A
CRIMINAL OFFENSE TO PROVIDE VAPOR PRODUCTS TO INMATES IN THE
CUSTODY OF THE DEPARTMENT OF CORRECTION OR A LOCAL
CONFINEMENT FACILITY, AND TO MAKE IT A CRIMINAL OFFENSE FOR
INMATES OF A LOCAL CONFINEMENT FACILITY TO POSSESS VAPOR
PRODUCTS.

The General Assembly of North Carolina enacts:

PART 1. TAX VAPOR PRODUCTS

SECTION 1. G.S. 105-113.3 reads as rewritten:

"§ 105-113.3. Scope of tax; administration.

(a) Scope. – The taxes imposed by this Article shall be collected only once on the same tobacco ~~product~~.product or vapor product. Except as permitted by Article 2 of this Chapter, a city or county may not levy a privilege license tax on the sale of tobacco ~~products~~.products or vapor products.

(b) Administration. – Article 9 of this Chapter applies to this Article."

SECTION 2. G.S. 105-113.4 reads as rewritten:

"§ 105-113.4. Definitions.

The following definitions apply in this Article:

...

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

...

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of vapor products or tobacco products, other than cigarettes, and is not a retail dealer.

(5) Licensed distributor. – A distributor licensed under Part 2 of this Article.

(6) Manufacturer. – A person who produces tobacco products or vapor products or a person who contracts with another person to produce tobacco products or vapor products and is the exclusive purchaser of the products under the contract.

...

(9) Retail dealer. – A person who sells a tobacco product or vapor product to the ultimate consumer of the product.



...

(11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use. The term does not include a vapor product.

(12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

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

(13a) Vapor product. – Any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to produce vapor from nicotine in a solution. The term includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. 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.

(14) Wholesale dealer. – Either of the following:

- a. A person who acquires vapor products or tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer.
- b. A manufacturer of vapor products or tobacco products other than cigarettes."

SECTION 3. G.S. 105-113.4D reads as rewritten:

"§ 105-113.4D. Tax with respect to inventory on effective date of tax increase.

Every person subject to the taxes levied in this Article who, on the effective date of a tax increase under this Article, has on hand any tobacco products or vapor products must file a complete inventory of the tobacco products within 20 days after the effective date of the increase, and must pay an additional tax to the Secretary when filing the inventory. The amount of tax due is the amount due based on the difference between the former tax rate and the increased tax rate."

SECTION 4. The title of Part 3 of Subchapter 1 of Chapter 105 of the General Statutes reads as rewritten:

"Part 3. Tax on Other Tobacco ~~Products~~ Products and Vapor Products."

SECTION 4. G.S. 105-113.35 reads as rewritten:

"§ 105-113.35. Tax on tobacco products other than ~~cigarettes~~ cigarettes and vapor products.

(a) ~~Tax.~~ Tax on Tobacco Products. – An excise tax is levied on tobacco products other than cigarettes at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products. ~~This tax does 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.~~

(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.

(a3) Limitation. – The taxes imposed under this section do not apply to the following:

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

(b) Primary Liability. – The wholesale dealer or retail dealer who first acquires or otherwise handles tobacco products or vapor products subject to the tax imposed by this section is liable for the tax imposed by this section. A wholesale dealer or retail dealer who brings into this State a tobacco product or vapor product made outside the State is the first person to handle the tobacco product vapor product in this State. A wholesale dealer or retail dealer who is the original consignee of a tobacco product or vapor product that is made outside the State and is shipped into the State is the first person to handle the tobacco product or vapor product in this State.

(c) Secondary Liability. – A retail dealer who acquires non-tax-paid tobacco products or vapor products subject to the tax imposed by this section from a wholesale dealer is liable for any tax due on the tobacco ~~products-products~~ or vapor products. A retail dealer who is liable for tax under this subsection may not deduct a discount from the amount of tax due when reporting the tax.

(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships vapor products or tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the tobacco ~~products-products~~ or vapor products. Once granted permission, a manufacturer may choose not to pay the tax until otherwise notified by the Secretary. To be relieved of payment of the tax imposed by this section, a manufacturer must comply with the requirements set by the Secretary.

Permission granted under this subsection to a manufacturer to be relieved of paying the tax imposed by this section applies to an integrated wholesale dealer with whom the manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with whom it is an affiliate when the manufacturer applies to the Secretary for permission to be relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the manufacturer after the Secretary has given the manufacturer permission to be relieved of paying the tax.

If a person is both a manufacturer of cigarettes and a wholesale dealer of vapor products or tobacco products other than cigarettes and the person is granted permission under G.S. 105-113.10 to be relieved of paying the cigarette excise tax, the permission applies to the tax imposed by this section on vapor products or tobacco products other than cigarettes. A cigarette manufacturer who becomes a wholesale dealer after receiving permission to be relieved of the cigarette excise tax must notify the Secretary of the permission received under G.S. 105-113.10 when applying for a license as a wholesale dealer.

(d1) Limitation. – Except as otherwise provided in this Article, integrated wholesale dealers may not sell, borrow, loan, or exchange non-tax-paid vapor products or non-tax-paid tobacco products other than cigarettes to, from, or with other integrated wholesale dealers.

(e) Repealed by Session Laws 2009-451, s. 27A.5(c), effective September 1, 2009."

SECTION 5. G.S. 105-113.36 reads as rewritten:

"§ 105-113.36. Wholesale dealer and retail dealer must obtain license.

A wholesale dealer shall obtain for each place of business a continuing tobacco products or vapor products license and shall pay a tax of twenty-five dollars (\$25.00) for the license. A retail dealer shall obtain for each place of business a continuing tobacco products or vapor products license and shall pay a tax of ten dollars (\$10.00) for the license. A "place of business" is a place where a wholesale dealer or where a retail dealer makes vapor products or tobacco products other than cigarettes or a wholesale dealer or a retail dealer receives or stores non-tax-paid vapor products or non-tax-paid tobacco products other than cigarettes."

SECTION 6. G.S. 105-113.37 reads as rewritten:

"§ 105-113.37. Payment of tax.

(a) Monthly Report. – Except for tax on a designated sale under subsection (b), the taxes levied by this Article are payable when a report is required to be filed. A report is due on

1 a monthly basis. A monthly report covers sales and other activities occurring in a calendar
2 month and is due within 20 days after the end of the month covered by the report. A report shall
3 be filed on a form provided by the Secretary and shall contain the information required by the
4 Secretary.

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

11 A wholesale dealer is not required to pay tax on a designated sale when filing a monthly
12 report. The wholesale dealer shall pay the tax due on all other sales in accordance with this
13 section. A wholesale dealer or a customer of a wholesale dealer may not delay payment of the
14 tax due on a tobacco product or vapor product by failing to pay tax on a sale that is not a
15 designated sale or by overstating the quantity of tobacco products or vapor products that will be
16 resold in a transaction exempt under G.S. 105-113.35(a3)(1) or (2). ~~G.S. 105-113.35(a)(1) or~~
17 ~~(2).~~

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

28 (c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 12.

29 (d) Shipping Report. – Any person who transports other tobacco products or vapor
30 products upon the public highways, roads, or streets of this State must, upon notice from the
31 Secretary, file a report in a form prescribed by and containing the information required by the
32 Secretary."

33 **SECTION 7.** G.S. 105-113.39(a) reads as rewritten:

34 **"§ 105-113.39. Discount; refund.**

35 (a) Discount. – A wholesale dealer or a retail dealer who is primarily liable under
36 G.S. 105-113.35(b) for the excise taxes imposed by this ~~Part~~ Part on tobacco products, who
37 files a timely report under G.S. 105-113.37, and who sends a timely payment may deduct from
38 the amount due with the report a discount of two percent (2%). This discount covers expenses
39 incurred in preparing the records and reports required by this Part and the expense of furnishing
40 a bond. "

41 **SECTION 8.** G.S. 105-113.40 reads as rewritten:

42 **"§ 105-113.40. Records of sales, inventories, and purchases to be kept.**

43 Every wholesale dealer and retail dealer shall keep accurate records of the dealer's
44 purchases, inventories, and sales of tobacco ~~products~~ products or vapor products. These records
45 shall be open at all times for inspection by the Secretary or an authorized representative of the
46 Secretary."

47 **SECTION 9.** This Part becomes effective January 1, 2015.

49 **PART II. PROHIBIT THE USE OF VAPOR PRODUCTS IN STATE**
50 **CORRECTIONAL FACILITIES AND LOCAL CONFINEMENT FACILITIES.**

SECTION 10. G.S. 148-23.1 reads as rewritten:

§ 148-23.1. Tobacco and vapor products prohibited on State correctional facilities premises.

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Division of Adult Correction of the Department of Public Safety and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco and vapor products on the premises of State correctional facilities and to ensure that employees and visitors do not use tobacco and vapor products on the premises of those facilities.

(b) No person may use tobacco or vapor products on the premises of a State correctional facility, except for authorized religious purposes. Notwithstanding any other provision of law, inmates in the custody of the Division of Adult Correction of the Department of Public Safety and persons facilitating religious observances may use and possess tobacco or vapor products for religious purposes consistent with the policies of the Division.

(b1) Except as provided in subsection (b) of this section, no person may possess tobacco or vapor products on the premises of a State correctional facility. Notwithstanding the provisions of this subsection, an employee or visitor may possess tobacco or vapor products within the confines of a motor vehicle located in a designated parking area of a correctional facility's premises if the tobacco or vapor product remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle.

(c) The Division of Adult Correction of the Department of Public Safety may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Division, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Division. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(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.

(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 11. 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 or vapor ~~products-products; or furnishing~~ mobile phones to inmates.

(c) Any person who knowingly gives or sells any tobacco or 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 or vapor product to a person who is not an inmate for delivery to an inmate in the custody of

1 the Division of Adult Correction of the Department of Public Safety and on the premises of a
2 correctional facility or to an inmate in the custody of a local confinement facility, other than for
3 authorized religious purposes, is guilty of a Class 1 misdemeanor.

4 ...

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

9 **SECTION 12.** Section 10 is effective July 1, 2014. Section 11 becomes effective
10 December 1, 2014, and applies to offenses committed on or after that date. The remainder of
11 this act is effective when it becomes law.