



## Bill Draft 2013-TDxz-24H: Tax Vapor/Prohibit in Jails.

2013-2014 General Assembly

**Committee:** Revenue Laws Study Committee  
**Introduced by:**  
**Analysis of:** 2013-TDxz-24H

**Date:** May 9, 2014  
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**SUMMARY:** *Bill draft 2013-TDxz-24H would provide an excise tax of 5¢ per milliliter to be imposed on vapor products, would prohibit the use of vapor products in State correctional facilities, and would make it a criminal offense to for a person to provide a vapor product to an inmate of a local confinement facility and for an inmate to possess a vapor product.*

**CURRENT LAW:** Under G.S. 105-113.5, cigarettes are taxed at 45¢ per pack. Other tobacco products (OTP), including pipe tobacco and roll-your-own tobacco is taxed under G.S. 105-113.35 at 12.8% of the cost of the product. The tax on cigarettes is paid by the distributor of the product. The tax on OTP products is payable by the wholesale dealer or retail dealer who first acquires or otherwise handles the product.

An electronic cigarette is a handheld device that produces vapor from a liquid. The liquid is generally heated to produce the vapor by a battery operated device. The liquid usually contains nicotine and sometimes contains flavors. The amount of the nicotine in the liquid can vary. Most electronic cigarettes are reusable. The liquid in the device can either be replenished replacing the cartridge that holds the liquid, or by manually refilling the liquid container.

In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act, which gave the US Food and Drug Administration (FDA) the authority to regulate new tobacco products including e-cigarettes, nicotine gels, cigars, pipe tobacco, and dissolvable nicotine products.

In April 2014, the FDA issued proposed rules to regulate e-cigarettes. The proposed rules will be subject to 75 days of public comment. The proposed rules deem e-cigarettes a "tobacco product" for the purpose of federal regulation. The rules further propose to subject e-cigarettes to the following restrictions:

- Enforcement against adulterated or misbranded products.
- Ingredient disclosure and reporting of harmful components
- No modified risk descriptors (light cigarettes)
- No free samples
- Premarket review
- Minimum age for purchase

G.S. 148-23.1 prohibits the use and possession of tobacco products anywhere on the premises of a State correctional facility. Exemptions are provided for use and possession for religious purposes consistent with the policies of the Department of Public Safety (DPS), and also for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the tobacco product remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

G.S. 14-258.1 provides that it is a Class 1 misdemeanor to do either of the following:

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- To knowingly give or sell tobacco products to an inmate on the premises of a correctional facility or in the custody of a local confinement facility, or to a person for delivery to an inmate.
- For an inmate in the custody of a local confinement facility to possess tobacco products.

## **BILL ANALYSIS:**

*Excise tax:* Sections 1 through 9 of the bill would impose an excise tax of 5¢ per milliliter of the consumable product of vapor products. Vapor products are defined as noncombustible products that use a heating element to produce vapor from nicotine in a solution. The consumable product is the part of the vapor product that contains the nicotine liquid solution. All invoices for vapor products must contain the amount of the consumable product in milliliters.

The tax would be administered in a similar fashion to the tax on OTP. The tax will be paid the wholesale dealer or retail dealer who first acquires or otherwise handles the product. The tax does not apply to products sold outside the State, products sold to the federal government, or products distributed without charge. Taxes are paid monthly. Each dealer must keep sufficient records of vapor products transactions.

Wholesale dealers and retail dealers must obtain a license for each place of business that handles vapor products. The license fee for wholesale dealers is \$25, and the license fee for retail dealers is \$10.

Taxpayers that timely file returns and payments of the taxes on OTP are allowed a discount of 2% of the amount due. This discount will not apply to the tax on vapor products.

*No vapor in prisons and jails:* Sections 10 prohibits the use use of vapor products in State correctional facilities. Exemptions are provided for use and possession for religious purposes consistent with the policies of DPS, and for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the vapor product remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

Section 11 it a Class 1 misdemeanor for either of the following:

- To knowingly give or sell vapor products to an inmate on the premises of a correctional facility or in the custody of a local confinement facility, or to a person for delivery to an inmate.
- For an inmate in the custody of a local confinement facility to possess vapor products.

**EFFECTIVE DATE:** The provisions related to imposing the excise tax on vapor products is effective January 1, 2015. The provisions related to vapor products in State and local confinement facilities are effective December 1, 2014.