

## HOUSE BILL NO. HB0073

Nicotine products-taxation.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation; imposing taxes on nicotine  
 2 products as specified; providing for collection and  
 3 distribution of the taxes imposed; requiring a license to  
 4 sell nicotine products; requiring reporting of nicotine  
 5 products sold; providing penalties; providing for state  
 6 preemption of nicotine products as specified; making  
 7 conforming amendments; and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11       **Section 1.** W.S. 14-3-301(a)(v), 39-15-107(a)(i),  
 12 39-18-101(a)(iv), (v)(A), (B) and by creating new  
 13 paragraphs (ix) through (xi), 39-18-102(b), 39-18-103(a) by  
 14 creating new paragraphs (v) and (vi), (b) and (c) by  
 15 creating new paragraphs (v) and (vi), 39-18-104 by creating  
 16 a new subsections (g) and (h), 39-18-106(a),

1 39-18-107(a)(i), (ii), (c)(i)(intro), (D),  
2 39-18-108(c)(ii)(A), (vi), (vii) and (ix) and 39-18-111(b)  
3 are amended to read:

4

5 **14-3-301. Definitions.**

6

7 (a) As used in this article:

8

9 (v) "Electronic cigarette" means ~~a product that~~  
10 ~~employs any mechanical heating element, battery or~~  
11 ~~electronic circuit, regardless of shape or size, that can~~  
12 ~~be used to deliver doses of nicotine vapor by means of~~  
13 ~~heating a liquid nicotine solution contained in a cartridge~~  
14 ~~or other delivery system~~ as defined by W.S.  
15 39-18-101(a)(ix).

16

17 **39-15-107. Compliance; collection procedures.**

18

19 (a) Returns, reports and preservation of records. The  
20 following shall apply:

21

22 (i) Each vendor shall on or before the last day  
23 of each month file a true return showing the preceding

1 month's gross sales and remit all taxes to the department.  
2 The returns shall contain such information and be made in  
3 the manner as the department by regulation prescribes. The  
4 department may allow extensions for filing returns and  
5 paying the taxes by regulation, but no extension may be for  
6 more than ninety (90) days. If the total tax to be remitted  
7 by a vendor during any month is less than one hundred fifty  
8 dollars (\$150.00), a quarterly or annual return as  
9 authorized by the department, and remittance in lieu of the  
10 monthly return may be made on or before the last day of the  
11 month following the end of the quarter or year for which  
12 the tax is collected. If the accounting methods regularly  
13 used by any vendor are such that reports of sales made  
14 during a calendar month would impose unnecessary hardships,  
15 the department after receiving a formal request filed by  
16 the vendor may accept reports at intervals as would be more  
17 convenient to the taxpayer. Any vendor shall report whether  
18 the vendor sells ~~cigarettes, cigars, snuff or other tobacco~~  
19 nicotine products, as defined by W.S. 39-18-101(a)(xi), in  
20 this state to the department in the form and manner  
21 required by the department. The department may reject any  
22 report required under this paragraph of any vendor who does  
23 not comply with the ~~tobacco~~-nicotine sales reporting

1 requirements. Every person purchasing goods or services  
2 taxable by this article who does not pay the tax owed to a  
3 vendor shall, on or before the last day of each month, file  
4 a return showing the gross purchases made during the  
5 preceding month and remit all taxes due to the department.  
6 The return shall contain such information and be made in  
7 the manner as the department shall prescribe by rule and  
8 regulation. The department, by rule and regulation, may  
9 allow an extension for filing a return and paying any tax  
10 due, but no extension shall be granted for more than ninety  
11 (90) days;

12

13 **39-18-101. Definitions.**

14

15 (a) As used in this article:

16

17 (iv) "Wholesale purchase price" means the  
18 established price for which a manufacturer sells the  
19 ~~tobacco~~nicotine product to a wholesaler exclusive of any  
20 discount or other reduction;

21

22 (v) "Wholesaler" means any person who:

23

1 (A) Whether located within or without  
2 Wyoming, imports, sells or distributes ~~cigarettes, cigars,~~  
3 ~~snuff or other tobacco~~ nicotine products into this state  
4 for sale or resale;

5  
6 (B) Purchases ~~cigarettes, cigars, snuff or~~  
7 ~~other tobacco~~ nicotine products in this state for sale or  
8 resale;

9  
10 (ix) "Electronic cigarette" means any device  
11 that can be used to deliver aerosolized or vaporized  
12 nicotine or synthetic nicotine to the person using the  
13 device and includes any component, part and accessory of  
14 the device and any vapor material intended to be  
15 aerosolized or vaporized during the use of the device.  
16 "Electronic cigarette" includes, without limitation, any  
17 electronic cigar, electronic cigarillo, electronic pipe,  
18 electronic hooka, vapor pen and any similar product or  
19 device. "Electronic cigarette" does not include a battery  
20 or battery charger if sold separately from the electronic  
21 cigarette and does not include any product regulated as a  
22 drug or device by the United States food and drug

1 administration under subchapter V of the Food, Drug and  
2 Cosmetic Act;

3  
4 (x) "Vapor material" means any liquid solution  
5 or other material containing nicotine or synthetic nicotine  
6 that is depleted as an electronic cigarette is used. "Vapor  
7 material" includes liquid solution or other material  
8 containing nicotine or synthetic nicotine that is sold with  
9 or inside an electronic cigarette;

10

11 (xi) "Nicotine product" means electronic  
12 cigarettes and vapor material, and cigarettes, cigars,  
13 snuff and any other tobacco products.

14

15 **39-18-102. Administration; confidentiality.**

16

17 (b) The ~~tax~~taxes imposed by W.S. 39-18-103(a)(iii)  
18 and (v) shall be paid by the wholesaler. The wholesaler  
19 shall be entitled to retain four percent (4%) of any tax  
20 collected under W.S. 39-18-103(a)(iii) and (v).

21

22 **39-18-103. Imposition.**

23

1 (a) Taxable event. The following event shall  
2 constitute a taxable event under this article:

3  
4 (v) In addition to the other taxes imposed by  
5 this subsection, there is levied and assessed upon  
6 electronic cigarettes and vapor material purchased or  
7 imported into this state by wholesalers for resale an  
8 excise tax at the rate imposed by W.S. 39-18-104(g);

9  
10 (vi) The tax imposed by paragraph (v) of this  
11 subsection shall also be imposed upon the use or storage by  
12 consumers of electronic cigarettes and vapor material in  
13 this state, and upon those consumers, at the rate imposed  
14 by W.S. 39-18-104(g). This tax shall not apply if the tax  
15 imposed by paragraph (v) of this subsection has been paid.

16  
17 (b) Basis of tax. The state preempts the field of  
18 imposing taxes on ~~eigarettes~~nicotine products and no city,  
19 town or county shall impose, levy or collect taxes upon the  
20 sale, occupation or privilege of selling ~~eigarettes~~  
21 nicotine products. This subsection shall not be construed  
22 to prevent a city, town or county from regulating the  
23 public use of nicotine products.

1

2 (c) Taxpayer. The following taxpayers are liable for  
3 the tax imposed by this article:

4

5 (v) In addition to the other taxes imposed by  
6 this subsection, there is levied and assessed upon  
7 electronic cigarettes and vapor material purchased or  
8 imported into this state by wholesalers for resale an  
9 excise tax at the rate imposed by W.S. 39-18-104(g);

10

11 (vi) The tax imposed by paragraph (v) of this  
12 subsection shall also be imposed upon the use or storage by  
13 consumers of electronic cigarettes and vapor material in  
14 this state, and upon those consumers, at the rate imposed  
15 by W.S. 39-18-104(g). This tax shall not apply if the tax  
16 imposed by paragraph (v) of this subsection has been paid.

17

18 **39-18-104. Taxation rate.**

19

20 (g) In addition to the other taxes imposed by this  
21 section, there is levied and assessed upon electronic  
22 cigarettes and vapor material purchased or imported into  
23 this state by wholesalers for resale, an excise tax at the



1 rate of fifteen percent (15%) of the wholesale purchase  
2 price at which the electronic cigarettes and vapor material  
3 are purchased by wholesalers from manufacturers.

4  
5 (h) The tax imposed by subsection (g) of this section  
6 shall also be imposed upon the use or storage by consumers  
7 of electronic cigarettes and vapor material in this state,  
8 and upon those consumers, at the rate of seven and one-half  
9 percent (7.5%) of the retail price of the electronic  
10 cigarettes and vapor material. This tax shall not apply if  
11 the tax imposed by subsection (g) of this section has been  
12 paid.

13  
14 **39-18-106. Licensing; permits.**

15  
16 (a) Every wholesaler, cigarette importer and  
17 cigarette manufacturer who sells or offers to sell  
18 ~~cigarettes, cigars, snuff or other tobacco~~ nicotine  
19 products in this state must have a license to do so issued  
20 by the department. No license or renewal of a license shall  
21 be granted under this section unless the wholesaler states  
22 in writing, under penalty for false swearing, that he shall  
23 comply fully with W.S. 9-4-1201 through 9-4-1209. The

1 license fee is ten dollars (\$10.00) per year or fraction  
2 thereof and is valid through June 30 in each year. The  
3 license will be granted only to wholesalers who own or  
4 operate the place from which sales are made and additional  
5 licenses must be obtained for each separate location. The  
6 licenses are transferable pursuant to rules and regulations  
7 promulgated by the department.

8

9 **39-18-107. Compliance; collection procedures.**

10

11 (a) Returns and reports. The following shall apply:

12

13 (i) Each wholesaler shall keep complete and  
14 accurate records of all ~~eigarettes, cigars, snuff or other~~  
15 ~~tobacco~~-nicotine products purchased and sold for three (3)  
16 years. The records shall be in the form prescribed by the  
17 department and will be available for inspection by the  
18 department at any reasonable time. The department may  
19 investigate and examine the stock of cigarettes upon any  
20 premises where they are stored or sold;

21

22 (ii) On or before the tenth day of each calendar  
23 quarter, every consumer who, during the preceding calendar

1 quarter, has acquired title to or possession of ~~eigars,~~  
2 ~~snuff or other tobacco~~ nicotine products for use or storage  
3 in this state, upon which products the tax imposed by W.S.  
4 39-18-103(a)(iii) and (v) has not been paid, shall file a  
5 return with the department showing the quantity of such  
6 products so acquired. The return shall be made upon a form  
7 furnished and prescribed by the department and shall  
8 contain such other information as the department may  
9 require. The return shall be accompanied by a remittance  
10 for the full unpaid tax liability shown by it.

11

12 (c) Timelines. The following shall apply:

13

14 (i) No later than the twentieth day of the month  
15 following the sale of cigarettes, or the month following  
16 the end of the calendar quarter for ~~eigars, snuff or other~~  
17 ~~tobacco~~ nicotine products other than cigarettes, each  
18 wholesaler shall return to the department the following  
19 information on forms furnished by the department:

20

21 (D) The amount paid by the wholesaler to  
22 the manufacturer for ~~eigars, snuff or other tobacco~~  
23 nicotine products other than moist snuff. For sales of

1 moist snuff, the return shall include the net weight as  
2 listed by the manufacturer. The department shall compile  
3 the information provided under this subparagraph with  
4 respect to moist snuff tobacco sales on an annual basis and  
5 shall report the information to the legislature every five  
6 (5) years beginning on July 1, 2014.

7

8 **39-18-108. Enforcement.**

9

10 (c) Penalties. The following shall apply:

11

12 (ii) The following acts are misdemeanors  
13 punishable by a fine of not more than one hundred dollars  
14 (\$100.00) or imprisonment in the county jail for not more  
15 than six (6) months or both:

16

17 (A) Selling or distributing ~~cigarettes,~~  
18 ~~eigars, snuff or other tobacco~~ nicotine products as a  
19 wholesaler without a license;

20

21 (vi) Any person who purchases any ~~tobacco~~  
22 nicotine product for resale in this state from other than a  
23 licensed wholesaler is liable for the tax and any penalties

1 and interest imposed under this paragraph as if he were a  
2 wholesaler under this act and shall pay an additional  
3 penalty of twenty-five percent (25%) of any tax due. Any  
4 wholesaler or other person who fails to file any return or  
5 to pay any tax within the time required or permitted by  
6 this subsection shall be subject to a penalty of five  
7 percent (5%) of the amount of the tax due, plus one percent  
8 (1%) of the tax for each month of delinquency or fraction  
9 thereof. The department may waive all or any part of this  
10 penalty for good cause shown;

11

12 (vii) Any person who does any act prohibited by  
13 this article, or omits, neglects or refuses to comply with  
14 any duty imposed upon him by this article, or causes not to  
15 be done any of the things required by this article, or does  
16 any act prohibited by this article, may, in addition to any  
17 other penalty provided by this article, be liable for a  
18 penalty of not to exceed one thousand dollars (\$1,000.00)  
19 or five (5) times the retail value of the ~~tobacco~~nicotine  
20 product at issue, whichever is lesser, to be recovered in a  
21 civil action;

22

1           (ix) Any fixture, equipment or other personal  
2 property used by a ~~tobacco~~nicotine product wholesaler or  
3 retailer to commit any of the following acts shall be  
4 subject to forfeiture to the state, if the retail value of  
5 the cigarettes involved or any tax involved in the act  
6 exceeds five hundred dollars (\$500.00):

7

8           **39-18-111. Distribution.**

9

10           (b) The revenue received from the ~~tax~~taxes imposed  
11 by W.S. 39-18-104(c), ~~and~~(d), (g) and (h) shall be  
12 deposited in the general fund.

13

14           **Section 2.** This act is effective July 1, 2020.

15

16

(END)