

Amendment No. 937

Assembly Amendment to Assembly Bill No. 535	(BDR 32-1242)
Proposed by: Assembly Committee on Taxation	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 535 (§ 6.7).
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ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BJF/BJE



Date: 5/27/2019

A.B. No. 535—Revises provisions relating to cigarettes and other tobacco products. (BDR 32-1242)



ASSEMBLY BILL NO. 535—COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE OFFICE OF FINANCE
IN THE OFFICE OF THE GOVERNOR)

MAY 20, 2019

Referred to Committee on Taxation

SUMMARY—Revises provisions relating to cigarettes and other tobacco products.
(BDR 32-1242)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Executive Budget.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to tobacco products; increasing the annual license fee for a license to engage in business as a wholesale dealer of cigarettes; establishing an annual license fee for a license to engage in certain other businesses related to cigarettes or other tobacco products; revising provisions governing the ~~imposition and payment of the tax on other tobacco products;~~ **use of the money collected from certain annual license fees;** and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 ~~Existing law requires a manufacturer of cigarettes, a wholesale dealer of cigarettes, a~~
2 ~~retail dealer of cigarettes, a wholesale dealer of other tobacco products and a retail dealer of~~
3 ~~other tobacco products to obtain a license to sell cigarettes or other tobacco products. (NRS~~
4 ~~370.080, 370.445) Under existing law, a wholesale dealer of cigarettes is required to pay an~~
5 ~~annual license fee of \$150 but there is no fee for a license as a manufacturer of cigarettes, a~~
6 ~~retail dealer of cigarettes, a wholesale dealer of other tobacco products or a retail dealer of~~
7 ~~other tobacco products. (NRS 370.150, 370.445) Sections 1 and 3] **Before the adoption of**~~
8 ~~**Senate Bill No. 81 of this legislative session, existing law: (1) provided for the licensing of**~~
9 ~~**persons engaged in the manufacture, sale or distribution of cigarettes separately from**~~
10 ~~**the licensing of persons engaged in the manufacture, sale or distribution of other tobacco**~~
11 ~~**products; and (2) required a wholesale dealer of cigarettes to pay an annual license fee of**~~
12 ~~**\$150 but prohibited the Department of Taxation from charging a fee for a license as a**~~
13 ~~**manufacturer of cigarettes, a retail dealer of cigarettes, a wholesale dealer of other**~~
14 ~~**tobacco products or a retail dealer of other tobacco products. (NRS 370.080, 370.150,**~~
15 ~~**370.445) Sections 2-34 of Senate Bill No. 81 established uniform provisions for the**~~
16 ~~**licensing of persons engaged in the manufacture, distribution or sale of cigarettes and**~~
17 ~~**other tobacco products. (Chapter 118, Statutes of Nevada 2019) Section 28 of Senate Bill**~~
18 ~~**No. 81 maintained the \$150 annual license fee for a wholesale dealer of cigarettes and the**~~
19 ~~**prohibition on charging an annual fee for the other types of licenses. Section 6.7 of this**~~
20 ~~**bill ~~+~~ amends section 28 of Senate Bill No. 81 to:**~~ (1) increase from \$150 to \$650 the annual
21 license fee for a wholesale dealer of cigarettes; and (2) establish an annual license fee of

22 \$1,000 for a license as a manufacturer of cigarettes, an annual license fee of \$50 for a license
 23 as a retail dealer of cigarettes, an annual license fee of \$650 for a license as a wholesale dealer
 24 of other tobacco products and an annual license fee of \$50 for a license as a retail dealer of
 25 other tobacco products. **Section ~~6~~ 1.5** of this bill requires the **proceeds of the annual license**
 26 **fees established by section ~~3~~ for wholesale dealers of other tobacco products and retail**
 27 **dealers of tobacco products ~~6.7~~ to be ~~distributed in the same manner as the tax imposed by~~**
 28 **existing law on other tobacco products. ~~used by the Department to administer and enforce~~**
 29 **certain existing laws governing cigarettes and other tobacco products. Section 8** of this
 30 bill provides that the provisions of this bill ~~related to the annual license fees~~ become
 31 effective on October 1, 2019. **Section 6.3 of this bill makes a conforming change.**
 32 ~~[— Existing law imposes a tax upon the purchase or possession of other tobacco products by~~
 33 ~~a customer in this State at a rate of 30 percent of the wholesale price of those products. (NRS~~
 34 ~~370.450) Under existing law, the tax is required to be collected and paid by the wholesale~~
 35 ~~dealer of other tobacco products after the sale or distribution of such products by the~~
 36 ~~wholesale dealer, and the wholesale dealer is required to submit a report to the Department of~~
 37 ~~the other tobacco products that were sold by the wholesale dealer during the previous month.~~
 38 ~~(NRS 370.465) Section 2 of this bill: (1) revises the definition of “wholesale dealer” for the~~
 39 ~~purpose of determining whether a person is a wholesale dealer of other tobacco products; and~~
 40 ~~(2) revises the definition of “wholesale price” for the purpose of calculating the amount of the~~
 41 ~~tax on other tobacco products by specifically providing that certain amounts are not subtracted~~
 42 ~~from the wholesale price on which the tax is required to be paid. Section 4 of this bill revises~~
 43 ~~provisions governing the collection and payment of the tax on other tobacco products to~~
 44 ~~require the tax to be imposed: (1) at the time the other tobacco products are first possessed or~~
 45 ~~received for sale or disposition in this State by a wholesale dealer who maintains a place of~~
 46 ~~business in this State; (2) at the time the other tobacco products are sold by a wholesale dealer~~
 47 ~~who does not maintain a place of business in this State to a retail dealer or ultimate consumer~~
 48 ~~in this State; or (3) for other tobacco products manufactured, produced, fabricated, assembled,~~
 49 ~~processed, labeled or finished in this State, at the time the other tobacco products are sold in~~
 50 ~~this State to a wholesale dealer, a retail dealer or ultimate consumer. Under sections 4 and 5 of~~
 51 ~~this bill, the tax is required to be paid to the Department not later than 20 days after the end of~~
 52 ~~the month in which the tax is imposed.~~
 53 ~~— Sections 7 and 8 of this bill provide that the revisions to the provisions of existing law~~
 54 ~~governing the imposition and payment of the tax on other tobacco products become effective~~
 55 ~~on January 1, 2020, and apply to any other tobacco products purchased, received or sold by a~~
 56 ~~wholesale dealer before January 1, 2020, if the tax on those products has not been paid before~~
 57 ~~January 1, 2020. Under section 8, a wholesale dealer is required to remit the tax on those~~
 58 ~~products to the Department at the time that the wholesale dealer remits to the Department the~~
 59 ~~taxes due for the January 2020 period.]~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** ~~[NRS 370.150 is hereby amended to read as follows:~~
 2 ~~370.150 1. Each license issued by the Department is valid only for the~~
 3 ~~calendar year for which it is issued, and must be renewed annually.~~
 4 ~~2. [The] Except as otherwise provided in subsection 3, the Department shall~~
 5 ~~[not] charge [any license fees for a manufacturer’s or retail dealer’s license.~~
 6 ~~3. An] +~~
 7 ~~(a) For a license as a manufacturer, an annual license fee of \$1,000.~~
 8 ~~(b) For a license as a wholesale dealer, an annual license fee of [\$150 must be~~
 9 ~~charged for each wholesale dealer’s license.] \$650.~~
 10 ~~(c) For a license as a retail dealer, an annual license fee of \$50.~~
 11 ~~3. If [such] a license is issued at any time during the year other than on~~
 12 ~~January 1, except for the renewal of a delinquent license pursuant to subsection 5,~~

1 ~~the licensee shall pay a proportionate part of the annual fee for the remainder of the~~
 2 ~~year, but not less than 25 percent of the annual license fee.~~

3 ~~4. The fees for a [wholesale dealer's] license are due and payable on January~~
 4 ~~1 of each year. If the annual license fee is not paid by January 15, the license is~~
 5 ~~cancelled automatically.~~

6 ~~5. A [wholesale dealer's] license which is cancelled for nonpayment of the~~
 7 ~~annual license fee may be renewed at any time by the payment of the fee plus a 5~~
 8 ~~percent penalty thereon.] (Deleted by amendment.)~~

9 **Sec. 1.5. NRS 370.260 is hereby amended to read as follows:**

10 370.260 1. All taxes and license fees imposed by the provisions of NRS
 11 370.001 to 370.430, inclusive, and sections 2 to 34, inclusive, of Senate Bill No. 81
 12 of this session, less any refunds granted as provided by law, must be paid to the
 13 Department in the form of remittances payable to the Department.

14 2. The Department shall:

15 (a) As compensation to the State for the costs of collecting the taxes ~~and~~
 16 ~~license fees,~~ transmit each month the sum the Legislature specifies from the
 17 remittances made to it pursuant to subsection 1 during the preceding month to the
 18 State Treasurer for deposit to the credit of the Department. The deposited money
 19 must be expended by the Department in accordance with its work program.

20 (b) From the remittances of taxes made to it pursuant to subsection 1 during
 21 the preceding month, less the amount transmitted pursuant to paragraph (a),
 22 transmit each month the portion of the tax which is equivalent to 85 mills per
 23 cigarette to the State Treasurer for deposit to the credit of the Account for the Tax
 24 on Cigarettes in the State General Fund.

25 (c) Transmit the balance of the payments of taxes each month to the State
 26 Treasurer for deposit in the Local Government Tax Distribution Account created by
 27 NRS 360.660.

28 (d) Report to the State Controller monthly the amount of collections ~~of~~ of taxes
 29 and license fees.

30 3. The money deposited pursuant to paragraph (c) of subsection 2 in the Local
 31 Government Tax Distribution Account is hereby appropriated to Carson City and to
 32 each of the counties in proportion to their respective populations and must be
 33 credited to the respective accounts of Carson City and each county.

34 **4. All license fees remitted to the Department pursuant to subsection 1 must**
 35 **be deposited with the State Treasurer for credit to the Department and used by the**
 36 **Department to administer and enforce the provisions of this chapter.**

37 **Sec. 2. [NRS 370.440 is hereby amended to read as follows:**

38 ~~370.440 As used in NRS 370.440 to 370.503, inclusive, unless the context~~
 39 ~~otherwise requires:~~

40 ~~1. "Alternative nicotine product" has the meaning ascribed to it in NRS~~
 41 ~~370.003.~~

42 ~~2. "Other tobacco product" has the meaning ascribed to it in NRS 370.0318.~~

43 ~~3. "Retail dealer" means any person who is engaged in selling other tobacco~~
 44 ~~products.~~

45 ~~4. "Sale" means any transfer, exchange, barter, gift, offer for sale, or~~
 46 ~~distribution for consideration of other tobacco products.~~

47 ~~5. "Ultimate consumer" means a person who purchases one or more other~~
 48 ~~tobacco products for his or her household or personal use and not for resale.~~

49 ~~6. "Wholesale dealer" means any person who:~~

50 ~~(a) [Brings or causes to be brought into] **Maintains a place of business in this**~~
 51 ~~State, **purchases** other tobacco products [purchased] from the manufacturer or a~~
 52 ~~wholesale dealer, and [who stores,] **possesses, receives, sells or otherwise disposes**~~

1 of such other tobacco products to ~~wholesale dealers or retail dealers~~ within this
2 State;

3 ~~— (b) Does not maintain a place of business in this State and sells or otherwise~~
4 ~~disposes of other tobacco products by any means, including, without limitation,~~
5 ~~through an Internet website, to wholesale dealers, retail dealers or ultimate~~
6 ~~consumers within this State; or~~

7 ~~— (c) Manufactures, [or] produces, fabricates, assembles, processes, labels or~~
8 ~~finishes other tobacco products within this State, [and who sells or distributes such~~
9 ~~other tobacco products within this State to other wholesale dealers, retail dealers or~~
10 ~~ultimate consumers; or~~

11 ~~— (c) Purchases other tobacco products solely for the purpose of bona fide resale~~
12 ~~to retail dealers or to other persons for the purpose of resale only.]~~

13 ~~7. “Wholesale price” means:~~

14 ~~— (a) Except as otherwise provided in paragraph (b), the established price] the~~
15 ~~total amount for which other tobacco products are sold to a wholesale dealer~~
16 ~~[before], valued in money, without any deduction on account of any of the~~
17 ~~following:~~

18 ~~— (a) A trade discount, cash discount, special discount or deal, cash rebate or~~
19 ~~any other reduction [is made.] from the regular selling price.~~

20 ~~— (b) [For] The cost of materials used, labor or service cost, interest charged,~~
21 ~~losses or any other expenses.~~

22 ~~— (c) The cost of transportation of the other tobacco products [sold to a retail~~
23 ~~dealer or an ultimate consumer by a wholesale dealer described in paragraph (b) of~~
24 ~~subsection 6, the established price for which the other tobacco product is sold to the~~
25 ~~retail dealer or ultimate consumer] before [any discount or other reduction is made.]~~
26 ~~their purchase.~~

27 ~~— (d) Any services that are part of the sale, including, without limitation,~~
28 ~~shipping, freight, warehousing, customer service or any other service related to~~
29 ~~the sale.~~

30 ~~— (e) The amount of any tax, not including any excise tax, imposed by the~~
31 ~~United States upon or with respect to other tobacco products.] (Deleted by~~
32 ~~amendment.)~~

33 **Sec. 3.** [NRS 370.445 is hereby amended to read as follows:

34 ~~— 370.445 1. The Department shall issue a license as a wholesale dealer or a~~
35 ~~license as a retail dealer to a person who submits a complete application on a form~~
36 ~~prescribed by the Department and who otherwise complies with the applicable~~
37 ~~provisions of this chapter and any regulations adopted by the Department. [The]~~
38 ~~Except as otherwise provided in subsections 5 and 7, the Department shall [not]~~
39 ~~charge [any fee for the issuance of a license pursuant to this subsection.]~~

40 ~~— (a) For a license as a wholesale dealer, an annual license fee of \$650.~~

41 ~~— (b) For a license as a retail dealer, an annual license fee of \$50.~~

42 ~~— 2. Except as otherwise provided in subsection 3, a person shall not engage in~~
43 ~~the business of a wholesale dealer or retail dealer in this State unless the person first~~
44 ~~obtains a license as a wholesale dealer or retail dealer from the Department. A~~
45 ~~person may be licensed as a wholesale dealer and as a retail dealer.~~

46 ~~— 3. A person who wishes to engage in the business of a retail dealer is not~~
47 ~~required to obtain a license as a retail dealer pursuant to this section if the person is~~
48 ~~licensed as a retail cigarette dealer pursuant to NRS 370.001 to 370.430, inclusive.~~

49 ~~— 4. The Department may refuse to issue or renew, or may suspend or revoke, a~~
50 ~~license issued pursuant to this section for any violation of the provisions of NRS~~
51 ~~370.440 to 370.503, inclusive.~~

52 ~~— 5. If a license is issued at any time during the year other than on January 1,~~
53 ~~except for the renewal of a delinquent license pursuant to subsection 7, the~~

~~licensee shall pay a proportionate part of the annual fee for the remainder of the year, but not less than 25 percent of the annual license fee.~~

~~6. The fees for a license are due and payable on January 1 of each year. If the annual license fee is not paid by January 15, the license is cancelled automatically.~~

~~7. A license which is cancelled for nonpayment of the annual license fee may be renewed at any time by the payment of the fee plus a 5 percent penalty thereon.~~

~~8. The Department may adopt regulations prescribing the form and contents of an application for, or which are otherwise necessary for the issuance of, a license pursuant to this section.~~

~~[6.] 9. Any person who violates any of the provisions of this section is guilty of a misdemeanor. (Deleted by amendment.)~~

Sec. 4. [NRS 370.450 is hereby amended to read as follows:

~~370.450 1. Except as otherwise provided in [subsection 2,] this section, there is hereby imposed upon the receipt, purchase or [possession] sale of other tobacco products [by a customer] in this State a tax of 30 percent of the wholesale price of those products.~~

~~2. The provisions of subsection 1 do not apply to those products which are:~~

~~(a) [Shipped out of the State for sale and use outside the State;~~

~~(b)] Displayed or exhibited at a trade show, convention or other exhibition in this State by a manufacturer or wholesale dealer who is not licensed in this State; or~~

~~[(c) Acquired]~~

~~(b) Distributed free of charge at a trade show, convention or other exhibition or public event in this State [, and which do not have significant value as determined by the Department by regulation.] if the distributor has obtained a license from the Department to distribute other tobacco products free of charge at the trade show, convention or other exhibition.~~

~~3. This tax [must be collected and]:~~

~~(a) Is imposed:~~

~~(1) At the time the other tobacco products are first possessed or received by a wholesale dealer who maintains a place of business in this State for sale or disposition in this State;~~

~~(2) At the time the other tobacco products are sold by a wholesale dealer who does not maintain a place of business in this State to a retail dealer or ultimate consumer in this State; or~~

~~(3) For other tobacco products manufactured, produced, fabricated, assembled, processed, labeled or finished in this State, at the time the other tobacco products are sold in this State to a wholesale dealer, retail dealer or ultimate consumer.~~

~~(b) Must be paid by the wholesale dealer to the Department, in accordance with the provisions of NRS 370.465 . [, after the sale or distribution of the other tobacco products by the wholesale dealer.] The wholesale dealer is entitled to retain 0.25 percent of the taxes collected to cover the costs of collecting and administering the taxes if the taxes are paid in accordance with the provisions of NRS 370.465.~~

~~4. Any wholesale dealer who sells or distributes other tobacco products without paying the tax provided for by this section is guilty of a misdemeanor.] (Deleted by amendment.)~~

Sec. 5. [NRS 370.465 is hereby amended to read as follows:

~~370.465 1. A wholesale dealer shall, not later than 20 days after the end of each month, submit to the Department a report on a form prescribed by the Department setting forth [each sale of] such information as the Department may~~

~~prescribe concerning other tobacco products [that the wholesale dealer made] on which the tax was imposed pursuant to NRS 370.450 during the previous month.~~

~~2. Each report submitted pursuant to this section on or after August 20, 2001, must be accompanied by the tax owed pursuant to NRS 370.450 for other tobacco products that were sold by the wholesale dealer during the previous month.~~

~~3. The Department may impose a civil penalty on a wholesale dealer who violates any of the provisions of this section as follows:~~

~~(a) For the first violation within 7 years, a [fine] civil penalty of \$1,000.~~

~~(b) For a second violation within 7 years, a [fine] civil penalty of \$5,000.~~

~~(c) For a third or subsequent violation within 7 years, revocation of the license of the wholesale dealer.] (Deleted by amendment.)~~

Sec. 6. ~~[NRS 370.500 is hereby amended to read as follows:~~

~~370.500 1. All amounts of tax and all license fees required to be paid to the State pursuant to NRS 370.440 to 370.490, inclusive, must be paid to the Department in the form of remittances payable to the Department.~~

~~2. The Department shall deposit these payments with the State Treasurer for credit to the Account for the Tax on Products Made From Tobacco, Other Than Cigarettes, in the State General Fund.] (Deleted by amendment.)~~

Sec. 6.3. Section 22 of Senate Bill No. 81 of this session is hereby amended to read as follows:

Sec. 22. An application for a license must:

1. Be made to the Department on forms prescribed by the Department.

2. Include the name and address of the applicant. If the applicant is a firm, association or partnership, the application must include the name and address of each of its members. If the applicant is a corporation, the application must include the names and addresses of the president, vice president, secretary and managing officer or officers.

3. Specify the location, by street and number, of the principal place of business of the applicant. In addition to specifying the principal place of business of the applicant pursuant to this subsection, an application for a license as a cigarette vending machine operator must list all cigarette vending machine locations for which the license is sought.

4. Specify the location, by street and number, of any place used by the applicant to distribute, ship, affix stamps to, warehouse or store cigarettes or other tobacco products and for which the license is sought.

5. Specify any other information the Department may require to carry out the provisions of this chapter.

6. Except as otherwise provided in NRS 370.001 to 370.430, inclusive, and sections 2 to 34, inclusive, of this act, ~~[if the application is for a license as a wholesale dealer of cigarettes,]~~ be accompanied by the required license fee. ~~[required by section 28 of this act.]~~

7. Be accompanied by a certified copy of the certificate required by NRS 602.010 or any renewal certificate required by NRS 602.035.

Sec. 6.7. Section 28 of Senate Bill No. 81 of this session is hereby amended to read as follows:

Sec. 28. 1. Each license issued by the Department is valid only for the calendar year for which it is issued, and must be renewed annually.

2. The Department shall not charge any license fees to operate a warehouse or distribution center or for a license as a ~~[manufacturer, wholesale dealer of other tobacco products, tobacco retail dealer or]~~ logistics company.

1 ~~3. An~~ Except as otherwise provided in subsections 3 and 5, the
2 Department shall charge:

3 (a) For a license as a manufacturer, an annual license fee of \$1,000.

4 (b) For a license as a wholesale dealer of cigarettes, an annual license
5 fee of ~~[\$150 must be charged for each license as a wholesale dealer of~~
6 ~~cigarettes.]~~ \$650.

7 (c) For a license as a wholesale dealer of other tobacco products, an
8 annual license fee of \$650.

9 (d) For a license as a tobacco retail dealer, \$50.

10 3. If ~~such~~ a license is issued at any time during the year other than
11 on January 1, except for the renewal of a delinquent license pursuant to
12 subsection 5, the licensee shall pay a proportionate part of the annual fee
13 for the remainder of the year, but not less than 25 percent of the annual
14 license fee.

15 4. The fees for a license ~~[as a wholesale dealer of cigarettes]~~ are due
16 and payable on January 1 of each year. If the annual license fee is not paid
17 by January 15, the license is cancelled automatically.

18 5. A license ~~[as a wholesale dealer of cigarettes]~~ which is cancelled
19 for nonpayment of the annual license fee may be renewed at any time by
20 the payment of the fee plus a 5 percent penalty thereon.

21 **Sec. 7.** ~~[NRS 370.450, as amended by section 4 of this act, applies to other~~
22 ~~tobacco products purchased, received or sold in this State before January 1, 2020, if~~
23 ~~the tax imposed by NRS 370.450, as that section existed before January 1, 2020,~~
24 ~~has not been paid before January 1, 2020. A wholesale dealer shall include other~~
25 ~~tobacco products described in this section in the report filed by the wholesale dealer~~
26 ~~with the Department of Taxation pursuant to NRS 370.465, as amended by section~~
27 ~~5 of this act, for the January 2020 reporting period and remit the tax required to be~~
28 ~~paid by this section with that report.]~~ (Deleted by amendment.)

29 **Sec. 8.** ~~[1.]~~ This ~~[section and sections 1, 3 and 6 of this] act ~~[become]~~~~
30 becomes effective on October 1, 2019.

31 ~~[2. Sections 2, 4, 5 and 7 of this act become effective on January 1, 2020.]~~