

ASSEMBLY BILL NO. 430—COMMITTEE ON REVENUE

MARCH 27, 2023

Referred to Committee on Revenue

SUMMARY—Revises provisions relating to cannabis. (BDR 32-893)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 taxation; revising the definition of “vapor products”; revising provisions governing the excise tax on cannabis; imposing a tax on the sale at wholesale of cannabis products by cannabis production facilities; requiring the Department of Taxation to adopt certain regulations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes a tax upon the receipt, purchase or sale of other tobacco products by a customer in this State at a rate of 30 percent of the wholesale price of those products. (NRS 370.450) Under existing law, vapor products, including electronic cigarettes, cigars, cigarillos, pipes, hookahs, vape pens and similar products or devices and their components are taxed as other tobacco products. (NRS 370.0318, 370.450) **Section 1** of this bill revises the definition of “vapor products” to exclude products which are primarily designed or intended to be used for vaporizing, ingesting, inhaling or otherwise introducing cannabis or cannabis products into the human body.

Existing law imposes an excise tax at the rate of 15 percent of the fair market value at wholesale upon each wholesale sale of cannabis by a medical cannabis cultivation facility or an adult-use cannabis cultivation facility to another cannabis establishment. (NRS 372A.290) Existing law imposes an excise tax at the rate of 10 percent of the sales price of each retail sale of cannabis or cannabis products by an adult-use cannabis retail store or cannabis consumption lounge. (NRS 372A.290) **Section 7** of this bill revises the excise tax on the wholesale sale of cannabis to apply the tax only to the first wholesale sale and to provide that the tax is at the rate of 15 percent of: (1) the fair market value at wholesale for sales made to an affiliate of the medical cannabis cultivation facility or adult-use cannabis cultivation facility; or (2) the sales price, if the sale is made to a cannabis establishment that is not an affiliate of the medical cannabis cultivation facility or adult-use cannabis cultivation facility.



Existing law provides for the licensing of adult-use cannabis production facilities and medical cannabis production facilities, which are authorized to acquire, possess, manufacture, deliver, transfer, supply or sell cannabis products to adult-use cannabis retail stores and medical cannabis dispensaries, respectively. (NRS 678A.060, 678A.205, 678B.210) **Section 7** imposes an excise tax upon each wholesale sale of cannabis products by a cannabis production facility at a rate of 15 percent of: (1) the fair market value at wholesale for sales made to an affiliate of the cannabis production facility; or (2) the sales price, if the sale is made to a cannabis establishment that is not an affiliate of the cannabis production facility. **Sections 5, 6 and 8** of this bill make conforming changes related to the imposition of the excise tax on cannabis production facilities. **Section 2** of this bill defines “cannabis production facility” for the purposes of the provisions of this bill relating to excise taxes. **Section 3** of this bill makes a conforming change to indicate the proper placement of **section 2** in the Nevada Revised Statutes.

Section 4 of this bill revises the definition of “sales price” to exclude the amount of any excise tax on cannabis or cannabis products.

Existing law requires the Department of Taxation to adopt regulations to establish procedures to determine the fair market value at wholesale of cannabis. (NRS 678B.640) **Section 9** of this bill requires the Department to also adopt regulations establishing procedures to determine the wholesale value of cannabis products and establishes certain additional requirements for the regulations adopted by the Department. **Section 9** requires the Cannabis Compliance Board to ensure that any computer software used for the seed-to-sale tracking of cannabis and cannabis products adopted by the Board includes a method to denote transfers of cannabis or cannabis products between affiliates.

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

Section 1. NRS 370.054 is hereby amended to read as follows:
370.054 “Vapor product”:

1. Means any noncombustible product containing nicotine or any other substance that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of the shape or size thereof, that can be used to produce vapor from nicotine or any other substance in a solution or other form, the use or inhalation of which simulates smoking.

2. Includes, without limitation:

(a) An electronic cigarette, cigar, cigarillo, pipe, hookah, or vape pen, or a similar product or device; and

(b) The components of such a product or device, whether or not sold separately, including, without limitation, vapor cartridges or other container of nicotine or any other substance in a solution or other form that is intended to be used with or in an electronic cigarette, cigar, cigarillo, pipe, hookah, or vape pen, or a similar product or device, atomizers, cartomizers, digital displays, clearomizers, tank systems, flavors, programmable software or other similar products or devices. As used in this paragraph, “component” means a product intended primarily or exclusively to be used with or



1 in an electronic cigarette, cigar, cigarillo, pipe, hookah, or vape pen,
2 or a similar product or device.

3 3. Does not include any product:

4 (a) Regulated by the United States Food and Drug
5 Administration pursuant to subchapter V of the Federal Food, Drug,
6 and Cosmetic Act, 21 U.S.C. §§ 351 et seq.

7 (b) Subject to the excise tax on cannabis or cannabis products
8 pursuant to NRS 372A.200 to 372A.380, inclusive.

9 (c) Purchased by a person who holds a current, valid medical
10 cannabis establishment license pursuant to chapter 678B of NRS.

11 *(d) Which is primarily designed or intended to be used for*
12 *vaporizing, ingesting, inhaling or otherwise introducing cannabis,*
13 *as defined in NRS 678A.085, or any cannabis product, as defined*
14 *in NRS 678A.120, into the human body.*

15 **Sec. 2.** Chapter 372A of NRS is hereby amended by adding
16 thereto a new section to read as follows:

17 *“Cannabis production facility” has the meaning ascribed to it*
18 *in NRS 678A.125.*

19 **Sec. 3.** NRS 372A.200 is hereby amended to read as follows:

20 372A.200 As used in NRS 372A.200 to 372A.380, inclusive,
21 *and section 2 of this act*, unless the context otherwise requires, the
22 words and terms defined in NRS 372A.205 to 372A.250, inclusive,
23 *and section 2 of this act* have the meanings ascribed to them in
24 those sections.

25 **Sec. 4.** NRS 372A.247 is hereby amended to read as follows:

26 372A.247 1. “Sales price” means the total amount for which
27 tangible property is sold, valued in money, whether paid in money
28 or otherwise, without any deduction on account of any of the
29 following:

30 (a) The cost of the property sold.

31 (b) The cost of materials used, labor or service cost, interest
32 charged, losses or any other expenses.

33 (c) The cost of transportation of the property before its purchase.

34 2. The total amount for which property is sold includes all of
35 the following:

36 (a) Any services that are a part of the sale.

37 (b) Any amount for which credit is given to the purchaser by the
38 seller.

39 3. “Sales price” does not include any of the following:

40 (a) Cash discounts allowed and taken on sales.

41 (b) The amount charged for property returned by customers
42 when the entire amount charged therefor is refunded either in cash
43 or credit, except that this exclusion does not apply in any instance
44 when the customer, to obtain the refund, is required to purchase



1 other property at a price greater than the amount charged for the
2 property that is returned.

3 (c) The amount of any tax, not including any manufacturers' or
4 importers' excise tax, imposed by the United States upon or with
5 respect to retail sales, whether imposed upon the retailer or the
6 consumer.

7 *(d) The amount of any tax imposed pursuant to NRS 372A.200*
8 *to 372A.380, inclusive, and section 2 of this act.*

9 **Sec. 5.** NRS 372A.250 is hereby amended to read as follows:

10 372A.250 "Taxpayer" means a:

- 11 1. Cannabis cultivation facility;
- 12 2. *Cannabis production facility;*
- 13 3. Adult-use cannabis retail store; or
- 14 ~~3.~~ 4. Cannabis consumption lounge.

15 **Sec. 6.** NRS 372A.285 is hereby amended to read as follows:

16 372A.285 1. Each cannabis cultivation facility shall submit a
17 report to the Department that includes the following information,
18 reported separately for each calendar month included in the report:

- 19 (a) The current production of the cannabis cultivation facility;
- 20 (b) Sales by product type;
- 21 (c) Prices by product type; and
- 22 (d) Such other information as the Department may require.

23 2. Each cannabis production facility shall submit a report to the
24 Department that includes the following information, reported
25 separately for each calendar month included in the report:

- 26 (a) The amount of cannabis purchased;
- 27 (b) The amount of cannabis products produced;
- 28 (c) Sales by product type;
- 29 (d) Prices by product type; and
- 30 (e) Such other information as the Department may require.

31 3. Each cannabis sales facility shall submit a report to the
32 Department that includes the following information, reported
33 separately for each calendar month included in the report:

- 34 (a) The amount of cannabis purchased by the cannabis sales
35 facility from cannabis cultivation facilities or cannabis production
36 facilities;
- 37 (b) Sales to consumers by product type;
- 38 (c) Prices by product type; and
- 39 (d) Such other information as the Department may require.

40 4. The Department shall adopt regulations prescribing the
41 frequency of the reports required pursuant to this section which
42 must be submitted not less frequently than quarterly and not more
43 frequently than monthly.

44 5. As used in this section:



1 (a) ~~“Cannabis production facility” has the meaning ascribed to~~
2 ~~it in NRS 678A.125.~~

3 ~~—(b)~~ “Cannabis products” has the meaning ascribed to it in
4 NRS 678A.120.

5 ~~[(e)]~~ (b) “Cannabis sales facility” has the meaning ascribed to it
6 in NRS 678A.130.

7 **Sec. 7.** NRS 372A.290 is hereby amended to read as follows:

8 372A.290 1. An excise tax is hereby imposed on ~~[(each)]~~ *the*
9 *first* wholesale sale in this State of cannabis by a medical cannabis
10 cultivation facility to another cannabis establishment at the rate of
11 15 percent of ~~[(the)]~~ :

12 (a) *The fair market value at wholesale of the cannabis [()], if the*
13 *sale is made to an affiliate of the medical cannabis cultivation*
14 *facility; or*

15 (b) *The sales price of the cannabis, if the sale is made to a*
16 *cannabis establishment that is not an affiliate of the medical*
17 *cannabis cultivation facility.*

18 ↪ The excise tax imposed pursuant to this subsection is the
19 obligation of the medical cannabis cultivation facility.

20 2. An excise tax is hereby imposed on ~~[(each)]~~ *the first*
21 wholesale sale in this State of cannabis by an adult-use cannabis
22 cultivation facility to another cannabis establishment at the rate of
23 15 percent of ~~[(the)]~~ :

24 (a) *The fair market value at wholesale of the cannabis [()], if the*
25 *sale is made to an affiliate of the adult-use cannabis cultivation*
26 *facility; or*

27 (b) *The sales price of the cannabis, if the sale is made to a*
28 *cannabis establishment that is not an affiliate of the adult-use*
29 *cannabis cultivation facility.*

30 ↪ The excise tax imposed pursuant to this subsection is the
31 obligation of the adult-use cannabis cultivation facility.

32 3. *An excise tax is hereby imposed on the first wholesale sale*
33 *in this State of a cannabis product by a cannabis production*
34 *facility to another cannabis establishment at the rate of 15 percent*
35 *of:*

36 (a) *The fair market value at wholesale of the cannabis*
37 *product, if the sale is made to an affiliate of the cannabis*
38 *production facility; or*

39 (b) *The sales price of the cannabis product, if the sale is made*
40 *to a cannabis establishment that is not an affiliate of the cannabis*
41 *production facility.*

42 ↪ *The excise tax imposed pursuant to this subsection is the*
43 *obligation of the cannabis production facility.*

44 4. An excise tax is hereby imposed on each retail sale in this
45 State of cannabis or cannabis products by an adult-use cannabis



1 retail store or cannabis consumption lounge at the rate of 10 percent
2 of the sales price of the cannabis or cannabis products. The excise
3 tax imposed pursuant to this subsection:

4 (a) Is the obligation of the seller of the cannabis or cannabis
5 product ~~[4.]~~ *but may be recovered from the purchaser.*

6 (b) Is separate from and in addition to any general state and
7 local sales and use taxes that apply to retail sales of tangible
8 personal property.

9 ~~[4.]~~ 5. The revenues collected from the excise tax imposed
10 pursuant to subsection 1 must be distributed:

11 (a) To the Cannabis Compliance Board and to local
12 governments in an amount determined to be necessary by the Board
13 to pay the costs of the Board and local governments in carrying out
14 the provisions of chapter 678C of NRS; and

15 (b) If any money remains after the revenues are distributed
16 pursuant to paragraph (a), to the State Treasurer to be deposited to
17 the credit of the State Education Fund.

18 ~~[5.]~~ 6. The revenues collected from the excise tax imposed
19 pursuant to subsection 2 must be distributed:

20 (a) To the Cannabis Compliance Board and to local
21 governments in an amount determined to be necessary by the Board
22 to pay the costs of the Board and local governments in carrying out
23 the provisions of chapter 678D of NRS; and

24 (b) If any money remains after the revenues are distributed
25 pursuant to paragraph (a), to the State Treasurer to be deposited to
26 the credit of the State Education Fund.

27 ~~[6.]~~ 7. For the purpose of subsections ~~[4.]~~ 5 and ~~[5.]~~ 6, a total
28 amount of \$5,000,000 of the revenues collected from the excise tax
29 imposed pursuant to subsection 1 and the excise tax imposed
30 pursuant to subsection 2 in each fiscal year shall be deemed
31 sufficient to pay the costs of all local governments to carry out the
32 provisions of chapters 678C and 678D of NRS. The Board shall, by
33 regulation, determine the manner in which local governments may
34 be reimbursed for the costs of carrying out the provisions of
35 chapters 678C and 678D of NRS.

36 ~~[7.]~~ 8. The revenues collected from the excise tax imposed
37 pursuant to ~~[subsection]~~ *subsections 3 and 4* must be paid over as
38 collected to the State Treasurer to be deposited to the credit of the
39 State Education Fund.

40 ~~[8.]~~ 9. As used in this section:

41 (a) “Adult-use cannabis cultivation facility” has the meaning
42 ascribed to it in NRS 678A.025.

43 (b) *“Affiliate” means a person who, directly or indirectly*
44 *through one or more intermediaries, controls, is controlled by or is*
45 *under common control with, a specified person. For the purposes*



1 *of this paragraph, control exists if any person directly or indirectly*
2 *owns, controls, holds with the power to vote or holds proxies*
3 *representing 51 percent or more of the voting securities of any*
4 *other person.*

5 (c) "Cannabis product" has the meaning ascribed to it in
6 NRS 678A.120.

7 ~~[(e)]~~ (d) "Local government" has the meaning ascribed to it in
8 NRS 360.640.

9 ~~[(d)]~~ (e) "Medical cannabis cultivation facility" has the meaning
10 ascribed to it in NRS 678A.170.

11 ~~[(e)]~~ (f) "Medical cannabis establishment" has the meaning
12 ascribed to it in NRS 678A.180.

13 ~~[(f)]~~ (g) "Wholesale sale" means ~~[(a)]~~ *the first* sale or transfer of
14 cannabis by a cannabis cultivation facility *or a cannabis product by*
15 *a cannabis production facility* to another cannabis establishment.
16 ~~[The term does not include a transfer of cannabis by a cannabis~~
17 ~~cultivation facility to another cannabis cultivation facility when both~~
18 ~~cannabis cultivation facilities share identical ownership.]~~

19 **Sec. 8.** NRS 387.1212 is hereby amended to read as follows:

20 387.1212 1. The State Education Fund is hereby created as a
21 special revenue fund to be administered by the Superintendent of
22 Public Instruction for the purpose of supporting the operation of the
23 public schools in this State. The interest and income earned on the
24 money in the Fund, excluding the direct legislative appropriation
25 from the State General Fund required by subsection 3, must, after
26 deducting any applicable charges, be credited to the Fund.

27 2. Money which must be deposited for credit to the State
28 Education Fund includes, without limitation:

29 (a) All money derived from interest on the State Permanent
30 School Fund, as provided in NRS 387.030;

31 (b) The proceeds of the tax imposed pursuant to NRS 244.33561
32 and any applicable penalty or interest, less any amount retained by
33 the county treasurer for the actual cost of collecting and
34 administering the tax;

35 (c) The proceeds of the tax imposed pursuant to subsection 1 of
36 NRS 387.195;

37 (d) The money identified in subsection 8 of NRS 120A.610;

38 (e) The portion of the money in each special account created
39 pursuant to subsection 1 of NRS 179.1187 which is identified in
40 paragraph (d) of subsection 2 of NRS 179.1187;

41 (f) The money identified in paragraph (d) of subsection 6 of
42 NRS 278C.250;

43 (g) The money identified in subsection 1 of NRS 328.450;

44 (h) The money identified in subsection 1 of NRS 328.460;



1 (i) The money identified in paragraph (a) of subsection 2 of
2 NRS 360.850;

3 (j) The money identified in paragraph (a) of subsection 2 of
4 NRS 360.855;

5 (k) The money required to be transferred to the State Education
6 Fund pursuant to NRS 362.100;

7 (l) The money required to be paid over to the State Treasurer for
8 deposit to the credit of the State Education Fund pursuant to
9 subsection 4 of NRS 362.170;

10 (m) The portion of the proceeds of the tax imposed pursuant to
11 subsection 1 of NRS 372A.290 identified in paragraph (b) of
12 subsection ~~4~~ 5 of NRS 372A.290;

13 (n) The proceeds of the tax imposed pursuant to ~~subsection~~
14 ~~subsections 3 and 4~~ of NRS 372A.290;

15 (o) The proceeds of the fees, taxes, interest and penalties
16 imposed pursuant to chapter 374 of NRS, as transferred pursuant to
17 subsection 3 of NRS 374.785;

18 (p) The money identified in subsection 5 of NRS 445B.640;

19 (q) The money identified in paragraph (b) of subsection 4 of
20 NRS 678B.390;

21 (r) The portion of the proceeds of the excise tax imposed
22 pursuant to subsection 1 of NRS 463.385 identified in paragraph (c)
23 of subsection 5 of NRS 463.385;

24 (s) The money required to be distributed to the State Education
25 Fund pursuant to subsection 3 of NRS 482.181;

26 (t) The portion of the proceeds of the fee imposed pursuant to
27 NRS 488.075 identified in subsection 2 of NRS 488.075;

28 (u) The portion of the net profits of the grantee of a franchise,
29 right or privilege identified in NRS 709.110;

30 (v) The portion of the net profits of the grantee of a franchise
31 identified in NRS 709.230;

32 (w) The portion of the net profits of the grantee of a franchise
33 identified in NRS 709.270;

34 (x) The money required to be distributed to the State Education
35 Fund pursuant to NRS 363D.290; and

36 (y) The direct legislative appropriation from the State General
37 Fund required by subsection 3.

38 3. In addition to money from any other source provided by law,
39 support for the State Education Fund must be provided by direct
40 legislative appropriation from the State General Fund in an amount
41 determined by the Legislature to be sufficient to fund the operation
42 of the public schools in this State for kindergarten through grade 12
43 for the next ensuing biennium for the population reasonably
44 estimated for that biennium. Money in the State Education Fund
45 does not revert to the State General Fund at the end of a fiscal year,



1 and the balance in the State Education Fund must be carried forward
2 to the next fiscal year.

3 4. Money in the Fund must be paid out on claims as other
4 claims against the State are paid.

5 **Sec. 9.** NRS 678B.640 is hereby amended to read as follows:

6 678B.640 **1.** The Department of Taxation shall adopt
7 regulations to establish procedures to determine the fair market
8 value at wholesale of cannabis ~~and~~ **and cannabis products. The**
9 **regulations shall:**

10 **(a) Provide that the fair market value of cannabis and**
11 **cannabis products:**

12 **(1) Will be calculated and published by the Department on**
13 **a quarterly basis not more than 30 days after the end of each**
14 **calendar quarter;**

15 **(2) Must be determined based on the sales price of the**
16 **cannabis or cannabis products; and**

17 **(3) Must be calculated using a weighted average, except for**
18 **seeds and immature plants, which must be calculated by unit.**

19 **(b) Prescribe any information required by the Department to**
20 **determine the fair market value at wholesale of cannabis or**
21 **cannabis products.**

22 **2. The Board shall ensure that any computer software used**
23 **for the seed-to-sale tracking of cannabis and cannabis products**
24 **adopted by the Board includes a method to denote transfers of**
25 **cannabis or cannabis products between affiliates.**

26 **3. The Board shall furnish the Department with such**
27 **information as the Department determines to be necessary to adopt**
28 **the regulations required by this section.**

29 **4. As used in this section, "affiliate" has the meaning**
30 **ascribed to it in NRS 372A.290.**

31 **Sec. 10.** 1. This section becomes effective upon passage and
32 approval.

33 2. Sections 1 to 9, inclusive, of this act become effective:

34 (a) Upon passage and approval for the purpose of adopting any
35 regulations and performing any other preparatory administrative
36 tasks that are necessary to carry out the provisions of this act;

37 (b) On January 1, 2024, for all other purposes.

