



SPONSOR: Rep. Schwartzkopf & Rep. Longhurst & Rep. Heffernan
& Sen. McBride & Sen. Henry & Sen. Poore
Reps. Baumbach, Mitchell

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 242

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO TOBACCO PRODUCT, INCLUDING VAPOR PRODUCT, TAXATION AND LICENSING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend Chapter 53, Title 30 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 53. Tobacco Product ~~Tax~~ Taxation and Licensing.

4 Section 2. Amend § 5301, Title 30 of the Delaware Code by making deletions as shown by strike through and
5 insertions as shown by underline as follows and by redesignating accordingly:

6 § 5301. Definitions.

7 As used in this chapter:

8 (1) "Affixing agent" means any tobacco products dealer or any other person within or without this State
9 appointed by the Department of Finance as an agent to affix the stamps to be used in paying the excise tax imposed by
10 this chapter. The first vendor who has possession of unstamped tobacco products in this State for sale in this State ~~shall~~
11 be is deemed an affixing agent.

12 (2) "Cigar" means any roll for smoking which is not a cigarette and which is made wholly or in part of
13 tobacco or any substitute therefor when the cover of the roll is made chiefly of tobacco.

14 (2) (3) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape,
15 and irrespective of the tobacco being flavored, ~~adulterated~~ adulterated, or mixed with any other ingredient, the wrapper
16 or cover of which is made of paper or any other substance or material except tobacco.

17 (5) (6) "Distributor" means any of the following:

18 a. Any person engaged in the business of selling tobacco products in this State who brings or causes to be
19 brought into this State from without the State any tobacco products for ~~sale~~; sale.

20 b. Any person who makes, ~~manufactures~~ manufactures, or fabricates tobacco products in this State for
21 sale in this ~~State~~; State.

22 c. Any person engaged in the business of selling tobacco products without this State who ships or
23 transports tobacco products to retail dealers in this State to be sold by those retail dealers.

24 (7) "Electronic smoking device" means a nonlighted, noncombustible device that employs a mechanical
25 heating element, battery, or circuit, regardless of shape or size, to produce aerosolized or vaporized nicotine for
26 inhalation into the body of an individual. "Electronic smoking device" includes a device that is manufactured,
27 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or any other similar product with
28 any other product name or descriptor.

29 (6) (8) "Moist snuff" means any finely cut, ~~ground~~ ground, or powdered tobacco that is not intended to be
30 ~~smoked but shall~~ smoked, but does not include any finely cut, ~~ground~~ ground, or powdered tobacco that is intended to
31 be placed in the nasal cavity.

32 (8) (10) "Place of business" means any place where tobacco products are sold, or where tobacco products are
33 bought or kept for the purpose of sale or consumption, including, so far as applicable, any vessel, airplane, ~~train~~ train,
34 or vending machine dispensing tobacco products.

35 (40) (12) "Sale" means in addition to its usual meaning, any sale, transfer, exchange, theft, barter, ~~gift~~ gift, or
36 offer for sale and distribution, in any manner or by any means whatsoever.

37 (12) (14) "Smokeless tobacco products" ~~mean~~ means all products, other than moist snuff, made primarily of
38 tobacco for individual consumption, not intended to be smoked.

39 (13) (15) "Tobacco products" means all ~~products, including but not limited to, cigarettes, cigars and pipe~~
40 ~~tobacco~~ products made primarily from tobacco for individual ~~consumption~~ consumption, including cigarettes, cigars,
41 pipe tobacco, and vapor products.

42 (14) (16) "Tobacco product tax stamps" means any adhesive stamps, tax meter ~~impression~~ impression, or
43 other stamps, ~~labels~~ labels, or prints authorized by the Department of Finance to evidence the payment of the tax
44 imposed by this chapter.

45 (20) "Vapor product" means any nicotine liquid solution or other material containing nicotine that is intended
46 to be used with or in an electronic smoking device.

47 (22) "Wholesale price" means the price for which a manufacturer sells a tobacco product to a distributor
48 exclusive of any discount, rebate, or other reduction.

49 Section 3. Amend § 5305, Title 30 of the Delaware Code by making deletions as shown by strike through and
50 insertions as shown by underline as follows:

51 § 5305. Levy of tax, limitation; exemption.

52 (a) An excise tax is imposed and assessed upon the sale or use of cigarettes within this State at the rate of ~~80.0~~
53 ~~mills~~ 105 mills per cigarette. This tax ~~shall apply~~ applies only once to the same pack of cigarettes. In the event the tax
54 computed according to this subsection results in a tax per pack or other unit of sale to which this tax applies involving a
55 fraction of a cent, the tax applicable to that pack or other unit ~~shall be~~ must be computed by rounding the tax to the next
56 higher whole cent.

57 (b) A tax is imposed and assessed upon the sale or use of ~~all tobacco products other than moist snuff and~~
58 ~~cigarettes, and including, but not limited to, smokeless tobacco products and cigars~~ all tobacco products, except those
59 tobacco products taxed under subsection (a) or (c) of this section, within this State at the rate of ~~15%~~ 30% of the wholesale
60 price on such products.

61 (c)(1) A tax is imposed and assessed upon the sale or use of moist snuff within this State at the rate of ~~54 cents~~ 92
62 cents per ounce and a proportionate tax at the like rate on any fractional parts of an ounce. ~~Such tax shall be~~ The per ounce
63 tax imposed under this subsection must be computed based on the net weight as listed by the manufacturer.

64 (2) An excise tax is imposed and assessed upon the sale or use of vapor products within this State at the rate of
65 5 cents per fluid milliliter of vapor product. The tax imposed by this paragraph (c)(2) of this section must be computed
66 based on the amount of vapor product in milliliters as listed by the manufacturer. All invoices for vapor products issued
67 by a manufacturer must state the amount of vapor product in milliliters.

68 (d) No tax imposed by this chapter ~~shall be~~ may be levied upon the possession or sale of tobacco products which
69 this State is prohibited from taxing under the Constitution or statutes of the United States.

70 (e) If the seller and purchaser have registered with the Department and obtained exemption certificates, the
71 following sales are exempt:

72 (1) Sales to veterans' organizations approved by the Department, if the tobacco products are being purchased
73 by the organization for gratuitous issue to veteran patients in federal, ~~state~~ state, or state-aided hospitals;

74 (2) Sales to patients in Veterans' Administration Hospitals by retail dealers located in such hospitals.

75 (f) ~~For purposes of this chapter:~~

76 (1) ~~The term "cigar" means any roll for smoking which is not a cigarette and which is made wholly or in part~~
77 ~~of tobacco or any substitute therefor when the cover of the roll is made chiefly of tobacco.~~

78 (2) ~~The term "wholesale price" shall mean the price for which a manufacturer sells a tobacco product to a~~
79 ~~distributor exclusive of any discount, rebate or other reduction; and~~ [Transferred to § 5301 of this title.]

80 Section 4. Amend § 5306, Title 30 of the Delaware Code by making deletions as shown by strike through and
81 insertions as shown by underline as follows:

82 § 5306. Liability for payment of tax.

83 The tax ~~shall be~~ must be paid and the stamp ~~shall be~~ must be affixed by the first person who has possession of
84 tobacco products in this State.

85 Section 5. Amend § 5307, Title 30 of the Delaware Code by making deletions as shown by strike through and
86 insertions as shown by underline as follows:

87 § 5307. License for sales of tobacco products.

88 ~~No person shall~~ A person may not engage in or conduct the business of manufacturing, purchasing, selling,
89 ~~consigning~~ consigning, or distributing tobacco products in this State or acting as an affixing agent without having first
90 obtained the appropriate license ~~or licenses~~ for that purpose as prescribed by this chapter.

91 Section 6. Amend § 5308, Title 30 of the Delaware Code by making deletions as shown by strike through and
92 insertions as shown by underline as follows:

93 § 5308. License charges.

94 (a) Wholesale license. — For each wholesale license issued there ~~shall be paid~~ must be paid to the Department of
95 Finance a fee of \$200. If a ~~wholesaler~~ holder of a wholesale license sells or intends to sell tobacco products at 2 or more
96 places of business, whether established or temporary, a separate license ~~shall be~~ is required for each place of business.

97 (b) Retail license. — For each retail license there ~~shall be paid~~ must be paid to the Department of Finance ~~a fee of~~
98 ~~\$5.00~~ a fee of \$50. If a ~~retail dealer~~ holder of a retail license sells or intends to sell tobacco products at 2 or more places of
99 business, whether established or temporary, or whether in the same building or not, a separate license ~~shall be~~ is required
100 for each place of business.

101 (c) Vending machine license. — Every vending machine from which tobacco products are offered for sale ~~shall~~
102 must have affixed thereto to it an identification stamp issued by the ~~State Tax Department~~ Department of Finance for which
103 a fee of ~~\$3.00 shall be charged~~ \$15 must be paid to the Department. ~~Where~~ If 2 or more vending machines are fastened
104 together, each set of mechanisms ~~shall require~~ must have a separate vending machine license.

105 (d) Affixing agent license. — For each affixing agent's license issued there ~~shall~~ must be paid to the Department of
106 Finance a fee of \$200, but only 1 license fee of \$200 ~~shall be~~ is required of any person who is both a wholesale dealer and
107 an affixing agent.

108 Section 7. Amend § 5309, Title 30 of the Delaware Code by making deletions as shown by strike through and
109 insertions as shown by underline as follows:

110 § 5309. Application for license.

111 (a) Every ~~person~~, person desiring to engage in the sale of tobacco products at wholesale, ~~retail~~ retail, or by tobacco
112 product vending machines within this State, except those persons who are exempt under § 5305(d) of this title, and every
113 person desiring to become an affixing agent shall file an application for a license with the Department of Finance.

114 (1) Every application for a tobacco product license ~~shall~~ must be made upon a form prescribed, ~~prepared~~
115 prepared, and furnished by the Department and ~~shall~~ must set forth the name under which the applicant transacts or
116 intends to transact ~~business~~, business; the location of the applicant's place of business, whether within or without the
117 ~~State~~, State; whether or not the applicant is the holder of a mercantile or business license in effect when the application
118 is made and, if so, the number of such license and the county for which such license was ~~issued~~ issued; and such other
119 information as the Department may require.

120 (2) If the applicant has or intends to have more than 1 place of business within the State, the application ~~shall~~
121 must state the location of each place of business.

122 (3) If the applicant is an association, the application ~~shall~~ must set forth the names and addresses of the
123 persons constituting the association; and if a corporation, the names and addresses of the principal officers thereof and
124 any other information prescribed by the Department for purposes of identification.

125 (4) The application ~~shall~~ must be signed and verified by oath or affirmation by the owner, if a natural person,
126 and, in the case of an association, by a member or partner thereof and, in the case of a corporation, by an executive
127 officer thereof, or some person specifically authorized to sign the application, to which ~~shall~~ must be attached the
128 written evidence of such person's authority.

129 (b) A single application may be filed for more than 1 license. The operator of ~~vending machines~~ tobacco product
130 vending machines shall list all locations at which the operator has machines at the time of the application. The operator may
131 also request extra licenses for new machines to be placed in new locations up to 10 percent of the listed locations on file
132 with the Department without submitting actual locations. As the new machines are placed on location for sale of tobacco
133 products, the operator shall immediately notify the Department and the operator shall become eligible to apply for licenses
134 for an additional 10 percent of the operator's new totals. Failure to notify the Department when and where new machines
135 are placed in operation ~~shall give~~ is cause for suspension and seizure of all licenses and tobacco product vending machines.

136 Section 8. Amend § 5312, Title 30 of the Delaware Code by making deletions as shown by strike through and
137 insertions as shown by underline as follows:

138 § 5312. Replacement of licenses.

139 Whenever any license issued under this chapter is defaced, ~~destroyed~~ destroyed, or lost, the Department of Finance
140 may issue a duplicate to the holder of the defaced, ~~destroyed~~ destroyed, or lost license by upon the payment of a fee of ~~\$1~~
141 \$10 by the holder.

142 Section 9. Amend § 5314, Title 30 of the Delaware Code by making deletions as shown by strike through and
143 insertions as shown by underline as follows:

144 § 5314. Transfer of license.

145 Any licensed dealer may transfer a license from 1 location to another or from 1 ~~cigarette vending machine~~ tobacco
146 product vending machine to another in accordance with the rules and regulations of the Department.

147 Section 10. Amend § 5315, Title 30 of the Delaware Code by making deletions as shown by strike through and
148 insertions as shown by underline as follows:

149 § 5315. Tobacco product tax stamps; affixing; amount; cancellation.

150 (a) Within the time prescribed, every authorized affixing agent shall affix to each pack of tobacco products
151 received by the agent and shall cancel Delaware tobacco product tax stamps to evidence payment of the tax imposed by this
152 chapter, unless such stamps have been affixed to the packs of tobacco products and cancelled before such authorized
153 affixing agent received them.

154 (b) Stamps in an amount not less than the tax thereon ~~shall be~~ must be affixed to each pack of tobacco products in
155 such manner that they will be visible to the purchaser. The authorized affixing agent, affixing such stamps, shall cancel
156 them immediately in such manner as may be prescribed by the Department.

157 Section 11. Amend § 5316, Title 30 of the Delaware Code by making deletions as shown by strike through and
158 insertions as shown by underline as follows:

159 § 5316. Design and sale of stamps.

160 (a) Delaware tobacco product tax stamps ~~shall be~~ must be adhesive stamps, tax meter ~~impressions~~ impressions, or
161 other stamps, ~~labels~~ labels, or prints of such designs and denominations as may be prescribed by the Department.

162 (b)(1) The Department shall make provisions for the sale of Delaware tobacco product tax stamps in such places
163 and at such times as it deems necessary.

164 (2) All stamps ~~shall be~~ must be paid for at the time of ~~purchase; however,~~ purchase.

165 (3) Notwithstanding paragraph (b)(2) of this section, an authorized affixing agent may enter into an agreement
166 with the Department of Finance providing for deferred payment for tobacco product stamps or for amounts added to
167 tobacco product tax meters during a month to a date not later than 30 days from the date of purchase or addition to a
168 ~~cigarette meter; provided, that~~ tobacco product tax meter if the affixing agent furnishes a bond to assure payment is

169 furnished in such amount as required by the Secretary of Finance; and provided, that Finance, and pays all amounts due
170 for the month of June shall be paid by June 30.

171 (4) ~~No persons shall~~ A person may not purchase tobacco product stamps from any person other than the
172 Department of Finance or its authorized agents, except in accordance with the Finance Department's regulations
173 relating to the stamping of floor stock.

174 Section 12. Amend § 5317, Title 30 of the Delaware Code by making deletions as shown by strike through and
175 insertions as shown by underline as follows:

176 § 5317. Time for affixing stamps; reporting requirements; violation.

177 (a) ~~Within 72 hours after receipt thereof and prior to the sale of such unstamped tobacco products, unless such~~
178 ~~tobacco products are exempt by other provisions of this chapter, the~~ The authorized affixing agent shall affix the required
179 amount of Delaware tobacco product tax stamps to unstamped tobacco products within 72 hours after receipt of the tobacco
180 products and prior to the sale of the tobacco products, unless the tobacco products are exempt by other provisions of this
181 chapter. Whenever any tobacco products are found in the place of business of the authorized affixing agent without the
182 stamps affixed as ~~herein~~ provided by this subsection, or not segregated or marked as having been received within the
183 preceding 72 hours, or not segregated or marked as exempt from requirement of Delaware tobacco product tax stamp under
184 other provisions of this chapter, a prima facie presumption ~~shall arise~~ arises that such tobacco products are possessed in
185 violation of this chapter.

186 (b) Between noon local time and midnight on each July 31 and December 31, ~~no~~ an affixing agent ~~shall~~ may not
187 have in its possession cigarettes without the stamps affixed as ~~herein~~ provided under subsection (a) of this section or not
188 segregated or marked as exempt from the requirement of Delaware tobacco product ~~tax stamps and~~ tax stamps. The affixing
189 agent shall accurately report to the Director of Revenue the quantity of cigarettes bearing stamps and the balance remaining
190 in any device used for affixation of stamps at that time. Failure to comply with this ~~provision shall be~~ subsection is prima
191 facie cause for suspension or revocation of licenses under § 5313 of this title.

192 Section 13. Amend § 5318, Title 30 of the Delaware Code by making deletions as shown by strike through and
193 insertions as shown by underline as follows:

194 § 5318. Appointment of stamp affixing agents; commission.

195 (a) The Department may appoint any manufacturer of tobacco products or wholesaler within this State and may
196 appoint any other person within or without this State as its agent to affix Delaware tobacco product tax stamps. Tax affixing
197 agents located outside the State must apply the stamps to all taxable tobacco products before bringing them into this State.

198 (b) Whenever the Department shall sell, ~~consign~~ consign, or deliver Delaware tobacco product tax stamps to any
199 authorized stamp affixing agent, such agent ~~shall be~~ is entitled to receive as compensation for such agent's services and
200 expenses a commission at the rate of 3/10 of 1 cent for affixing the tax stamp to each package of 20 or more cigarettes. The
201 commission is to be retained out of the moneys to be paid by such agent for such stamps purchased from the Department.

202 Section 14. Amend § 5321, Title 30 of the Delaware Code by making deletions as shown by strike through and
203 insertions as shown by underline as follows:

204 § 5321. Duties imposed on licensed tobacco ~~product~~ products dealers; lists.

205 (a) A licensed tobacco ~~product~~ products dealer ~~shall~~ may not sell tobacco products or purchase tobacco products
206 from any person required to be licensed who is not so licensed or is improperly licensed; except that a licensed wholesale
207 tobacco products dealer may sell tax paid tobacco products to a tobacco ~~product~~ products manufacturer's ~~representative~~;
208 ~~provided, that~~ representative if the manufacturer's representative presents valid proof that the representative is a bona fide
209 sales representative of the tobacco ~~product~~ products manufacturer.

210 (b) All holders of wholesale licenses shall maintain at every licensed location a list of the names and license
211 numbers or holders of wholesale and retail licenses to whom tobacco products are sold ~~and/or~~ or delivered.

212 (c) A licensed tobacco ~~product~~ products dealer ~~shall~~ may not sell smokeless tobacco products unless the
213 package for such smokeless tobacco product bears a legible legend required by any federal law, ~~rule~~ rule, or regulation
214 relating to the possible hazard involved in use of the product.

215 Section 15. Amend § 5322, Title 30 of the Delaware Code by making deletions as shown by strike through and
216 insertions as shown by underline as follows:

217 § 5322. Duties imposed on manufacturer's representatives.

218 A tobacco ~~product~~ products manufacturer's representative may sell only to a licensed tobacco ~~product~~ products
219 dealer, unless the representative obtains a dealer's license under this chapter and the rules and regulations promulgated
220 ~~thereunder~~ under this chapter. A manufacturer's representative who participates in promotional activities involving the sale
221 of tobacco products to persons other than licensees ~~shall be~~ is presumed to be acting as an agent of the licensee who
222 furnished the tobacco products.

223 Section 16. Amend § 5327, Title 30 of the Delaware Code by making deletions as shown by strike through and
224 insertions as shown by underline as follows:

225 § 5325. Late filing penalty.

226 Every stamp affixing agent shall file with the Department, on or before the twentieth day of each month, a report
227 in such form as the Secretary of Finance shall ~~prescribe, which~~ prescribe. The report ~~shall~~ must disclose the number of

228 tobacco products on hand on the first and last days of the calendar month immediately preceding the month in which such
229 report is required, together with such information concerning the amount of stamps purchased, used and on hand during the
230 report period, together with any other information for the report period that the Secretary of Finance shall prescribe. Any
231 tax affixing agent who ~~shall fail~~ fails to file any report on the day when it ~~shall be~~ is due shall forfeit, as a penalty for each
232 day thereafter until the report is filed, the sum of \$15 to be collected in the manner provided in this chapter for the
233 collection of penalties. The Secretary of Finance, if satisfied that the failure to comply with this section was excusable, may
234 remit the whole or any part of said penalty.

235 Section 17. Amend § 5326, Title 30 of the Delaware Code by making deletions as shown by strike through and
236 insertions as shown by underline as follows:

237 § 5326. Refunds.

238 Whenever any packs of tobacco products upon which stamps have been placed have been sold and shipped into
239 another state for sale or use therein, or have been sold to persons exempt under § 5305(d) of this title for resale to
240 authorized purchasers, or have been returned to the manufacturer for credit because they became unfit for use and
241 consumption or became unsalable by reason of fire, ~~flood~~ flood, or other causes beyond the control of the person who sold
242 the tobacco products and shipped them into another state for sale or for use therein or who sold the tobacco products to
243 persons exempt under § 5305(d) of this title for resale to authorized purchasers or who owned the tobacco products at the
244 time they were returned to manufacturer because they became unfit for use and consumption or unsalable by reason of fire,
245 ~~flood~~ flood, or other cause beyond the control of the person seeking the refund shall be entitled to a refund of the actual
246 amount of tobacco product tax paid with respect to such tobacco products. If the Department is satisfied that a refund is
247 proper, it shall certify the proposed amount of refund and thereafter shall issue to the person seeking the refund stamps
248 ~~and/or~~ or cash of sufficient value to cover the refund.

249 Section 18. Amend § 5327, Title 30 of the Delaware Code by making deletions as shown by strike through and
250 insertions as shown by underline as follows:

251 § 5327. Exempt sales.

252 The Department may promulgate regulations to relieve authorized affixing agents from affixing stamps to packs of
253 tobacco products to be sold and delivered to points outside the State for use outside the State, or to be sold to purchasers
254 designated as exempt under § 5305(d) of this title for resale to authorized purchasers. ~~All sales, however, shall be~~ However,
255 all sales are presumed to be taxable and the burden ~~shall be~~ is upon the person claiming an exemption to prove such
256 person's right ~~thereto~~ to the exemption.

257 Section 19. Amend § 5328, Title 30 of the Delaware Code by making deletions as shown by strike through and
258 insertions as shown by underline as follows:

259 § 5328. Invoices or delivery tickets and purchase orders required in certain cases.

260 ~~(a) Every person who shall possess or transport 10 or more packs or packages (or an equivalent amount~~
261 ~~unpackaged)~~ A person who possesses or transports 10 or more packs or packages, or an equivalent amount unpackaged, of
262 unstamped tobacco products upon the public highways, ~~roads~~ roads, or streets of this State for the purpose of delivery, ~~sale~~
263 sale, or disposition ~~shall be~~ is required to have in ~~such~~ the person's possession invoices or delivery tickets and purchase
264 orders for ~~such~~ the tobacco products which ~~shall~~ must show all of the following:

265 (1) ~~the~~ The true name and complete and exact address of the consignor or ~~seller,~~ seller.

266 (2) ~~the~~ The true name and complete and exact address of the person transporting the tobacco ~~products,~~
267 products.

268 (3) ~~the~~ The quantity and brand of the tobacco products transported and the true name and complete and exact
269 address of the person who has been licensed to assume the payment of the Delaware tax or the tax, if any, of the state
270 or foreign country at the point of ultimate ~~destination;~~ destination.

271 ~~(b) provided, that any~~ Notwithstanding subsection (a) of this section, any common carrier which has issued a bill
272 of lading for shipment of tobacco products and is without notice to itself or to any of its agents or employees that the
273 tobacco products are not stamped as required by this chapter ~~shall be~~ is deemed to have complied with this chapter.

274 ~~(c)~~ The absence of ~~such~~ proper invoices or delivery tickets and purchase orders ~~shall be~~ required under this section
275 is prima facie evidence that ~~such~~ the person is in violation of this chapter and subject to the penalties of this chapter.

276 Section 20. Amend § 5330, Title 30 of the Delaware Code by making deletions as shown by strike through and
277 insertions as shown by underline as follows:

278 § 5330. Bonds.

279 The Secretary, at the Secretary's discretion, in order to protect the revenues to be obtained under this chapter, may
280 require any person liable for the payment of ~~the tobacco product tax~~ a tax imposed under this chapter to furnish a bond
281 executed by a surety company authorized to do business in this State and approved by the State Insurance Commissioner as
282 to solvency and responsibility, in such amounts as the Secretary may fix, to secure the payment of any tax and interest or
283 penalties due or which may become due from ~~such taxpayer. In the event that~~ the person.

284 (1) If the Secretary determines that ~~such person is to file such a bond~~ a person must file a bond, the Secretary
285 shall give notice to such person to that effect, specifying the amount of the bond required.

286 (2) ~~The bond shall be~~ must be filed 5 days after the giving of ~~such notice~~ notice under paragraph (1) of this
287 section, unless within 5 days ~~thereof~~ of such notice a request in writing for a hearing before the Secretary of Finance
288 ~~shall be made,~~ is made.

289 (3) ~~at which hearing the necessity, propriety~~ At a hearing held under paragraph (2) of this section, the
290 Secretary of Finance shall review and determine the necessity, propriety, and amount of the bond ~~shall be reviewed and~~
291 ~~determined by the Secretary of Finance.~~

292 (4) ~~Such determination by the Secretary shall be~~ The Secretary's determination is final and shall be complied
293 with the person requesting the hearing must comply with the determination within 15 days after ~~the notice thereof~~ of
294 the determination is sent by the Secretary to the person requesting the hearing.

295 Section 21. Amend § 5341, Title 30 of the Delaware Code by making deletions as shown by strike through and
296 insertions as shown by underline as follows:

297 § 5341. Sale of unstamped tobacco products; refusal to permit inspection; counterfeited or reused stamps; penalty.

298 (a) ~~Whoever sells~~ A person may not sell any pack of tobacco products ~~which that~~ that does not have affixed ~~thereto~~ to
299 it the proper amount of Delaware tobacco product ~~tax stamps;~~ or tax stamps.

300 (b) ~~Whoever being a dealer refuses~~ A dealer may not refuse to permit the Department to examine such dealer's
301 books and records, stock of tobacco ~~products~~ products, or premises and equipment in order to verify the accuracy of the tax
302 payments imposed by ~~this chapter;~~ or this chapter.

303 (c) ~~Whoever~~ A person may not falsely or fraudulently ~~makes, forges, alters or counterfeits~~ make, forge, alter, or
304 counterfeit any stamp prescribed by the Department under this ~~chapter or causes or procures~~ chapter; or ~~cause or procure a~~
305 stamp to be falsely or fraudulently made, forged, ~~altered or counterfeited any stamp;~~ altered, or counterfeited; or knowingly
306 and wilfully ~~utters, publishes, passes or tenders~~ utter, publish, pass, or tender as true ~~any such~~ a false, altered, ~~forged~~ forged,
307 or counterfeited ~~stamp, or uses~~ stamp; or use more than once any stamp provided for and required by this chapter for the
308 purpose of evading the tax hereby imposed and ~~assessed;~~ assessed.

309 (d) ~~shall be~~ A person who violates this section may be fined not more than \$1,000, or imprisoned for not more than
310 1 year, or both.

311 Section 22. Amend § 5342, Title 30 of the Delaware Code by making deletions as shown by strike through and
312 insertions as shown by underline as follows:

313 § 5342. Possession of untaxed tobacco products.

314 (a) Except as authorized by this chapter, ~~no person, not being an affixing agent or not holding an unexpired~~
315 ~~exemption certificate, shall have in such person's possession~~ a person who is not an affixing agent or does not hold a valid,

316 unexpired exemption certificate may not possess within this State 10 or more packs or packages (or packages, or an
317 equivalent amount unpackaged) unpackaged amount of tobacco products upon which the Delaware tobacco product tax has
318 not been paid, or to which Delaware tobacco product tax stamps are not affixed in the amount required.

319 (b) Whenever any tobacco products are found at the place of business of a dealer, whether a stamp affixing agent
320 or not, and ~~such~~ the tobacco products do not have the proper amount of stamps affixed and cancelled, or it is determined
321 that the Delaware tobacco product tax has not been paid on such tobacco products, and the boxes, ~~cartons~~ cartons, or other
322 containers have not been marked as having been received within 72 hours, such dealer ~~shall be~~ may be fined not less than
323 \$100 nor more than \$1,000, or imprisoned not more than 90 days, or both.

324 (c) Notwithstanding the provisions of subsection (b) of this section, any violation of § 5317(b) of this title ~~shall be~~
325 is punishable as a violation of subsection (b) of this section, except that the Superior Court in and for the county in which
326 any element of the offense occurred ~~shall have~~ has exclusive original jurisdiction over offenses under this subsection.

327 Section 23. Amend § 5344, Title 30 of the Delaware Code by making deletions as shown by strike through and
328 insertions as shown by underline as follows:

329 § 5344. Liability joint and several as between owner and operator.

330 Whenever a duty or liability is imposed under this chapter on the owner or operator of tobacco product vending
331 machines, the owner and operator ~~shall be~~ is jointly and severally liable for the performance of such duty or satisfaction of
332 such liability.

333 Section 24. Amend § 5345, Title 30 of the Delaware Code by making deletions as shown by strike through and
334 insertions as shown by underline as follows:

335 § 5345. Police powers; arrests.

336 (a) Employees of the Department of Finance who are designated "tobacco product tax-enforcement officers" ~~shall~~
337 be are peace officers and ~~shall~~ have the same police power and authority as constables throughout the State.

338 (b) Such officers may arrest on view, except in private homes, without warrant, any person actually engaged in the
339 unlawful sale of unstamped tobacco products, or unlawfully having in such person's possession unstamped tobacco
340 products, contrary to this chapter.

341 Section 25. Amend § 5351, Title 30 of the Delaware Code by making deletions as shown by strike through and
342 insertions as shown by underline as follows:

343 § 5351. Forfeiture of tobacco products; disposal.

344 (a) In the event of a conviction under § 5342 of this title, the tobacco products which were the subject of the
345 violation ~~shall automatically be~~ are automatically forfeited to the State.

346 (b) The Department shall destroy any tobacco products forfeited under this section. The Department may, prior to
347 the destruction of any tobacco products, permit the true holder of the trademark rights in the tobacco product brand to
348 inspect such forfeited tobacco products in order to assist the Department in any investigation regarding such tobacco
349 products.

350 Section 26. Amend § 5352, Title 30 of the Delaware Code by making deletions as shown by strike through and
351 insertions as shown by underline as follows:

352 § 5352. Forfeiture of vehicle used in illegally transporting tobacco products.

353 Any vehicle used in the transporting of tobacco products in violation of this chapter ~~shall be~~ is subject to the
354 provisions of subchapter II of Chapter 23 of Title 11.

355 Section 27. Amend § 5354, Title 30 of the Delaware Code by making deletions as shown by strike through and
356 insertions as shown by underline as follows:

357 § 5354. Seizure of untaxed tobacco products and tobacco product vending machines.

358 Whenever any law-enforcement officer, the Department or its agents have reasonable grounds to believe that any
359 untaxed tobacco products are unlawfully in the State or that a vending machine is being used to hold untaxed tobacco
360 products, they may seize such tobacco products or tobacco product vending machines and hold them in custody pending a
361 decision of the Court. No tobacco products or tobacco product vending machines being held in custody shall be seized or
362 taken therefrom on any writ of replevin or like judicial process.

363 Section 28. Effective Dates.

364 (a)(1) Section 5305(a), (b), and (c)(1) of Title 30, as contained in Section 3 of this Act, takes effect on September
365 1, 2017, and establishes the rate of tax payable on tobacco products, other than vapor products.

366 (2)a. The tax imposed under subsection (a)(1) of this Section must be imposed on all of the following:

367 1. Stocks or inventories of tobacco products in possession of any person liable for the tax as of
368 midnight August 31, 2017, which as of that date have been affixed with any tobacco product tax stamp or
369 other indicia of payment of the tax.

370 2. Any tobacco product tax stamps purchased, but not yet affixed, before midnight August 31, 2017.

371 b. The amount of tax due under this subsection of this Section is equal to the tax determined at the rates
372 specified in § 5305(a), (b), and (c)(1) of Title 30, as contained in Section 3 of this Act, less the tax previously paid
373 with respect to such tobacco products, other than vapor products. The amount of tax due under this subsection of
374 this Section must be paid by December 31, 2017.

375 (b) Section 5301(7), (15), and (20) of Title 30, as contained in Section 2 of this Act; § 5305(c)(2) of Title 30, as
376 contained in Section 3 of this Act; § 5308(b) and (c) of Title 30, as contained in Section 6 of this Act; Section 8 of this Act
377 take effect on January 1, 2018.

378 (c) All other provisions or Sections of this Act take effect upon enactment.

SYNOPSIS

Vapor products, commonly known as e-cigarettes or vape products, are increasing in popularity. This Act adds a definition of vapor products to Chapter 53, Title 30 (regarding Tobacco Product Tax), includes vapor products as a type of tobacco product, and makes other amendments to the Chapter to require those who deal in vapor products to obtain licenses just like those who deal in traditional tobacco products and to impose a tax on vapor products. This Act also increases the tax on tobacco products. Specifically, this Act does the following related to tobacco product and vapor product taxes:

- (1) Increases the tax on cigarettes from \$1.60 to \$2.10 per 20 cigarette pack.
- (2) Increases the tax on all tobacco products other than vapor products, moist snuff, and cigarettes from 15% of the wholesale price to 30% of the wholesale price.
- (3) Imposes a tax of 5 cents per fluid millimeter of vapor product.
- (4) Increases the tax on moist snuff from 54 cents per ounce to 92 cents per ounce.

This Act also increases the fees charged for retail tobacco product licenses and tobacco product vending machine licenses. These license fees were originally established in 1964. The retail license fee was last increased in 1969. The vending machine license fee was last increased in 1976. The licensing fees adopted by this Act are similar to, or less than, the fees charged by other states in the region. By including vapor products in the definition of tobacco products, vapor product wholesalers, retailers, and vending machine operators must pay license fees at the same rates as for traditional tobacco products.

Section 28 establishes when the Sections of this Act take effect and how increases in existing taxes are to be handled.

Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.