



SPONSOR: Rep. Barbieri & Sen. Henry  
Reps. Heffernan, Jaques, Potter; Sens. Blevins, Lopez,  
Townsend

HOUSE OF REPRESENTATIVES  
147th GENERAL ASSEMBLY

HOUSE BILL NO. 138

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO TAXES ON TOBACCO PRODUCTS.

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 § 5301, Title 30 of the Delaware Code by making insertions as shown by underlining and  
2 deletions as shown by strike through as follows:

3           § 5301. Definitions.

4           As used in this chapter:

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

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

12           (3) "Consumer" means any person who has possession of tobacco products for any purpose other than  
13 transportation or sale.

14           (4) "Department of Finance" or "Department" means the Department of Finance.

15           (5) "Distributor" means:

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

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

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

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

(7)(6) "Package" or "pack" means, as to cigars, the smallest individual container which contains more than 1 cigar in or from which retail sales are normally made or intended to be made, and means, as to other tobacco products, the smallest individual container in or from which retail sales of such products are normally made or intended to be made.

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

(9)(8) "Retail dealer" means any person who purchases or receives stamped tobacco products from any source whatsoever for the purpose of sale to the ultimate consumer.

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

(11)(10) "Secretary of Finance" or "Secretary" means the Secretary of Finance or the Secretary's duly authorized designee; provided, that any such delegation of authority is consistent with Chapter 83 of Title 29.

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

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

(11) "Tobacco products" means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including but not limited to: cigarettes; cigars; little cigars; cheroots; stogies; periques; granulated plug cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco, fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other forms of tobacco; but does not include any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

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

(13)(15) "Tobacco product vending machine" means any mechanical device from which tobacco products are dispensed for a consideration.

(14) "Unstamped tobacco products" means any pack or package of tobacco products to which the proper amount of genuine Delaware tobacco product tax stamps has not been affixed.

(15) "Use" means the exercise of any right or power over tobacco products including the retention for any length of time for any purpose other than sale or transportation as allowed under the provisions of this chapter.

(16) "Vending machine operator" means any person who places 1 or more vending machines, owned, leased or operated by the person, at locations where tobacco products are sold therefrom. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, if the owner or lessee does not own or lease the machine and if the sole remuneration therefrom is a flat rental fee or a commission, based upon the number or value of tobacco products sold from the machine, or a combination of both.

(17) "Wholesale dealer" means any person who regularly sells tobacco products within this State to others who buy for the purpose of resale.

Section 2. Amend § 5305, Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5305. Levy of tax, limitation; exemption.

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

(b) A tax is imposed and assessed upon the sale or use of all tobacco products other than ~~moist snuff and~~ cigarettes, ~~and including, but not limited to, smokeless tobacco products and cigars~~ within this State at the rate of ~~15%~~ 30% of the wholesale price on such products. In each fiscal year, all receipts in excess of \$3.5 million collected under this subsection shall be transferred to The Delaware Health Fund created by § 137 of Title 16.

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

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

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

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

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

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

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

(2) The term "wholesale price" shall mean the price for which a manufacturer sells a tobacco product to a distributor exclusive of any discount, rebate or other reduction; ~~and~~.

Section 3. This Act shall become effective for tax periods beginning after December 31, 2013.

#### SYNOPSIS

This youth tobacco prevention bill eliminates the taxing disparity between moist snuff and "other tobacco products," not including cigarettes. It also raises the tax rate from 15% to 30% of the wholesale price, and designates tax revenue over \$3.5 million to The Delaware Health Fund. This bill does not affect taxes on cigarettes. This bill attempts to make moist snuff and other tobacco products less attractive to minors by making them more expensive, as well as designating a new funding source for The Delaware Health Fund, which promotes preventive care for Delawareans in order to detect and avoid adverse health conditions.