**South Carolina General Assembly**

120th Session, 2013-2014

**H. 4074**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. White, Cobb‑Hunter, K.R. Crawford, Clemmons, Simrill, Owens, Harrell, Howard, Sellers, Rutherford, Bannister, Mitchell, Delleney, Hardwick, G.M. Smith, Lucas, Bingham, Barfield, Finlay, Gagnon, Hamilton, Henderson, Herbkersman, H.L. Ott, Pitts, J.R. Smith, Stringer, Sandifer and Gambrell

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Introduced in the House on April 30, 2013

Currently residing in the House Committee on **Ways and Means**

Summary: Electronic cigarettes

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/30/2013 House Introduced and read first time ([House Journal‑page 186](file:///h:\HJ%20Archive\2013\04-30-13.docx))

4/30/2013 House Referred to Committee on **Ways and Means** ([House Journal‑page 186](file:///h:\HJ%20Archive\2013\04-30-13.docx))

5/14/2013 House Member(s) request name removed as sponsor: Allison, Forrester

5/15/2013 House Member(s) request name added as sponsor: Sandifer, Gambrell

**VERSIONS OF THIS BILL**

[4/30/2013](file:///p:\pprever\2013-14\4074_20130430.docx)

**A** **BILL**

TO AMEND ARTICLE 5, CHAPTER 21, TITLE 12, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TOBACCO, AMMUNITION, AND PLAYING CARDS, SO AS TO LEVY, ASSESS, AND COLLECT FIVE CENTS ON CERTAIN PRODUCTS CONTAINING NICOTINE THAT ARE COMMONLY USED IN ELECTRONIC CIGARETTES, TO LIMIT THE RATE TO NO MORE THAN TEN PERCENT OF THE EXCISE TAX AND SURCHARGE ON A PACK OF CIGARETTES, TO REQUIRE THAT AN INVOICE FOR SUCH PRODUCTS CLEARLY STATES THE AMOUNT OF PRODUCT INCLUDED, AND TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 21, Title 12 of the 1976 Code is amended to read:

“Article 5

Tobacco, Ammunition and Playing Cards

Section 12‑21‑610. Every person doing business within the State and engaging in the business of selling such articles or commodities as are named in this article shall, for the privilege of carrying on such business, and every person, firm, corporation, club or association within the State importing, receiving or acquiring from without the State or from any other source any such articles for use or consumption within the State shall for the privilege of so doing be subject to the payment of a license tax which shall be measured by and graduated in accordance with the volume of sales or acquisitions of such person within the State.

Section 12‑21‑615. (A) Any invoice for vapor products or tobacco‑derived products must include the actual fluid ounces, or its metric equivalent, of the consumable material contained in vapor products and the actual pounds or ounces of tobacco‑derived products, as applicable.

(B) A copy of all invoices for the purchase or sale of any tobacco products, vapor products, or tobacco‑derived products must be retained by any party that issues or receives the invoice for a period of three years, subject to the examination by the Department of Revenue.

Section 12‑21‑620. (A) There shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in this section the following amounts:

(1) upon all cigarettes made of tobacco or any substitute for tobacco, three and one‑half mills on each cigarette;

(2) upon all tobacco products, as defined in Section 12‑21‑800, five percent of the manufacturer’s price;

(3) upon all vapor products five cents per milliliter of consumable material in the vapor product. A proportionate tax at the same rate shall be levied, assessed, and collected on all fractional parts of a milliliter. However, the rate per milliliter may never exceed ten percent of the tax imposed on a pack of cigarettes, containing twenty cigarettes, imposed pursuant to item (1) and Section 12‑21‑625;

(4) upon all tobacco‑derived products, five cents per ounce. A proportionate tax at the same rate shall be levied, assessed, and collected on all fractional parts of an ounce. However, the rate per ounce may never exceed ten percent of the tax imposed on a pack of cigarettes, containing twenty cigarettes, imposed pursuant to item (1) and Section 12‑21‑625.

Manufacturer’s price as used in this section is the established price at which a manufacturer sells to a wholesaler.

(B) As used in this section, ‘cigarette’ means:

(1) any roll for smoking containing tobacco or any substitute for tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1) of this subsection.

Section 12‑21‑625. (A) Effective July 1, 2010, there is imposed a surtax on cigarettes subject to the tax imposed pursuant to Section 12‑21‑620(1) in an amount equal to two and one‑half cents on each cigarette.

(B) Notwithstanding another provision of law providing for the crediting of the revenues of license or other taxes, the revenue of the surtax imposed pursuant to this section must be credited as follows:

(1) five million dollars annually to the Medical University of South Carolina Hollings Cancer Center to be used for tobacco‑related cancer research;

(2) five million dollars annually to the Smoking Prevention and Cessation Trust Fund created pursuant to Section 11‑11‑230(A);

(3) the remaining annual revenue shall be deposited in the South Carolina Medicaid Reserve Fund created pursuant to Section 11‑11‑230(B).

(C) For all purposes of reporting, payment, collection, and enforcement, the surtax imposed by this section is deemed to be imposed pursuant to Section 12‑21‑620.

(D) For purposes of this section, ‘cigarette’ means:

(1) any roll for smoking containing tobacco or any substitute for tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1).

Section 12‑21‑650. Whenever in this article:

(1) Reference is made to manufactured tobacco products, vapor products, or tobacco‑derived products manufactured or imported to sell at a certain price, as the basis for computing the tax, it is intended to mean the ordinary, customary or usual price paid by the consumer for each individual cigar, package of cigarettes, package of smoking tobacco, vapor products, tobacco‑derived products, or other tobacco product;

(2) The retail or selling price is referred to as the basis for computing the amount of stamps required on any article, it is intended to mean the ordinary, customary or usual price paid by the consumer for each article less the amount of tax added thereto; and

(3) When any articles or commodities subject to tax under this article are given as prizes on punchboards, shooting galleries and under similar circumstances the tax shall be based on the ordinary selling price of such articles.

Section 12‑21‑660. Every person engaged in the business of purchasing, selling or distributing cigars, cheroots, stogies, cigarettes, snuff, ~~or~~ smoking or chewing tobacco, vapor products, or tobacco‑derived products at wholesale or through vending machines within the State and all cigarette, cigar, vapor products, tobacco‑derived products and tobacco product manufacturers’ sales representatives who conduct business in this State shall file with the Department of Revenue an application for a license permitting him to engage in such business. When such business is conducted at two or more separate places, a separate license for each place of business shall be required. A person whose business is conducted through vending machines needs to obtain only one license but shall maintain an up‑to‑date list of the location of each vending machine operated under this license and each manufacturer’s sales representative needs to obtain only one license. The provisions of this section shall not apply to persons who own and stock vending machines for use on their own premises.

Nothing in this section shall be construed as requiring a license for the privilege of buying, selling or distributing leaf tobacco nor shall this section apply to churches, schools or charitable organizations operating booths at state, county, or community fairs or to school or church entertainments.

Section 12‑21‑670. The application must be filed on a blank to be furnished by the department for that purpose and shall contain a statement including the name of the individual, partnership, (and in the case of each individual partner) or corporation, the post‑office address and the nature of the business. Upon receipt of an application for a license to engage in any business as set forth in Section 12‑21‑660, the department shall issue to the applicant a permanent license permitting the purchase, sale, and distribution of the articles designated therein. The license must be displayed at all times in some conspicuous place at or in the place of business where it may be easily seen by the public. The license provided for in this section must be obtained before engaging in the business in this State and is only valid for the person in whose name it is issued and only for the transaction of business at the place designated in the license.

Section 12‑21‑680. The department may reclassify a person as a wholesaler or retailer as may be just and proper according to the business done.

Section 12‑21‑690. No license issued permitting the sale and distribution of tobacco products shall be transferable and any license issued to any person who shall afterwards retire from business shall be null and void. But anyone may be allowed to operate for ten days after purchase of stock in bulk, pending granting of a license upon application made promptly upon such purchase.

Section 12‑21‑735. Each person or distributor of cigarettes, vapor products, or tobacco‑derived products taxable under this article, first receiving untaxed cigarettes, vapor products, or tobacco‑derived products for sale or distribution in this State, is subject to the tax imposed in Section 12‑21‑620. Each distributor required to pay the tax shall make a report to the department, in the form the department prescribes, of all cigarettes, vapor products, or tobacco‑derived products sold or disposed of in this State, and pay taxes due thereon not later than the twentieth day of the month next succeeding the month of the sale or disposition. However, any person or distributor making shipments of cigarettes, vapor products, or tobacco‑derived products to retail locations in and out of this State shall apply to the department for a license which enables them to purchase cigarettes, vapor products, or tobacco‑derived products free of tax, and report and pay tax as provided in this section on sales of cigarettes, vapor products, or tobacco‑derived products sold to locations in this State.

The department shall require bonds or statements of financial stability satisfactory to the department to cover possible losses resulting from failure to remit taxes due. When the return required by this section is timely filed and the taxes shown to be due are paid by the date specified in this section, the person or distributor may deduct three and one‑half percent of the tax due.

Section 12‑21‑750. All retail dealers in manufactured tobacco products, vapor products, tobacco‑derived products, shells, cartridges or playing cards purchasing or receiving such commodities from without the State, whether they shall have been ordered through a wholesaler or jobber in this State, by drop shipment or otherwise, shall, within five days after receipt of them, mail a duplicate invoice of all such purchases or receipts to the department. Failure to furnish duplicate invoices as required shall be a misdemeanor and, upon conviction, be punishable by a fine of not more than one hundred dollars for each offense or imprisonment for a period not exceeding thirty days.

Section 12‑21‑760. It is the intent of this article to require all manufacturers within this State, wholesale dealers, jobbers, distributors and retail dealers to affix the stamps provided for in this article to taxable commodities, but when the stamps have been affixed as required in this article no further or other stamp shall be required under the provisions of this chapter regardless of how often such articles may be sold or resold within this State.

Section 12‑21‑770. Every person, firm, corporation, club or association who sells, stores or receives for the purpose of distribution to any person, firm, corporation, club or association any shotgun or other shells, cartridges, manufactured tobacco products, vapor products, tobacco‑derived products, or playing cards otherwise taxable under the provisions of this chapter shall pay the tax at the rates provided in this article for the sale of such articles.

Section 12‑21‑780. Every distributor, on or before the twentieth day of each month, shall file with the South Carolina Department of Revenue a return on forms to be prescribed and furnished by the department showing the quantity and wholesale price of all tobacco products, vapor products, and tobacco‑derived products transported or caused to be transported into the State by him or manufactured or fabricated in the State for sale in this State. Every distributor authorized by the department to make returns and pay the tax on tobacco products, vapor products, or tobacco‑derived products sold, shipped, or delivered by him to any person in the State shall file a return showing the quantity and wholesale price of all products so sold, shipped, or delivered during the preceding calendar month. These returns must contain such further information as the department may require. Every distributor shall pay to the department with the filing of the return the tax on tobacco products, vapor products, and tobacco‑derived products for the month imposed under this article. When the distributor or dealer files the return and pays the tax within the time specified in this section, he may deduct therefrom three and one‑half percent of the tax due.

Section 12‑21‑785. Notwithstanding the provisions of Sections 12‑21‑735 and 12‑21‑780, the department may require returns and payments of this tax for other than monthly periods.

Section 12‑21‑800. As used in Sections 12‑21‑620 and 12‑21‑780, ‘tobacco products’ means cigars, cheroots, stogies, periques, granulated, plug cut, crimp 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 kinds and forms of tobacco, prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking, but does not include cigarettes, vapor products, or tobacco‑derived products.

Section 12‑21‑810. As used in Section 12‑21‑780, ‘distributor’ means:

(A) Any person engaged in the business of selling tobacco products, vapor products, or tobacco‑derived products in this State who brings or causes to be brought into this State from without the State any tobacco products, vapor products, or tobacco‑derived products for sale;

(B) Any person who makes, manufacturers, or fabricates tobacco products, vapor products, or tobacco‑derived products in this State for sale in this State;

(C) Any person engaged in the business of selling tobacco products, vapor products, or tobacco‑derived products without this State who ships or transports tobacco products, vapor products, or tobacco‑derived products to retailers in this State to be sold by those retailers.

Section 12‑21‑820. As used in this article:

(1) ‘Consumable material’ means any liquid nicotine solution or other material containing nicotine that is depleted as a vapor product is used.

(2) ‘Tobacco‑derived product’ means any noncombustible product derived from tobacco that contains nicotine and is intended for human consumption, whether chewed, absorbed, dissolved or ingested by any other means, but does not include a vapor product or any product regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

(3) ‘Vapor product’ means a noncombustible tobacco‑derived product containing nicotine, such as an electronic cigarette, that employs a mechanical heating element, battery or electronic circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in a vapor cartridge. ‘Vapor product’ includes any vapor cartridge that can be used with or in a vapor product and containing liquid nicotine solution, but does not include any product regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.”

SECTION 2. This act takes effect July 1, 2013.

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