

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
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LEGISLATION NO: \_0145-24\_

SPONSOR: Carl R. Slater

**TITLE: An Act Relating to the Health, Education, and Human Services, Law and Order, Budget and Finance, and Naabik'iyáti' Committees, and the Navajo Nation Council; Amending the Tobacco Products Tax at 24 N.N.C. §800- §810 and Enacting the Electronic Smoking Products Tax at 24 N.N.C. §1001- §1016**

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Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7586

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## **SUMMARY OF PROPOSED LEGISLATION**

Tracking No. 0145-24

DATE: July 2, 2024

**RE: AN ACT RELATING TO THE HEALTH, EDUCATION, AND HUMAN SERVICES, LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'IYATI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; AMENDING THE TOBACCO PRODUCTS TAX AT 24 N.N.C. §800 - §810 AND ENACTING THE ELECTRONIC SMOKING PRODUCTS TAX AT 24 N.N.C. §1001 - §1016**

### **PURPOSE OF THIS LEGISLATION:**

to amend the Tobacco Products Tax to increase the tax rate, to enact a new Electronic Smoking Products Act, and to establish a Fund for the Navajo Department of Health.

### **FINAL AUTHORITY and VOTE REQUIREMENT:**

The Navajo Nation Council has final authority. A simple majority vote is required.



1 seeking to expend funds within the Navajo Nation or for the benefit of the Navajo People."  
2 2 N.N.C. §301(8)(5).

3 D. The Naabik'iyáti' Committee of the Navajo Nation Council reviews proposed resolutions  
4 requiring final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9).

5 E. The Navajo Nation Council, as the governing body of the Navajo Nation, sets policy for the  
6 Navajo Nation. 2 N.N.C. §102(A).

7  
8 **SECTION TWO. FINDINGS**

9 A. Research shows that taxing commercial tobacco products is one of the most effective ways  
10 to reduce commercial tobacco use, especially among youth and young adults. See "The  
11 Economic Analysis of Substance Use and Abuse: An Integration of Econometric and  
12 Behavioral Economic Research." Bickel, W.K., *et al.* (2009), University of Chicago Press  
13 2009.

14 B. According to the "Morbidity and Mortality Weekly Report" dated April 15, 2016, issued by  
15 the Centers for Disease Control and Prevention ("CDC"), electronic cigarettes or vaping  
16 products have been the most used commercial tobacco product among youth. From 2011 to  
17 2015, 16% of U.S. high school students and 5.3% of middle school students reported the use  
18 of electronic cigarettes or vaping products within the past 30 days of the study.

19 C. According to the 2017 Navajo Youth Risk Behavior Survey, 41% of high school students  
20 reported having smoked cigarettes in their lifetime. In addition, 40% of high school students  
21 reported having used electronic cigarettes or vaping products in their lifetime. Furthermore,  
22 11% of Navajo high school students reported using smokeless tobacco products compared to  
23 the U.S. national high school use at 3.1% (reported by the CDC in December 18, 2020).

24 D. The number of youths who have used electronic cigarettes or vaping products at least once  
25 will increase in their subsequent experience by a factor of three. These same youth are  
26 identified as not experiencing cigarette use. Youth identified as never having smoked a  
27 cigarette but using electronic cigarettes or vaping products may be more likely to smoke  
28 conventional cigarettes than "never smokers" who have not used electronic cigarettes or  
29 vaping products. Stone, E., *et al.* (2023). Recreational vaping ban in Australia - policy failure  
30 or masterstroke? *The Lancet* (British Edition); Leventhal, A.M., *et al.* (2015). Association of

1 Electronic Cigarette Use with Initiation of Combustible Tobacco Product Smoking in Early  
2 Adolescence. *The Journal of the American Medical Association*, 314(7), 700–707.

3 E. Further research shows that increasing the tax on smokeless tobacco may deter its use,  
4 particularly among young males, and increasing the tax on cigars may deter youth and adult  
5 cigar smoking. See Chaloupka, F.J. *et al.* (1997). *Public Policy and Youth Smokeless*  
6 *Tobacco Use*. *Southern Economic Journal*, 64(2), 503.

7 F. According to the *American Journal of Preventive Medicine*, taxing electronic smoking  
8 devices as other commercial tobacco products will likely result in lower youth initiation and  
9 nicotine addiction. See Diaz, M.C., *et al.* (2023). *Investigating the Impact of E-Cigarette*  
10 *Price and Tax on E-Cigarette Use Behavior*. *American Journal of Preventive Medicine*,  
11 64(6), 797–804.

12 G. The Navajo Nation finds it is in the best interests of the Navajo Nation to amend Title 24 of  
13 the Navajo Nation Code to increase the tax on tobacco products and electronic smoking  
14 products. These changes may result in a healthier population while reducing overall health  
15 costs and mortality rates.

16  
17 **SECTION THREE. AMENDING THE TOBACCO PRODUCTS TAX AT 24 N.N.C.**  
18 **§800 *ET SEQ.***

19 The Navajo Nation Council hereby amends Title 24, Chapter 8 of the Navajo Nation Code. as  
20 follows:

21 **TITLE 24. Taxation**  
22 **Chapter 8 Tobacco Products Tax**

23  
24 § 800 SHORT TITLE.

25 This Chapter shall be called the “Tobacco Products Tax Act.”

26  
27 § 801 ADMINISTRATION.

28 The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this  
29 Chapter. The Office of the Navajo Tax Commission is charged with the administration of this  
30 Act. The Office of the Navajo Tax Commission shall retain five percent (5%) of all tax revenue

1 collected under this Act as a fee to offset the costs of administration.

2  
3 § 802 DEFINITIONS.

4 Subject to additional definitions (if any) contained in the subsequent sections of this Chapter,  
5 and unless the context otherwise requires, in this Chapter:

- 6 1. "Tobacco" means commercially cultivated tobacco, the leaves of which are processed  
7 chiefly for use in cigarettes, cigars, snuff, plug or chewing tobacco, or for smoking in  
8 pipes.
- 9 2. "Tobacco product" means any commercially processed and/or manufactured product for  
10 human consumption which contains tobacco, including cigarettes.
- 11 3. "Distributor" means any person within the Navajo Nation who manufactures, produces,  
12 ships, transports, or imports tobacco products into the Navajo Nation or in any manner  
13 acquires or possesses tobacco products for the purpose of making the first sale.
- 14 4. "First sale" means the first sale or distribution within the Navajo Nation or the first use or  
15 consumption of tobacco products within the Navajo Nation.
- 16 5. "Retailer" means any person engaged in the sale or resale of tobacco products within the  
17 Navajo Nation.
- 18 6. "Sale" means a transfer of possession or ownership between buyer and seller for a  
19 consideration.
- 20 7. "Consumer" means any person who comes into possession or ownership of a tobacco  
21 product by purchasing or otherwise acquiring it for the purpose of using, consuming, or  
22 giving away such product.
- 23 8. "Period" means one calendar month.

24  
25 § 803 TAX IMPOSED - RATES.

26 There is hereby levied and imposed by Chapter for each period a tax upon the first sale by any  
27 retailer or distributor of tobacco products. The tax rates shall be established in regulations. Until  
28 other rates are established, the following rates shall apply:

- 29 1. On each cigarette, ~~five cents (5¢)~~ twelve and one-half cents (12.5¢);
- 30 2. On smoking tobacco, snuff, chewing tobacco, cut and granulated tobacco, shorts and

1 refuse or fine cut tobacco, refuse, scraps, clippings, cuttings and sweepings of tobacco,  
2 excluding tobacco powder or tobacco products used exclusively for agricultural or  
3 horticultural purposes and unfit for human consumption, ~~eleven and three tenths cents~~  
4 ~~(11.3¢) per ounce or major fraction thereof~~ three dollars and eighty-five cents (\$3.85) per  
5 ounce or major fraction thereof;

6 3. On all Cavendish, plug or twist tobacco, ~~two and eight tenths~~ one dollar and twenty-five  
7 cents (2.8¢)(\$1.25) per ounce or fractional part thereof;, or, if packaged for sale to a  
8 consumer in a package of less than 1.2 ounces, at the minimum rate of two dollars and  
9 fifty cents (\$2.50) per package. When more than one package subject to tax under this  
10 paragraph is packaged together, each package shall be taxed separately;

11 4. On each twenty small cigars or fractional part thereof weighing not more than three  
12 pounds per thousand, ~~twenty-two and three tenths~~ two dollars and fifty cents (22.3¢  
13 \$2.50);

14 5. On cigars of all descriptions except those included in paragraph 4 of this Subsection, made  
15 of tobacco or any substitute therefore, ~~if manufactured to retail at not more than five (5¢)~~  
16 ~~cents each, eleven cents (11¢) on each~~ three dollars and sixty-two cents (\$3.62) on each  
17 ~~cigar;~~ ~~but if manufactured to retail at more than five (5¢) cents each, four and four tenths~~  
18 ~~(4.4¢) cents on each cigar.~~

19 6. On any other tobacco product not subject to tax under the preceding paragraphs 1-5, 22%  
20 of the retail price.

21  
22 § 804 LEGAL INCIDENCE.

23 The tax imposed by this Chapter Act is presumed to be a direct tax on retailers and distributors  
24 of commercially processed and/or manufactured tobacco products.

25  
26 § 805 LIABILITY FOR REMITTANCE AND PAYMENT OF TAX.

27 Distributors and retailers are responsible for the collection and remittance of the tax imposed  
28 under this Chapter. Distributors and retailers are liable for taxes regardless of whether the taxes  
29 are collected from the consumer.

1 § 806 LICENSING.

2 All distributors and retailers licensed by Arizona, Utah, or New Mexico shall provide the Office  
3 of the Navajo Tax Commission with a copy of their state license.

4  
5 § 807 RESERVED.

6  
7 § 808 USE OF FUNDS.

8 ~~Tax, interest, and penalties collected by the Office of the Navajo Tax Commission pursuant to~~  
9 ~~this Chapter shall be deposited in the General Fund of the Navajo Nation.~~

10 A. After mandatory allocations of tax revenue as required by Navajo Nation law, all tax, interest,  
11 and penalties collected by the Office of the Navajo Tax Commission pursuant to this Chapter  
12 shall be deposited into a special account for use by the Navajo Department of Health  
13 ("DOH") or its subordinate offices, in compliance with a Fund Management Plan that shall  
14 be approved by the Budget and Finance Committee. No funds so deposited shall be expended  
15 unless in compliance with the approved Fund Management Plan.

16 B. The Fund Management Plan shall include provisions stating as follows:

- 17 1. 20% of the net revenue received by DOH shall be used for projects or purposes carried  
18 out by traditional Navajo healer non-profit organizations that are Priority-Certified under  
19 5 N.N.C. §204(A)(1) (Priority One) or under §204(A)(2) (Priority Two); and  
20 2. 80% of the net revenue shall be provided to the Office of Traditional Cultural and Spiritual  
21 Healing ("OTCSH") for its use:  
22 a. in leveraging funds or satisfying matching funds requirements to secure funds from  
23 non-Navajo Nation government sources; and/or  
24 b. for projects or purposes carried out by the OTCSH to improve the well-being of the  
25 Navajo People by preserving traditional Navajo cultural teachings and practices.  
26 3. OTCSH shall enter into contracts with individuals or entities to carry out or manage its  
27 projects, so long as those individuals or entities are Priority-Certified under 5 N.N.C.  
28 § 204(A)(1) (Priority One) or under § 204(A)(2) (Priority Two).  
29  
30



1 § 809 EFFECTIVE DATE.

2 The tax imposed by this Chapter shall be effective as of the date of adoption by the Navajo  
3 Nation Council and in accordance with 2 N.N.C. §1005.

4  
5 § 810 SEVERABILITY.

6 If any provision of this Chapter, as amended, or its application to any person or circumstance,  
7 is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not  
8 affect other provisions or applications of this Chapter which can be given effect without the  
9 invalid provision or application, and to this end the provisions of this Chapter are severable.

10  
11 **SECTION FOUR. ENACTING THE ELECTRONIC SMOKING PRODUCTS ACT**

12  
13 **TITLE 24. Taxation**

14 **Chapter 10 ~~Fuel Distributor's Licensing Act [Repealed]~~**

15 **Electronic Smoking Products Tax**

16  
17 The Navajo Nation Council hereby amends Title 24, Chapter 10 of the Navajo Nation Code to  
18 enact the Electronic Smoking Products Tax as follows:

19  
20 **§ 1001 SHORT TITLE.**

21 The tax imposed by this Chapter shall be called the "Electronic Smoking Products Tax."

22  
23 **§ 1002 PURPOSE.**

24 The Navajo Nation Council hereby enacts this tax for the privilege of engaging in business  
25 activity within the Navajo Nation, and for purposes of defraying necessary governmental  
26 expenses incurred in providing for the public welfare.

27  
28 **§ 1003 TAX IMPOSED.**

29 A tax is hereby imposed on the Gross Receipts of a Person. The tax due for a Period is  
30 determined by first calculating applicable gross receipts from all Electronic Smoking Products

1 sold for a Period, and then multiplying those Gross Receipts from all Electronic Smoking  
2 Products sold by the applicable tax rate.

3  
4 § 1004 LEGAL INCIDENCE AND RESPONSIBILITY FOR PAYMENT.

5 The Person liable for the payment of the tax imposed by this Chapter is the Person receiving  
6 the Gross Receipts from a Sale of Electronic Smoking Products.

7  
8 § 1005 RATE OF TAX.

9 The tax imposed by this Chapter is imposed at a rate of twenty-two percent (22%) of a Person's  
10 Electronic Smoking Products Gross Receipts.

11  
12 § 1006 ADMINISTRATION.

13 The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this  
14 Chapter. The Office of the Navajo Tax Commission is charged with the administration of this  
15 tax. The Office of the Navajo Tax Commission shall retain five percent (5%) of all tax revenue  
16 collected under this Chapter as a fee to offset the costs of administration.

17  
18 § 1007 DEFINITIONS.

19 Subject to additional definitions contained in Title 24, Chapter 6, Sales Tax, the following  
20 definitions apply to this Chapter:

- 21 1. "Electronic Smoking Product" means any device that can deliver aerosolized or  
22 vaporized nicotine to the person inhaling from the device, including, but not limited to, an  
23 e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic Smoking Product includes  
24 any component, part, or accessory of such a device, whether or not sold separately. It  
25 includes any substance intended to be aerolized or vaporized during the use of the device,  
26 whether or not the substance contains nicotine. An electronic smoking device includes no  
27 battery or battery charger when sold separately. In addition, Electronic Smoking Product  
28 does not include drugs, devices, or combination products authorized for sale by the U.S.  
29 Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and  
30 Cosmetic Act.

1 2. "Person" as defined in the Uniform Tax Administration Statute, shall include any  
2 organization, whether a sole proprietorship, partnership, joint venture, trust, estate,  
3 unincorporated association, company, corporation, or government (other than the Navajo  
4 Nation government), or any part, division, or agency of any of the foregoing, and an  
5 individual or group of individuals. In accordance with Section 1009 of this Chapter,  
6 "person" for purposes of the Electronic Smoking Products Tax shall include the  
7 government of the Navajo Nation and any wholly owned subdivision or Enterprise of the  
8 Navajo Nation government.

9  
10 § 1008 NAVAJO NATION GOVERNMENT.

11 A. Sales by corporations owned by the Navajo Nation government or any political subdivision  
12 thereof shall be fully subject to the tax imposed by this Chapter.

13 B. Sales by the government of the Navajo Nation, or political subdivision or Enterprises thereof,  
14 shall be subject to the tax imposed by this Chapter.

15  
16 § 1009 EXEMPTIONS AND EXCLUSIONS.

17 A. The tax imposed by this Chapter does not apply to Gross Receipts generated directly by the  
18 following:

19 1. Sales for resale;

20 2. Sales related to agriculture, farming, or livestock activities conducted within the Navajo  
21 Nation

22 3. Sales, other than Sales from an unrelated trade or business as defined in §511 - §513 of  
23 the Internal Revenue Code, by any person operating exclusively for non-profit or  
24 charitable purposes, and recognized as such pursuant to §501(C)(3) and §501(C)(19) of  
25 the United States Internal Revenue Code at the time of the sale.

26 4. Sales by hospital and health-care organizations or facilities such as nursing care  
27 institutions, residential care and mental health facilities, senior citizen care facilities or  
28 retirement homes, kidney dialysis facilities and blood banks, or other facilities which  
29 provide medical care and services.

30

1 § 1010 FILING A RETURN.

2 A. Each Person must file a return indicating all sales from applicable gross receipts and the tax  
3 due under this Chapter for each Period by the fifteenth day of the second month after the end  
4 of each calendar quarter. Returns are due on February 15, May 15, August 15, and November  
5 15 of each calendar year.

6 B. The Commission may by form or regulation require that other information, records or  
7 relevant documents which it deems necessary for the proper and efficient administration of  
8 this Chapter be included with the return and signed by a specified individual.

9 C. No return need be filed by any Person who is exempt under Section 1009, provided that the  
10 Office of the Navajo Tax Commission may require such Person to file the information  
11 necessary to establish its exempt status.

12  
13 § 1011 PAYMENT OF TAX.

14 Payment in full of the taxes owed for a particular Period is due on the same date that the  
15 completed return for that same Period is due. The Office of the Navajo Tax Commission,  
16 however, may require payment of any taxes due on a monthly basis.

17  
18 § 1012 RECORDKEEPING.

19 A. Each Person shall keep all records which pertain to or relate in any manner to all sales from  
20 any business activity engaged in at any time by such Person. Such records shall be maintained  
21 separately for each reporting Period during which a Person is engaged in business activity.

22 B. Records required to be kept must be preserved for four years beyond the end of the Period  
23 for which the records relate.

24  
25 § 1013 ALLOCATION OF REVENUE.

26 After mandatory allocations of tax revenue as required by Navajo Nation law, all tax, interest,  
27 and penalties collected by the Office of the Navajo Tax Commission from this Act shall be  
28 deposited into the special account established in 24 N.N.C. §808.

1 § 1014 NO CONFLICT WITH LOCAL GOVERNANCE ACT.

2 The provisions of this Chapter and corresponding regulations shall not be construed to affect  
3 any governmental authority under the Local Governance Act, 26 N.N.C. §1 - §2008.

4  
5 § 1015 SEVERABILITY.

6 If any provision of this Chapter, as amended, or its application to any person or circumstance,  
7 is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not  
8 affect other provisions or applications of the Chapter which can be given effect without the  
9 invalid provision or application, and to this end, the provisions of this Chapter are severable.

10  
11 § 1016 REPEALS.

12 All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of  
13 this Chapter are hereby repealed, including, without limitation, any law purporting to waive any  
14 right of taxation by the Navajo Nation.

15  
16 **SECTION FIVE. EFFECTIVE DATE**

17 This Act shall become effective as provided in 2 N.N.C. §221(B), 2 N.N.C. §1005(C)(10), and  
18 2 N.N.C. §164(A)(17).

19  
20 **SECTION SIX. SAVING CLAUSE**

21 If any portion of this Act is determined invalid by the Navajo Nation Supreme Court, or by a  
22 District Court of the Navajo Nation without appeal to the Navajo Nation Supreme Court, the  
23 remainder of this Act shall be the law of the Navajo Nation.

24  
25 **SECTION SEVEN. CODIFICATION**

26 The provisions of this Act which amend or enact new sections of the Navajo Nation Code shall  
27 be codified by the Office of Legislative Counsel.