
ASSEMBLY BILL NO. 549—COMMITTEE ON JUDICIARY

(ON BEHALF OF ATTORNEY GENERAL)

MARCH 15, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning tobacco products. (BDR 15-1372)

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

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to tobacco; prohibiting a person from selling certain products that resemble products made from tobacco; prohibiting a person from selling cigarettes in packages that contain fewer than 20 cigarettes; revising the limitations on the public areas in which cigarette vending machines may be placed; providing that a minor who purchases, possesses or uses tobacco products, or falsely represents his age to purchase tobacco products, is in need of supervision and care or rehabilitation; providing a penalty; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 202 of NRS is hereby amended by adding thereto
2 a new section to read as follows:
3 ***1. A person shall not distribute, sell or offer for sale in this state a***
4 ***product that is not made from tobacco if it or its packaging resembles or***
5 ***is designed or intended to imitate a product made from tobacco,***
6 ***including, without limitation, chewing gum in the shape of a cigar and***
7 ***candy in the shape of a cigarette.***
8 ***2. A person who violates the provisions of this section is guilty of a***
9 ***misdemeanor.***
10 **Sec. 2.** NRS 202.2485 is hereby amended to read as follows:
11 202.2485 As used in NRS 202.2485 to 202.2497, inclusive ~~it~~, ***and***
12 ***section 1 of this act, unless the context otherwise requires:***

1 1. "Distribute" includes furnishing, giving away or providing products
2 made from tobacco or samples thereof at no cost to promote the product,
3 whether or not in combination with a sale.

4 2. "Health authority" means the district health officer in a district, or
5 his designee, or, if none, the state health officer, or his designee.

6 **Sec. 3.** NRS 202.2493 is hereby amended to read as follows:

7 202.2493 1. A person shall not sell, distribute or offer to sell
8 cigarettes or smokeless products made from tobacco in any form other than
9 in an unopened package which originated with the manufacturer and bears
10 any health warning required by federal law ~~and~~ *and which, if it is a package*
11 *of cigarettes, contains at least 20 cigarettes.* A person who violates this
12 subsection shall be punished by a fine of \$100 and a civil penalty of \$100.

13 2. Except as otherwise provided in subsections 3, 4 and 5, it is
14 unlawful for any person to sell, distribute or offer to sell cigarettes,
15 cigarette paper, tobacco of any description or products made from tobacco
16 to any child under the age of 18 years. A person who violates this
17 subsection shall be punished by a fine of not more than \$500 and a civil
18 penalty of not more than \$500.

19 3. A person shall be deemed to be in compliance with the provisions of
20 subsection 2 if, before he sells, distributes or offers to sell to another,
21 cigarettes, cigarette paper, tobacco of any description or products made
22 from tobacco, he:

23 (a) Demands that the person present a valid driver's license or other
24 written or documentary evidence which shows that the person is 18 years
25 of age or older;

26 (b) Is presented a valid driver's license or other written or documentary
27 evidence which shows that the person is 18 years of age or older; and

28 (c) Reasonably relies upon the driver's license or written or
29 documentary evidence presented by the person.

30 4. The employer of a child who is under 18 years of age may, for the
31 purpose of allowing the child to handle or transport tobacco or products
32 made from tobacco in the course of the child's lawful employment,
33 provide tobacco or products made from tobacco to the child.

34 5. With respect to any sale made by his employee, the owner of a retail
35 establishment shall be deemed to be in compliance with the provisions of
36 subsection 2 if he:

37 (a) Had no actual knowledge of the sale; and

38 (b) Establishes and carries out a continuing program of training for his
39 employees which is reasonably designed to prevent violations of
40 subsection 2.

41 6. Any money recovered pursuant to this section as a civil penalty
42 must be deposited in a separate account in the state general fund to be used
43 for the enforcement of this section and NRS 202.2494.

1 **Sec. 4.** NRS 202.2494 is hereby amended to read as follows:

2 202.2494 1. A cigarette vending machine must not be placed in a
3 public area ~~{described in paragraph (a), (c), (e), (f), (g) or (h) of subsection~~
4 ~~1 of NRS 202.2491,}~~ if minors are permitted ~~{access}~~ to *loiter in* that area.

5 2. A coin-operated vending machine containing cigarettes must not be
6 used to dispense any product not made from tobacco.

7 **Sec. 5.** Chapter 62 of NRS is hereby amended by adding thereto a
8 new section to read as follows:

9 **1. Except as otherwise provided in subsection 3, a child under the**
10 **age of 18 years who:**

11 **(a) Purchases, possesses or uses cigarettes, cigarette paper, tobacco of**
12 **any description or products made from tobacco; or**

13 **(b) Falsely represents that he is 18 years of age or older to purchase**
14 **or obtain cigarettes, cigarette paper, tobacco of any description or**
15 **products made from tobacco,**
16 **is a child in need of supervision and care or rehabilitation as provided in**
17 **subparagraph (2) of paragraph (a) of subsection 1 of NRS 62.040.**

18 **2. If a child is found to be in need of supervision and care or**
19 **rehabilitation pursuant to subsection 1, in addition to any other action**
20 **ordered pursuant to the provisions of this chapter, the court shall impose**
21 **a fine of not more than \$100 pursuant to paragraph (l) of subsection 1 of**
22 **NRS 62.211 and an administrative assessment pursuant to NRS 62.223.**

23 **3. The provisions of subsection 1 do not apply to a child under the**
24 **age of 18 years who:**

25 **(a) Purchases or possesses cigarettes, cigarette paper, tobacco of any**
26 **description or products made from tobacco while assisting in an**
27 **inspection performed pursuant to NRS 202.2496; or**

28 **(b) Handles or transports cigarettes, cigarette paper, tobacco of any**
29 **description or products made from tobacco in the course of his lawful**
30 **employment.**

31 **Sec. 6.** NRS 62.040 is hereby amended to read as follows:

32 62.040 1. Except if the child involved is subject to the exclusive
33 jurisdiction of an Indian tribe, and except as otherwise provided in this
34 chapter, the court has exclusive original jurisdiction in proceedings:

35 (a) Concerning any child living or found within the county who is in
36 need of supervision because he:

37 (1) Is a child who is subject to compulsory school attendance and is a
38 habitual truant from school;

39 (2) *Purchases, possesses or uses cigarettes, cigarette paper, tobacco*
40 *of any description or products made from tobacco, or falsely represents*
41 *that he is 18 years of age or older to purchase or obtain cigarettes,*
42 *cigarette paper, tobacco of any description or products made from*
43 *tobacco, as provided in subsection 1 of section 5 of this act;*

1 (3) Habitually disobeys the reasonable and lawful demands of his
2 parents, guardian or other custodian, and is unmanageable; or
3 ~~H(3)~~ (4) Deserts, abandons or runs away from his home or usual
4 place of abode,
5 and is in need of care or rehabilitation. The child must not be considered a
6 delinquent.

7 (b) Concerning any child living or found within the county who has
8 committed a delinquent act. A child commits a delinquent act if he violates
9 a county or municipal ordinance or any rule or regulation having the force
10 of law, or he commits an act designated a crime under the law of the State
11 of Nevada.

12 (c) Concerning any child in need of commitment to an institution for
13 the mentally retarded.

14 2. For the purposes of subsection 1, each of the following acts shall be
15 deemed not to be a delinquent act, and the court does not have jurisdiction
16 of a person who is charged with committing such an act:

17 (a) Murder or attempted murder and any other related offense arising
18 out of the same facts as the murder or attempted murder, regardless of the
19 nature of the related offense.

20 (b) Sexual assault or attempted sexual assault involving the use or
21 threatened use of force or violence against the victim and any other related
22 offense arising out of the same facts as the sexual assault or attempted
23 sexual assault, regardless of the nature of the related offense, if:

24 (1) The person was 16 years of age or older when the sexual assault
25 or attempted sexual assault was committed; and

26 (2) Before the sexual assault or attempted sexual assault was
27 committed, the person previously had been adjudicated delinquent for an
28 act that would have been a felony if committed by an adult.

29 (c) An offense or attempted offense involving the use or threatened use
30 of a firearm and any other related offense arising out of the same facts as
31 the offense or attempted offense involving the use or threatened use of a
32 firearm, regardless of the nature of the related offense, if:

33 (1) The person was 16 years of age or older when the offense or
34 attempted offense involving the use or threatened use of a firearm was
35 committed; and

36 (2) Before the offense or attempted offense involving the use or
37 threatened use of a firearm was committed, the person previously had been
38 adjudicated delinquent for an act that would have been a felony if
39 committed by an adult.

40 (d) Any other offense if, before the offense was committed, the person
41 previously had been convicted of a criminal offense.

1 3. If a child is charged with a minor traffic offense, the court may
2 transfer the case and record to a justice's or municipal court if the judge
3 determines that it is in the best interest of the child. If a case is so
4 transferred:

5 (a) The restrictions set forth in subsection 4 of NRS 62.170 are
6 applicable in those proceedings; and

7 (b) The child must be accompanied at all proceedings by a parent or
8 legal guardian.

9 With the consent of the judge of the juvenile division, the case may be
10 transferred back to the juvenile court.

11 **Sec. 7.** NRS 62.132 is hereby amended to read as follows:

12 62.132 1. Except as otherwise provided in subsection 2, in addition
13 to the information required pursuant to NRS 62.130, a petition alleging
14 that a child is in need of supervision must contain a list of the local
15 programs to which the child was referred, and other efforts taken in the
16 community, to modify the child's behavior. Except as otherwise provided
17 in subsection 2, no court may decree that a child is in need of supervision
18 unless it expressly finds that reasonable efforts were taken in the
19 community to assist the child in ceasing the behavior for which he is
20 alleged to be in need of supervision.

21 2. The provisions of this section do not apply to ~~§~~ :

22 (a) A child alleged to be in need of supervision because he is a habitual
23 truant ~~§~~ ; or

24 (b) *A child alleged to be in need of supervision pursuant to section 5*
25 *of this act.*

26 **Sec. 8.** NRS 62.211 is hereby amended to read as follows:

27 62.211 1. Except as otherwise provided in NRS 62.212, 62.224 and
28 62.2245 ~~§~~ *and section 5 of this act*, if the court finds that a child is within
29 the purview of this chapter it shall so decree and may:

30 (a) Place the child under supervision in his own home or in the custody
31 of a suitable person elsewhere, upon such conditions as the court may
32 determine. A program of supervision in the home may include electronic
33 surveillance of the child. The legislature declares that a program of
34 supervision that includes electronic surveillance is intended as an
35 alternative to commitment and not as an alternative to probation, informal
36 supervision or a supervision and consent decree.

37 (b) Commit the child to the custody of a public or private institution or
38 agency authorized to care for children, or place him in a home with a
39 family. In committing a child to a private institution or agency the court
40 shall select one that is required to be licensed by the department of human
41 resources to care for such children, or, if the institution or agency is in
42 another state, by the analogous department of that state. The court shall not
43 commit a female child to a private institution without prior approval of the

1 superintendent of the Caliente youth center, and shall not commit a male
2 child to a private institution without prior approval of the superintendent of
3 the Nevada youth training center.

4 (c) Order such medical, psychiatric, psychological or other care and
5 treatment as the court deems to be for the best interests of the child, except
6 as otherwise provided in this section.

7 (d) Order the parent, guardian, custodian or any other person to refrain
8 from continuing the conduct which, in the opinion of the court, has caused
9 or tended to cause the child to come within or remain under the provisions
10 of this chapter.

11 (e) If the child is less than 18 years of age, order:

12 (1) The parent, guardian or custodian of the child; and

13 (2) Any brother, sister or other person who is living in the same
14 household as the child over whom the court has jurisdiction,
15 to attend or participate in counseling, with or without the child, including,
16 but not limited to, counseling regarding parenting skills, alcohol or
17 substance abuse, or techniques of dispute resolution.

18 (f) Order the parent or guardian of the child to participate in a program
19 designed to provide restitution to the victim of an act committed by the
20 child or to perform public service.

21 (g) Order the parent or guardian of the child to pay all or part of the cost
22 of the proceedings, including, but not limited to, reasonable attorney's
23 fees, any costs incurred by the court and any costs incurred in the
24 investigation of an act committed by the child and the taking into custody
25 of the child.

26 (h) Order the suspension of the child's driver's license for at least 90
27 days but not more than 2 years. If the child does not possess a driver's
28 license, the court may prohibit the child from receiving a driver's license
29 for at least 90 days but not more than 2 years:

30 (1) Immediately following the date of the order, if the child is eligible
31 to receive a driver's license.

32 (2) After the date he becomes eligible to apply for a driver's license,
33 if the child is not eligible to receive a license on the date of the order.

34 If the court issues an order suspending the driver's license of a child
35 pursuant to this paragraph, the judge shall require the child to surrender to
36 the court all driver's licenses then held by the child. The court shall, within
37 5 days after issuing the order, forward to the department of motor vehicles
38 and public safety the licenses, together with a copy of the order. If,
39 pursuant to this paragraph, the court issues an order delaying the ability of
40 a child to receive a driver's license, the court shall, within 5 days after
41 issuing the order, forward to the department of motor vehicles and public
42 safety a copy of the order. The department of motor vehicles and public
43 safety shall report a suspension pursuant to this paragraph to an insurance

1 company or its agent inquiring about the child's driving record, but such a
2 suspension must not be considered for the purpose of rating or
3 underwriting. The department of motor vehicles and public safety shall not
4 require the child to submit to the tests and other requirements which are
5 adopted by regulation pursuant to subsection 1 of NRS 483.495 as a
6 condition of reinstatement or reissuance after a suspension of his license
7 pursuant to this paragraph, unless the suspension resulted from his poor
8 performance as a driver.

9 (i) Place the child, when he is not in school, under the supervision of:

10 (1) A public organization to work on public projects;

11 (2) A public agency to work on projects to eradicate graffiti; or

12 (3) A private nonprofit organization to perform other public
13 service.

14 The person under whose supervision the child is placed shall keep the child
15 busy and well supervised and shall make such reports to the court as it may
16 require. As a condition of such a placement, the court may require the
17 child or his parent or guardian to deposit with the court a reasonable sum
18 of money to pay for the cost of policies of insurance against liability for
19 personal injury and damage to property or for industrial insurance, or both,
20 during those periods in which he performs the work, unless, in the case of
21 industrial insurance, it is provided by the organization or agency for which
22 he performs the work.

23 (j) Permit the child to reside in a residence without the immediate
24 supervision of an adult, or exempt the child from mandatory attendance at
25 school so that the child may be employed full time, or both, if the child is
26 at least 16 years of age, has demonstrated the capacity to benefit from this
27 placement or exemption and is under the strict supervision of the juvenile
28 division.

29 (k) Require the child to provide restitution to the victim of the crime
30 which the child has committed.

31 (l) Impose a fine on the child. If a fine is imposed, the court shall
32 impose an administrative assessment pursuant to NRS 62.223.

33 (m) If the child has not previously been found to be within the purview
34 of this chapter and if the act for which the child is found to be within the
35 purview of this chapter did not involve the use or threatened use of force or
36 violence, order the child to participate in a publicly or privately operated
37 program of sports or physical fitness. If the court orders the child to
38 participate in such a program, the court may order any or all of the
39 following, in the following order of priority if practicable:

40 (1) The parent or guardian of the child, to the extent of his financial
41 ability, to pay the costs associated with the participation of the child in the
42 program, including, but not limited to, a reasonable sum of money to pay

1 for the cost of policies of insurance against liability for personal injury and
2 damage to property during those periods in which the child participates in
3 the program;

4 (2) The child to work on projects or perform public service pursuant
5 to paragraph (i) for a period that reflects the costs associated with the
6 participation of the child in the program; or

7 (3) The county in which the petition alleging the child to be
8 delinquent or in need of supervision is filed to pay the costs associated
9 with the participation of the child in the program.

10 2. If the court finds that a child who is less than 17 years of age has
11 committed a delinquent act, the court may order the parent or guardian of
12 the child to pay any fines and penalties imposed for the delinquent act. If
13 the parent or guardian is unable to pay the fines and penalties imposed
14 because of financial hardship, the court may require the parent or guardian
15 to perform community service.

16 3. In determining the appropriate disposition of a case concerning a
17 child found to be within the purview of this chapter, the court shall
18 consider whether the act committed by the child involved the use of a
19 firearm or the use or threatened use of force or violence against the victim
20 of the act and whether the child is a serious or chronic offender. If the
21 court finds that the act committed by the child involved the use of a
22 firearm or the use or threatened use of force or violence against the victim
23 or that the child is a serious or chronic offender, the court shall include the
24 finding in its order and may, in addition to the options set forth in
25 subsections 1 and 2 of this section and NRS 62.213:

26 (a) Commit the child for confinement in a secure facility, including a
27 facility which is secured by its staff.

28 (b) Impose any other punitive measures the court determines to be in
29 the best interests of the public or the child.

30 4. Except as otherwise provided in NRS 62.455 and 62.570, at any
31 time, either on its own volition or for good cause shown, the court may
32 terminate its jurisdiction concerning the child.

33 5. Whenever the court commits a child to any institution or agency
34 pursuant to this section or NRS 62.213, it shall transmit a summary of its
35 information concerning the child and order the administrator of the school
36 that the child last attended to transmit a copy of the child's educational
37 records to the institution or agency. The institution or agency shall give to
38 the court any information concerning the child that the court may require.

39 6. In determining whether to place a child pursuant to this section in
40 the custody of a person other than his parent, guardian or custodian,
41 preference must be given to any person related within the third degree of
42 consanguinity to the child whom the court finds suitable and able to
43 provide proper care and guidance for the child.

1 **Sec. 9.** NRS 62.212 is hereby amended to read as follows:

2 62.212 1. Except as otherwise provided in subsection 3, if the court
3 finds that a child is within the purview of paragraph (a) of subsection 1 of
4 NRS 62.040 and has not previously been the subject of a complaint under
5 NRS 62.128 before committing the acts for which the petition was filed,
6 the court shall:

7 (a) Admonish the child to obey the law and to refrain from repeating the
8 acts for which the petition was filed, and maintain a record of the
9 admonition; and

10 (b) Refer the child, without adjudication, to services available in
11 the community for counseling, behavioral modification and social
12 adjustment.

13 Except as otherwise provided in subsection 3, a child must not be
14 adjudicated to be a child in need of supervision unless a subsequent
15 petition based upon additional facts is filed with the court after admonition
16 and referral pursuant to this subsection.

17 2. A child who is:

18 (a) Less than 12 years of age must not be committed to or otherwise
19 placed in the Nevada youth training center or the Caliente youth center.

20 (b) Not adjudicated to be delinquent must not be committed to or
21 otherwise placed in the Nevada youth training center, the Caliente youth
22 center or any other facility that provides correctional care.

23 3. The provisions of subsection 1 do not apply to ~~1a~~ :

24 (a) A child alleged to be in need of supervision because he is a habitual
25 truant ~~1b~~ ; or

26 (b) *A child alleged to be in need of supervision pursuant to section 5*
27 *of this act.*

28 **Sec. 10.** The amendatory provisions of sections 1 to 4, inclusive, of
29 this act do not apply to offenses that were committed before October 1,
30 1999.

31 **Sec. 11.** The amendatory provisions of sections 5 to 9, inclusive, of
32 this act do not apply to:

33 1. The purchase, possession or use of cigarettes, cigarette paper,
34 tobacco of any description or products made from tobacco by a child who
35 is under 18 years of age; or

36 2. A false representation made by a child who is under 18 years of age
37 to purchase or obtain cigarettes, cigarette paper, tobacco of any description
38 or products made from tobacco,
39 that occurred before October 1, 1999.