

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 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 falsely represents his age to purchase tobacco products is in need of supervision; 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.** NRS 202.2493 is hereby amended to read as follows:
2 202.2493 1. A person shall not sell, distribute or offer to sell
3 cigarettes or smokeless products made from tobacco in any form other than
4 in an unopened package which originated with the manufacturer and bears
5 any health warning required by federal law ~~and~~ ***and which, if it is a package***
6 ***of cigarettes, contains at least 20 cigarettes.*** A person who violates this
7 subsection shall be punished by a fine of \$100 and a civil penalty of \$100.
8 2. Except as otherwise provided in subsections 3, 4 and 5, it is
9 unlawful for any person to sell, distribute or offer to sell cigarettes,
10 cigarette paper, tobacco of any description or products made from tobacco
11 to any child under the age of 18 years. A person who violates this
12 subsection shall be punished by a fine of not more than \$500 and a civil
13 penalty of not more than \$500.
14 3. A person shall be deemed to be in compliance with the provisions of
15 subsection 2 if, before he sells, distributes or offers to sell to another,

1 cigarettes, cigarette paper, tobacco of any description or products made
2 from tobacco, he:

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

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

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

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

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

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

18 (b) Establishes and carries out a continuing program of training for his
19 employees which is reasonably designed to prevent violations of subsection
20 2.

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

24 **Sec. 2.** NRS 202.2494 is hereby amended to read as follows:

25 202.2494 1. A cigarette vending machine must not be placed in a
26 public area ~~{described in paragraph (a), (c), (e), (f), (g) or (h) of subsection~~
27 ~~1 of NRS 202.2491,}~~ if minors are permitted ~~{access}~~ to *loiter in* that area.

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

30 **Sec. 3.** Chapter 62 of NRS is hereby amended by adding thereto a new
31 section to read as follows:

32 *1. A child under the age of 18 years shall not falsely represent that*
33 *he is 18 years of age or older to purchase or obtain cigarettes, cigarette*
34 *paper, tobacco of any description or products made from tobacco.*

35 *2. A child who is found to have engaged in an act that is prohibited*
36 *by subsection 1 must be treated in the manner set forth in NRS 62.212*
37 *and in addition to any other action ordered pursuant to NRS 62.212, may*
38 *be ordered to pay a fine of not more than \$100.*

39 **Sec. 4.** NRS 62.040 is hereby amended to read as follows:

40 62.040 1. Except if the child involved is subject to the exclusive
41 jurisdiction of an Indian tribe, and except as otherwise provided in this
42 chapter, the court has exclusive original jurisdiction in proceedings:

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

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

5 (2) *Engages in an act described in subsection 1 of section 3 of this*
6 *act;*

7 (3) Habitually disobeys the reasonable and lawful demands of his
8 parents, guardian or other custodian, and is unmanageable; or

9 ~~(3)~~ (4) Deserts, abandons or runs away from his home or usual
10 place of abode,

11 and is in need of care or rehabilitation. The child must not be considered a
12 delinquent.

13 (b) Concerning any child living or found within the county who has
14 committed a delinquent act. A child commits a delinquent act if he violates
15 a county or municipal ordinance or any rule or regulation having the force
16 of law, or he commits an act designated a crime under the law of the State
17 of Nevada.

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

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

23 (a) Murder or attempted murder and any other related offense arising
24 out of the same facts as the murder or attempted murder, regardless of the
25 nature of the related offense.

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

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

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

35 (c) An offense or attempted offense involving the use or threatened use
36 of a firearm and any other related offense arising out of the same facts as
37 the offense or attempted offense involving the use or threatened use of a
38 firearm, regardless of the nature of the related offense, if:

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

42 (2) Before the offense or attempted offense involving the use or
43 threatened use of a firearm was committed, the person previously had been

1 adjudicated delinquent for an act that would have been a felony if
2 committed by an adult.

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

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

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

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

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

15 **Sec. 5.** NRS 62.211 is hereby amended to read as follows:

16 62.211 1. Except as otherwise provided in NRS 62.212, 62.224 and
17 62.2245 ~~H~~ **and section 3 of this act**, if the court finds that a child is within
18 the purview of this chapter it shall so decree and may:

19 (a) Place the child under supervision in his own home or in the custody
20 of a suitable person elsewhere, upon such conditions as the court may
21 determine. A program of supervision in the home may include electronic
22 surveillance of the child. The legislature declares that a program of
23 supervision that includes electronic surveillance is intended as an
24 alternative to commitment and not as an alternative to probation, informal
25 supervision or a supervision and consent decree.

26 (b) Commit the child to the custody of a public or private institution or
27 agency authorized to care for children, or place him in a home with a
28 family. In committing a child to a private institution or agency the court
29 shall select one that is required to be licensed by the department of human
30 resources to care for such children, or, if the institution or agency is in
31 another state, by the analogous department of that state. The court shall not
32 commit a female child to a private institution without prior approval of the
33 superintendent of the Caliente youth center, and shall not commit a male
34 child to a private institution without prior approval of the superintendent of
35 the Nevada youth training center.

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

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

- 1 (e) If the child is less than 18 years of age, order:
 - 2 (1) The parent, guardian or custodian of the child; and
 - 3 (2) Any brother, sister or other person who is living in the same
 - 4 household as the child over whom the court has jurisdiction,
 - 5 to attend or participate in counseling, with or without the child, including,
 - 6 but not limited to, counseling regarding parenting skills, alcohol or
 - 7 substance abuse, or techniques of dispute resolution.
- 8 (f) Order the parent or guardian of the child to participate in a program
- 9 designed to provide restitution to the victim of an act committed by the
- 10 child or to perform public service.
- 11 (g) Order the parent or guardian of the child to pay all or part of the cost
- 12 of the proceedings, including, but not limited to, reasonable attorney's fees,
- 13 any costs incurred by the court and any costs incurred in the investigation
- 14 of an act committed by the child and the taking into custody of the child.
- 15 (h) Order the suspension of the child's driver's license for at least 90
- 16 days but not more than 2 years. If the child does not possess a driver's
- 17 license, the court may prohibit the child from receiving a driver's license
- 18 for at least 90 days but not more than 2 years:
 - 19 (1) Immediately following the date of the order, if the child is eligible
 - 20 to receive a driver's license.
 - 21 (2) After the date he becomes eligible to apply for a driver's license,
 - 22 if the child is not eligible to receive a license on the date of the order.
 - 23 If the court issues an order suspending the driver's license of a child
 - 24 pursuant to this paragraph, the judge shall require the child to surrender to
 - 25 the court all driver's licenses then held by the child. The court shall, within
 - 26 5 days after issuing the order, forward to the department of motor vehicles
 - 27 and public safety the licenses, together with a copy of the order. If,
 - 28 pursuant to this paragraph, the court issues an order delaying the ability of a
 - 29 child to receive a driver's license, the court shall, within 5 days after
 - 30 issuing the order, forward to the department of motor vehicles and public
 - 31 safety a copy of the order. The department of motor vehicles and public
 - 32 safety shall report a suspension pursuant to this paragraph to an insurance
 - 33 company or its agent inquiring about the child's driving record, but such a
 - 34 suspension must not be considered for the purpose of rating or
 - 35 underwriting. The department of motor vehicles and public safety shall not
 - 36 require the child to submit to the tests and other requirements which are
 - 37 adopted by regulation pursuant to subsection 1 of NRS 483.495 as a
 - 38 condition of reinstatement or reissuance after a suspension of his license
 - 39 pursuant to this paragraph, unless the suspension resulted from his poor
 - 40 performance as a driver.
- 41 (i) Place the child, when he is not in school, under the supervision of:
 - 42 (1) A public organization to work on public projects;
 - 43 (2) A public agency to work on projects to eradicate graffiti; or

1 (3) A private nonprofit organization to perform other public
2 service.

3 The person under whose supervision the child is placed shall keep the child
4 busy and well supervised and shall make such reports to the court as it may
5 require. As a condition of such a placement, the court may require the child
6 or his parent or guardian to deposit with the court a reasonable sum of
7 money to pay for the cost of policies of insurance against liability for
8 personal injury and damage to property or for industrial insurance, or both,
9 during those periods in which he performs the work, unless, in the case of
10 industrial insurance, it is provided by the organization or agency for which
11 he performs the work.

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

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

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

22 (m) If the child has not previously been found to be within the purview
23 of this chapter and if the act for which the child is found to be within the
24 purview of this chapter did not involve the use or threatened use of force or
25 violence, order the child to participate in a publicly or privately operated
26 program of sports or physical fitness that is adequately supervised or a
27 publicly or privately operated program for the arts that is adequately
28 supervised. A program for the arts may include, but is not limited to,
29 drawing, painting, photography or other visual arts, musical, dance or
30 theatrical performance, writing or any other structured activity that involves
31 creative or artistic expression. If the court orders the child to participate in
32 a program of sports or physical fitness or a program for the arts, the court
33 may order any or all of the following, in the following order of priority if
34 practicable:

35 (1) The parent or guardian of the child, to the extent of his financial
36 ability, to pay the costs associated with the participation of the child in the
37 program, including, but not limited to, a reasonable sum of money to pay
38 for the cost of policies of insurance against liability for personal injury and
39 damage to property during those periods in which the child participates in
40 the program;

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

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

4 2. If the court finds that a child who is less than 17 years of age has
5 committed a delinquent act, the court may order the parent or guardian of
6 the child to pay any fines and penalties imposed for the delinquent act. If
7 the parent or guardian is unable to pay the fines and penalties imposed
8 because of financial hardship, the court may require the parent or guardian
9 to perform community service.

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

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

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

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

27 5. Whenever the court commits a child to any institution or agency
28 pursuant to this section or NRS 62.213, it shall transmit a summary of its
29 information concerning the child and order the administrator of the school
30 that the child last attended to transmit a copy of the child's educational
31 records to the institution or agency. The institution or agency shall give to
32 the court any information concerning the child that the court may require.

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

38 **Sec. 6.** The amendatory provisions of sections 1 and 2 of this act do
39 not apply to offenses that were committed before October 1, 1999.

40 **Sec. 7.** The amendatory provisions of sections 3, 4 and 5 of this act do
41 not apply to a false representation made by a child who is under 18 years of
42 age to purchase or obtain cigarettes, cigarette paper, tobacco of any

1 description or products made from tobacco that occurred before October 1,
2 1999.

3 **Sec. 8.** 1. This section and sections 1 to 4, inclusive, and 6 and 7 of
4 this act become effective on October 1, 1999.

5 2. Section 5 of this act becomes effective at 12:01 a.m. on October 1,
6 1999.

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