

Senate Bill No. 527—Committee on Taxation

CHAPTER.....

AN ACT relating to cigarettes; exempting duty-free sales enterprises and persons importing cigarettes for personal use from provisions governing the licensing of cigarette dealers and the taxation of cigarettes; providing that cigarette revenue stamps must identify the dealer who affixed the stamps; requiring certain dealers to file certificates regarding cigarettes imported into the United States; expanding the scope of prohibited acts by cigarette dealers; revising the provisions governing the disposal of certain contraband cigarettes; providing for a private right of action for injunctive relief regarding certain violations of chapter 370 of NRS; 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:

Section 1. Chapter 370 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, a person may institute a civil action in a court of competent jurisdiction for appropriate injunctive relief if the person:

(a) Sells, distributes or manufactures cigarettes; and
(b) Sustains direct economic or commercial injury as a result of a violation of subsection 4 of NRS 370.240 or NRS 370.385.

2. Nothing in this section authorizes an action against this state, a political subdivision of this state, or an officer, employee or agency thereof.

Sec. 2. NRS 370.070 is hereby amended to read as follows:

370.070 The provisions of NRS 370.001 to 370.430, inclusive, do not apply to ~~common~~:

1. Common carriers while engaged in interstate commerce which sell or furnish cigarettes on their trains, buses or airplanes ~~+~~;

2. A person entering this state with a quantity of cigarettes for household or personal use which is exempt from federal import duty; and

3. A duty-free sales enterprise as defined in 19 U.S.C. § 1555(b)(8)(D) that:

(a) Operates pursuant to the provisions of 19 U.S.C. § 1555(b); and
(b) To the extent it sells cigarettes, only sells cigarettes that are duty-free merchandise as defined in 19 U.S.C. § 1555(b)(8)(E).

Sec. 3. NRS 370.180 is hereby amended to read as follows:

370.180 1. The department shall:

(a) Design ~~the suitable stamp or~~ suitable stamps for the purpose of this chapter ~~+~~ *which meet the requirements of this section; and*

(b) From time to time, have as many revenue stamps printed as may be required.

2. Each stamp must be designed to permit the identification of the dealer who affixed the stamp to a package or other container of cigarettes. The dealer must be identified by a number or other mark on the stamp. The department shall maintain, for not less than 3 years after the date the stamp is provided to the dealer, a record of the information necessary to identify the dealer by examining the stamp. Upon request,

the department shall provide to any person the information maintained pursuant to this subsection.

3. The use of a metered stamping machine approved by and registered with the department shall be subject to such regulations as prescribed by the department.

Sec. 4. NRS 370.240 is hereby amended to read as follows:

370.240 1. Each dealer authorized to purchase or affix cigarette revenue stamps shall report to the department:

(a) The inventory of all cigarettes in his possession or control at the close of business on the last day of each month.

(b) The total value of all cigarette revenue stamps affixed by him upon cigarette packages sold in or shipped into the state by him during the preceding month.

2. The report must be made by the 25th day of the month following shipments upon forms to be provided by the department.

3. The dealer may be allowed 5 additional days to file his report, if he makes prior written application to the department and the department finds good cause for extension.

4. If, during the preceding month, the dealer affixed cigarette revenue stamps upon cigarette packages imported into the United States, he shall file with the report a copy of each certificate submitted pursuant to 19 U.S.C. § 1681a(c) with regard to the cigarette packages.

Sec. 5. NRS 370.385 is hereby amended to read as follows:

370.385 1. A wholesale or retail dealer shall not affix a Nevada cigarette revenue stamp or a metered machine impression upon a package, carton, packet or other container of cigarettes which:

(a) Does not meet the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1331 et seq., for the placement of labels, warnings or any other information required by that Act to be placed upon a container of cigarettes sold within the United States;

(b) Is labeled as "for export only," "U.S. tax exempt," "for use outside the U.S." or with similar wording indicating that the manufacturer did not intend for the product to be sold in the United States;

(c) Has been altered by the unauthorized addition or removal of wording, labels or warnings described in paragraph (a) or (b);

(d) Has been exported from the United States after January 1, 2000, and imported into the United States in violation of 26 U.S.C. § 5754; ~~for~~

(e) Has been imported into the United States in violation of 19 U.S.C. § 1681a;

(f) Was manufactured, packaged or imported by a person who has not complied with 15 U.S.C. § 1335a with regard to the cigarettes;

(g) Violates a federal trade-mark or copyright law ~~H~~; or

(h) Violates any other federal statute or regulation or with respect to which any federal statute or regulation has been violated.

2. A wholesale or retail dealer shall not:

(a) Affix Nevada cigarette revenue stamps or metered machine impressions on;

(b) Sell or distribute in this state; or

(c) Possess in this state with the intent to sell or distribute in this state, cigarettes manufactured for export outside the United States.

3. The department may impose a penalty on a wholesale or retail dealer who violates subsection 1 or 2 as follows:

(a) For the first violation, a penalty of \$5,000.

(b) For each subsequent violation, a penalty of \$10,000.

4. Notwithstanding any other provision of law, the department ~~{may seize, destroy or sell to the manufacturer, for export only, a container of}~~ *shall seize and destroy* cigarettes upon which a revenue stamp or metered machine impression was placed in violation of subsection 1 or 2.

5. As used in this section, "cigarettes manufactured for export outside the United States" means cigarettes contained in a package or carton which indicates that the cigarettes are tax exempt and for use outside the United States.

Sec. 6. NRS 370.415 is hereby amended to read as follows:

370.415 *1. The department, its agents, sheriffs within their respective counties and all other peace officers of the State of Nevada shall seize any contraband cigarettes found or located in the State of Nevada.*

2. A sheriff or other peace officer who seizes cigarettes pursuant to this section shall provide written notification of the seizure to the department not later than 5 working days after the seizure. The notification must include the reason for the seizure.

3. After consultation with the department, the sheriff or other peace officer shall transmit the cigarettes to the department if:

(a) The cigarettes, except for revenue stamps or metered machine impressions being properly affixed as required by this chapter, comply with all state and federal statutes and regulations; and

(b) The department approves the transmission of the cigarettes.

4. Upon receipt of the cigarettes, the department shall dispose of the cigarettes as provided in subsection 4 of NRS 370.270.

5. If the sheriff or other peace officer does not transmit the cigarettes to the department, he shall destroy the cigarettes.

Sec. 7. The amendatory provisions of this act do not apply to offenses committed before July 1, 2001.

Sec. 8. This act becomes effective on July 1, 2001.