

ASSEMBLY BILL NO. 460—COMMITTEE ON JUDICIARY

MARCH 24, 2003

Referred to Committee on Judiciary

SUMMARY—Makes various changes regarding manufacture, sale and use of tobacco products. (BDR 15-1283)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

~

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

AN ACT relating to tobacco; prohibiting smoking in certain video arcades and child care facilities; making various changes relating to the sale of tobacco products to and the purchase of those products by minors; making various changes regarding the sale, delivery and taxation of cigarettes; revising the duties and rights of manufacturers and distributors of cigarettes; revising the duties of the Department of Taxation; providing civil and criminal penalties; 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 202.2485 is hereby amended to read as
2 follows:
3 202.2485 As used in NRS 202.2485 to 202.2497, inclusive:
4 1. ***“Delivery sale” means any sale or distribution of a product***
5 ***for which:***
6 (a) ***The purchaser submits the order for the sale by means of a***
7 ***telephonic or other method of voice transmission, the mail or any***
8 ***other delivery service, or the Internet or any other online service;***
9 ***or***
10 (b) ***The product is delivered by mail or the use of another***
11 ***delivery service, or by the seller or distributor or his agent.***



1 **2. “Delivery service” means any person engaged in the**
2 **commercial delivery of letters, packages or other containers.**

3 **3. “Distribute” includes furnishing, giving away or providing**
4 **products made from tobacco or samples thereof at no cost to**
5 **promote the product, whether or not in combination with a sale.**

6 ~~2.~~ **4. “Health authority” means the district health officer in a**
7 **district, or his designee, or, if none, the State Health Officer, or his**
8 **designee.**

9 **Sec. 1.5.** NRS 202.2491 is hereby amended to read as follows:
10 202.2491 1. Except as otherwise provided in subsections 5
11 and 6 and NRS 202.24915, the smoking of tobacco in any form is
12 prohibited if done in any:

13 (a) Public elevator.

14 (b) Public building.

15 (c) Public waiting room, lobby or hallway of any:

16 (1) Medical facility or facility for the dependent as defined in
17 chapter 449 of NRS; or

18 (2) Office of any chiropractor, dentist, physical therapist,
19 physician, podiatric physician, psychologist, optician, optometrist or
20 doctor of Oriental medicine.

21 (d) Hotel or motel when so designated by the operator thereof.

22 (e) Public area of a store principally devoted to the sale of food
23 for human consumption off the premises.

24 (f) Child care facility.

25 (g) Bus used by the general public, other than a chartered bus, or
26 in any maintenance facility or office associated with a bus system
27 operated by any regional transportation commission.

28 (h) School bus.

29 **(i) Video arcade.**

30 2. The person in control of an area listed in paragraph (c), (d),
31 (e) ~~1, (f)~~ or (g) of subsection 1:

32 (a) Shall post in the area signs prohibiting smoking in any place
33 not designated for that purpose as provided in paragraph (b).

34 (b) May designate separate rooms or portions of the area which
35 may be used for smoking, except for a room or portion of the area of
36 a store described in paragraph (e) of subsection 1 if the room or
37 portion of the area:

38 (1) Is leased to or operated by a person licensed pursuant to
39 NRS 463.160; and

40 (2) Does not otherwise qualify for an exemption set forth in
41 NRS 202.24915.

42 3. The person in control of a public building:

43 (a) Shall post in the area signs prohibiting smoking in any place
44 not designated for that purpose as provided in paragraph (b).



1 (b) Shall, except as otherwise provided in this subsection,
2 designate a separate area which may be used for smoking.

3 A school district which prohibits the use of tobacco by pupils need
4 not designate an area which may be used by the pupils to smoke.

5 4. The operator of a restaurant with a seating capacity of 50 or
6 more shall maintain a flexible nonsmoking area within the restaurant
7 and offer each patron the opportunity to be seated in a smoking or
8 nonsmoking area.

9 5. A business which derives more than 50 percent of its gross
10 receipts from the sale of alcoholic beverages or 50 percent of its
11 gross receipts from gaming operations may be designated as a
12 smoking area in its entirety by the operator of the business.

13 6. The smoking of tobacco is not prohibited in:

14 (a) Any room or area designated for smoking pursuant to
15 paragraph (b) of subsection 2 or paragraph (b) of subsection 3.

16 (b) A licensed gaming establishment. A licensed gaming
17 establishment may designate separate rooms or areas within the
18 establishment which may or may not be used for smoking.

19 7. ~~[The person in control of a child care facility shall not allow~~
20 ~~children in any room or area he designates for smoking pursuant to~~
21 ~~paragraph (b) of subsection 2. Any such room or area must be~~
22 ~~sufficiently separate or ventilated so that there are no irritating or~~
23 ~~toxic effects of smoke in the other areas of the facility.~~

24 ~~—8.]~~ As used in this section:

25 (a) "Child care facility" means an establishment ~~[licensed~~
26 ~~pursuant to chapter 432A of NRS to provide care for 13 or more~~
27 ~~children.]~~ *operated and maintained to furnish care on a temporary*
28 *or permanent basis, during the day or overnight, to five or more*
29 *children under 18 years of age, if compensation is received for the*
30 *care of any of those children. The term does not include the home*
31 *of a natural person who provides child care.*

32 (b) "Licensed gaming establishment" has the meaning ascribed
33 to it in NRS 463.0169.

34 (c) "Public building" means any building or office space owned
35 or occupied by:

36 (1) Any component of the University and Community
37 College System of Nevada and used for any purpose related to the
38 System.

39 (2) The State of Nevada and used for any public purpose,
40 other than that used by the Department of Corrections to house or
41 provide other services to offenders.

42 (3) Any county, city, school district or other political
43 subdivision of the State and used for any public purpose.



1 If only part of a building is owned or occupied by an entity
2 described in this paragraph, the term means only that portion of the
3 building which is so owned or occupied.

4 (d) "School bus" has the meaning ascribed to it in NRS 483.160.

5 (e) *"Video arcade" means a facility legally accessible to*
6 *persons under 18 years of age which is intended primarily for the*
7 *use of pinball and video machines for amusement and which*
8 *contains a minimum of 10 such machines.*

9 **Sec. 2.** NRS 202.24935 is hereby amended to read as follows:

10 202.24935 1. It is unlawful for a person to knowingly sell or
11 distribute cigarettes, cigarette paper, tobacco of any description or
12 products made from tobacco to a child under the age of 18 years
13 through ~~the use of the Internet.~~ *a delivery sale.*

14 2. A person who violates the provisions of subsection 1 shall
15 be punished by a fine of not more than \$500 and a civil penalty of
16 not more than \$500. Any money recovered pursuant to this section
17 as a civil penalty must be deposited in the same manner as money is
18 deposited pursuant to subsection 6 of NRS 202.2493.

19 3. Every person who sells or distributes cigarettes, cigarette
20 paper, tobacco of any description or products made from tobacco
21 through ~~the use of the Internet.~~ *a delivery sale* shall adopt a policy
22 to prevent a child under the age of 18 years from obtaining
23 cigarettes, cigarette paper, tobacco of any description or products
24 made from tobacco from the person through ~~the use of the~~
25 ~~Internet.~~ *a delivery sale.* The policy must include, without
26 limitation, a method for ensuring that the person who delivers such
27 items obtains the signature of a person who is over the age of 18
28 years when delivering the items, that the packaging or wrapping of
29 the items when they are shipped is clearly marked with the word
30 "cigarettes" or the words "tobacco products," and that the person
31 complies with the provisions of 15 U.S.C. § 376. A person who fails
32 to adopt a policy pursuant to this subsection is guilty of a
33 misdemeanor and shall be punished by a fine of not more than \$500.

34 **Sec. 3.** Chapter 62 of NRS is hereby amended by adding
35 thereto the provisions set forth as sections 4 and 5 of this act.

36 **Sec. 4. 1.** *Except as otherwise provided in subsection 2, a*
37 *child under the age of 18 years shall not falsely represent that he*
38 *is 18 years of age or older to purchase or obtain cigarettes,*
39 *cigarette paper, tobacco of any description or products made from*
40 *tobacco.*

41 **2.** *Subsection 1 does not apply to a child who is assisting in*
42 *an inspection pursuant to NRS 202.2496.*

43 **Sec. 5.** (Deleted by amendment.)



1 **Sec. 6.** NRS 62.040 is hereby amended to read as follows:
2 62.040 1. Except if the child involved is subject to the
3 exclusive jurisdiction of an Indian tribe, and except as otherwise
4 provided in this chapter, the court has exclusive original jurisdiction
5 in proceedings:
6 (a) Concerning any child living or found within the county who
7 is in need of supervision because he:
8 (1) Is a child who is subject to compulsory school attendance
9 and is a habitual truant from school;
10 (2) *Engages in an act prohibited by section 4 of this act;*
11 (3) Habitually disobeys the reasonable and lawful demands
12 of his parents, guardian or other custodian, and is unmanageable; or
13 ~~(3)~~ (4) Deserts, abandons or runs away from his home or
14 usual place of abode,
15 and is in need of care or rehabilitation. ~~[The]~~ A child *who is in need*
16 *of supervision pursuant to this paragraph* must not be considered a
17 delinquent.
18 (b) Concerning any child living or found within the county who
19 has committed a delinquent act. A child commits a delinquent act if
20 he violates a county or municipal ordinance or any rule or regulation
21 having the force of law, or he commits an act designated a crime
22 under the law of the State of Nevada.
23 (c) Concerning any child in need of commitment to an
24 institution for the mentally retarded.
25 2. For the purposes of subsection 1, each of the following acts
26 shall be deemed not to be a delinquent act, and the court does not
27 have jurisdiction of a person who is charged with committing such
28 an act:
29 (a) Murder or attempted murder and any other related offense
30 arising out of the same facts as the murder or attempted murder,
31 regardless of the nature of the related offense.
32 (b) Sexual assault or attempted sexual assault involving the use
33 or threatened use of force or violence against the victim and any
34 other related offense arising out of the same facts as the sexual
35 assault or attempted sexual assault, regardless of the nature of the
36 related offense, if:
37 (1) The person was 16 years of age or older when the sexual
38 assault or attempted sexual assault was committed; and
39 (2) Before the sexual assault or attempted sexual assault was
40 committed, the person previously had been adjudicated delinquent
41 for an act that would have been a felony if committed by an adult.
42 (c) An offense or attempted offense involving the use or
43 threatened use of a firearm and any other related offense arising out
44 of the same facts as the offense or attempted offense involving the



* A B 4 6 0 R 3 *

1 use or threatened use of a firearm, regardless of the nature of the
2 related offense, if:

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

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

10 (d) A felony resulting in death or substantial bodily harm to the
11 victim and any other related offense arising out of the same facts as
12 the felony, regardless of the nature of the related offense, if:

13 (1) The felony was committed on the property of a public or
14 private school when pupils or employees of the school were present
15 or may have been present, at an activity sponsored by a public or
16 private school or on a school bus while the bus was engaged in its
17 official duties; and

18 (2) The person intended to create a great risk of death or
19 substantial bodily harm to more than one person by means of a
20 weapon, device or course of action that would normally be
21 hazardous to the lives of more than one person.

22 (e) Any other offense if, before the offense was committed, the
23 person previously had been convicted of a criminal offense.

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

28 (a) The restrictions set forth in subsection 7 of NRS 62.170 are
29 applicable in those proceedings; and

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

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

34 4. As used in this section, "school bus" has the meaning
35 ascribed to it in NRS 483.160.

36 **Sec. 7.** NRS 62.212 is hereby amended to read as follows:

37 62.212 1. Except as otherwise provided in subsection ~~3.3~~ 4,
38 if the court finds that a child is within the purview of paragraph (a)
39 of subsection 1 of NRS 62.040 and has not previously been the
40 subject of a complaint under NRS 62.128 before committing the acts
41 for which the petition was filed, the court shall:

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



1 (b) Refer the child, without adjudication, to services available in
2 the community for counseling, behavioral modification and social
3 adjustment.

4 **2.** Except as otherwise provided in subsection ~~{3.}~~ **4**, a child
5 *described in subsection 1* must not be adjudicated to be a child in
6 need of supervision unless a subsequent petition based upon
7 additional facts is filed with the court after admonition and referral
8 pursuant to ~~{this subsection.}~~
9 ~~—2.}~~ *that subsection.*

10 **3.** A child who is:

11 (a) Less than 12 years of age must not be committed to or
12 otherwise placed in the Nevada Youth Training Center or the
13 Caliente Youth Center.

14 (b) Not adjudicated to be delinquent must not be committed to
15 or otherwise placed in the Nevada Youth Training Center, the
16 Caliente Youth Center or any other facility that provides
17 correctional care.

18 ~~{3.}~~ **4.** The provisions of subsection 1 do not apply to a child
19 alleged to be in need of supervision because he is a habitual truant.

20 **5.** *In addition to the actions set forth in subsection 1, a court*
21 *may order a child who engages in an act prohibited by section 4 of*
22 *this act to perform community service. Community service so*
23 *ordered must be performed:*

24 (a) *For and under the supervising authority of a county, city,*
25 *town or other political subdivision or agency of this state or a*
26 *charitable organization that renders service to the community or*
27 *its residents; and*

28 (b) *At the child's school of attendance, if practicable.*

29 **Sec. 8.** (Deleted by amendment.)

30 **Sec. 9.** Chapter 370 of NRS is hereby amended by adding
31 thereto the provisions set forth as sections 10 to 58, inclusive, of this
32 act.

33 **Secs. 10-37.** (Deleted by amendment.)

34 **Sec. 38.** *The Legislature finds that:*

35 **1.** *Violations of the provisions of chapter 370A of NRS*
36 *threaten the integrity of the Master Settlement Agreement, the*
37 *fiscal soundness of the State and the public health.*

38 **2.** *The enactment of the procedural enhancements set forth in*
39 *sections 38 to 58, inclusive, of this act will aid in the enforcement*
40 *of the provisions of chapter 370A of NRS and thereby safeguard*
41 *the Master Settlement Agreement, the fiscal soundness of the State*
42 *and the public health.*

43 **Sec. 39.** *As used in sections 38 to 58, inclusive, of this act,*
44 *unless the context otherwise requires, the words and terms defined*



1 *in sections 40 to 50, inclusive, of this act have the meanings*
2 *ascribed to them in those sections.*

3 **Sec. 40.** *“Brand family” means all styles of cigarettes sold*
4 *under the same trademark and differentiated from one another by*
5 *means of additional modifiers or descriptors, including, but not*
6 *limited to, “menthol,” “lights,” “kings” and “100s,” and includes*
7 *any brand name, whether occurring alone or in conjunction with*
8 *any other word, any trademark, logo, symbol, motto, selling*
9 *message or recognizable pattern of colors, or any other indicia of*
10 *product identification identical or similar to, or identifiable with, a*
11 *previously known brand of cigarettes.*

12 **Sec. 41.** *“Cigarette” has the meaning ascribed to it in*
13 *NRS 370A.050.*

14 **Sec. 42.** *“Directory” means the directory created pursuant to*
15 *section 53 of this act.*

16 **Sec. 43.** *“Distributor” means a person that is authorized to*
17 *affix stamps to cigarette packages pursuant to this chapter or any*
18 *person that is required to pay the taxes on cigarettes imposed*
19 *pursuant to this chapter.*

20 **Sec. 44.** *“Manufacturer of tobacco products” has the*
21 *meaning ascribed to it in NRS 370A.060.*

22 **Sec. 45.** *“Master Settlement Agreement” has the meaning*
23 *ascribed to it in NRS 370A.070.*

24 **Sec. 46.** *“Nonparticipating manufacturer” means any*
25 *manufacturer of tobacco products that is not a participating*
26 *manufacturer.*

27 **Sec. 47.** *“Participating manufacturer” has the meaning*
28 *ascribed to it in NRS 370A.080.*

29 **Sec. 48.** *“Qualified escrow fund” has the meaning ascribed*
30 *to it in NRS 370A.090.*

31 **Sec. 49.** *“Stamp” means the indicia required to be placed on*
32 *a cigarette package that evidences payment of the taxes on*
33 *cigarettes imposed pursuant to this chapter.*

34 **Sec. 50.** *“Units sold” has the meaning ascribed to it in*
35 *NRS 370A.120.*

36 **Sec. 51. 1.** *A manufacturer of tobacco products whose*
37 *cigarettes are sold in this state, whether directly or through a*
38 *distributor, retailer or similar intermediary or intermediaries,*
39 *shall, not later than April 30 of each year, execute and deliver to*
40 *the Attorney General and the Department, on a form provided by*
41 *the Department, a certification which certifies under penalty of*
42 *perjury that, as of the date of that certification, the manufacturer*
43 *of tobacco products is either:*

44 *(a) A participating manufacturer; or*



* A B 4 6 0 R 3 *

1 (b) *In full compliance with subsection 2 of NRS 370A.140,*
2 *including any quarterly installment payments required pursuant to*
3 *section 56 of this act.*

4 2. *Except as otherwise provided in section 52 of this act:*

5 (a) *A participating manufacturer shall include in its*
6 *certification pursuant to this section a list of its brand families.*
7 *The participating manufacturer shall update that list at least 30*
8 *calendar days before it adds to or modifies its brand families by*
9 *executing and delivering a supplemental certification to the*
10 *Attorney General and the Department.*

11 (b) *A nonparticipating manufacturer shall, in its certification*
12 *pursuant to this section:*

13 (1) *Include:*

14 (I) *A list of all of its brand families and the number of*
15 *units sold for each brand family that were sold in the State during*
16 *the preceding calendar year; and*

17 (II) *A list of all of its brand families that have been sold*
18 *in the State at any time during the current calendar year;*

19 (2) *Indicate, by an asterisk, any brand family sold in the*
20 *State during the preceding calendar year that is no longer being*
21 *sold in the State as of the date of the certification; and*

22 (3) *Identify, by name and address, any other manufacturer*
23 *of those brand families in the preceding or current calendar*
24 *year.*

25 *A nonparticipating manufacturer shall update the information*
26 *required by this paragraph at least 30 calendar days before it adds*
27 *to or modifies its brand families by executing and delivering a*
28 *supplemental certification to the Attorney General and the*
29 *Department.*

30 3. *In addition to the requirements of subsection 2, the*
31 *certification of a nonparticipating manufacturer pursuant to this*
32 *section must certify:*

33 (a) *That the nonparticipating manufacturer is registered to do*
34 *business in the State or has appointed a resident agent for service*
35 *of process and provided notice thereof as required by section 54 of*
36 *this act;*

37 (b) *That the nonparticipating manufacturer has:*

38 (1) *Established and continues to maintain a qualified*
39 *escrow fund; and*

40 (2) *Executed a qualified escrow agreement governing the*
41 *qualified escrow fund that has been reviewed and approved by the*
42 *Attorney General;*

43 (c) *That the nonparticipating manufacturer is in full*
44 *compliance with chapter 370A of NRS and any regulations*
45 *adopted pursuant thereto;*



1 (d) *The name, address and telephone number of the financial*
2 *institution where the nonparticipating manufacturer has*
3 *established the qualified escrow fund required pursuant to chapter*
4 *370A of NRS and any regulations adopted pursuant thereto;*

5 (e) *The account number of that qualified escrow fund and any*
6 *sub-account number for this state;*

7 (f) *The amount the nonparticipating manufacturer placed in*
8 *that qualified escrow fund for cigarettes sold in the State during*
9 *the preceding calendar year, the date and amount of each such*
10 *deposit, and such evidence or verification as may be deemed*
11 *necessary by the Department to confirm the information required*
12 *by this paragraph; and*

13 (g) *The amount and date of any withdrawal or transfer of*
14 *money the nonparticipating manufacturer made at any time from*
15 *that qualified escrow fund or from any other qualified escrow*
16 *fund into which it ever made escrow payments pursuant to chapter*
17 *370A of NRS and any regulations adopted pursuant thereto.*

18 **Sec. 52.** *A manufacturer of tobacco products:*

19 1. *Shall not include a brand family in its certification*
20 *pursuant to section 51 of this act unless, if the manufacturer is:*

21 (a) *A participating manufacturer, the manufacturer affirms*
22 *that the brand family is to be deemed to be its cigarettes for*
23 *purposes of calculating its payments under the Master Settlement*
24 *Agreement for the relevant year, in the volume and shares*
25 *determined pursuant to the Master Settlement Agreement; or*

26 (b) *A nonparticipating manufacturer, the manufacturer*
27 *affirms that the brand family is to be deemed to be its cigarettes*
28 *for purposes of chapter 370A of NRS.*

29 *This subsection must not be construed as limiting or otherwise*
30 *affecting the right of the State to maintain that a brand family*
31 *constitutes cigarettes of a different manufacturer of tobacco*
32 *products for purposes of calculating payments under the Master*
33 *Settlement Agreement or for purposes of chapter 370A of NRS.*

34 2. *Shall maintain all invoices and documentation of sales,*
35 *and any other information relied upon by the manufacturer for its*
36 *certification pursuant to section 51 of this act, for at least 5 years,*
37 *unless the manufacturer is otherwise required by law to maintain*
38 *them for a greater period.*

39 **Sec. 53.** 1. *The Department shall create and maintain on*
40 *its Internet website and otherwise make available for public*
41 *inspection a directory that lists, except as otherwise provided in*
42 *sections 38 to 58, inclusive, of this act, all manufacturers of*
43 *tobacco products that have provided current and accurate*
44 *certifications conforming to the requirements of sections 38 to 58,*



* A B 4 6 0 R 3 *

1 *inclusive, of this act and all brand families that are listed in those*
2 *certifications. The Department:*

3 *(a) Shall not include or retain in the directory the name or*
4 *brand families of any nonparticipating manufacturer that has*
5 *failed to provide the required certification or whose certification*
6 *the Department determines is not in compliance with sections 38*
7 *to 58, inclusive, of this act, unless the Department has determined*
8 *that such violation has been cured to its satisfaction.*

9 *(b) Shall not include or retain in the directory a manufacturer*
10 *of tobacco products or brand family if the Department concludes,*
11 *for a nonparticipating manufacturer, that:*

12 *(1) Any escrow payment required pursuant to chapter 370A*
13 *of NRS for any period for any brand family, whether or not listed*
14 *by the nonparticipating manufacturer, has not been fully paid into*
15 *a qualified escrow fund governed by a qualified escrow agreement*
16 *which has been approved by the Attorney General; or*

17 *(2) Any outstanding final judgment, including any interest*
18 *thereon, for a violation of chapter 370A of NRS has not been fully*
19 *satisfied for that manufacturer or brand family.*

20 *2. The Department shall update the directory as necessary to*
21 *correct mistakes and to add or remove a manufacturer of tobacco*
22 *products or brand family to keep the directory in conformity with*
23 *the requirements of sections 38 to 58, inclusive, of this act.*

24 *3. Any determination of the Department not to include in or*
25 *to remove from the directory a manufacturer of tobacco products*
26 *or brand family is a final decision for the purposes of judicial*
27 *review.*

28 **Sec. 54. 1.** *Any nonresident or foreign nonparticipating*
29 *manufacturer that has not registered to do business in the State as*
30 *a foreign corporation or other business entity must, as a condition*
31 *precedent to having its brand families included or retained in the*
32 *directory, appoint and continually engage without interruption the*
33 *services of an agent in this state to act as its agent for the service*
34 *of process on whom all process, in any action or proceeding*
35 *against it concerning or arising out of the enforcement of this*
36 *chapter, may be served in any manner authorized by law. Such*
37 *service constitutes legal and valid service of process on the*
38 *nonparticipating manufacturer. The nonparticipating*
39 *manufacturer shall provide the name, address, phone number and*
40 *proof of the appointment and availability of such agent to, and to*
41 *the satisfaction of, the Attorney General and the Department.*

42 *2. A nonparticipating manufacturer shall provide notice to*
43 *the Attorney General and the Department at least 30 calendar days*
44 *before the termination of the authority of an agent appointed*
45 *pursuant to this section and shall provide proof to the satisfaction*



1 of the Attorney General and the Department of the appointment of
2 a new agent not less than 5 calendar days before the termination
3 of appointment of an existing agent. If an agent terminates his
4 appointment as an agent, the nonparticipating manufacturer shall
5 notify the Attorney General and the Department of that
6 termination within 5 calendar days and include with that
7 notification proof to the satisfaction of the Attorney General and
8 the Department of the appointment of a new agent.

9 3. Any nonparticipating manufacturer whose cigarettes are
10 sold in this state and who has not appointed and engaged an agent
11 as required by this section shall be deemed to have appointed the
12 Secretary of State as such agent and may be proceeded against in
13 courts of this state by service of process upon the Secretary of
14 State, except that the appointment of the Secretary of State as such
15 agent does not satisfy the condition precedent for having the brand
16 families of the nonparticipating manufacturer included or
17 retained in the directory.

18 **Sec. 55. 1.** Not later than 20 calendar days after the end of
19 each calendar quarter, and more frequently if so directed by the
20 Department, each distributor shall submit such information as the
21 Department requires to facilitate compliance with the provisions of
22 sections 38 to 58, inclusive, of this act, including, without
23 limitation, a list by brand family of the total number of cigarettes
24 or, in the case of "roll-your-own" tobacco, the equivalent unit
25 count, for which the distributor affixed stamps during the previous
26 calendar quarter or otherwise paid the tax due for those cigarettes.
27 The distributor shall maintain for at least 5 years, and make
28 available to the Department, all invoices and documentation of
29 sales of all cigarettes of nonparticipating manufacturers and any
30 other information relied upon in reporting to the Department.

31 2. The Department may disclose to the Attorney General any
32 information received pursuant to sections 38 to 58, inclusive, of
33 this act and requested by the Attorney General for purposes
34 of determining compliance with and enforcing the provisions of
35 sections 38 to 58, inclusive, of this act. The Department and
36 Attorney General shall share with each other the information
37 received pursuant to the provisions of sections 38 to 58, inclusive,
38 of this act, and may share such information with other federal,
39 state or local agencies only for purposes of enforcement of those
40 provisions, the provisions of chapter 370A of NRS or the
41 corresponding laws of other states.

42 3. The Department may require at any time from a
43 nonparticipating manufacturer proof, from the financial
44 institution in which that manufacturer has established a qualified
45 escrow fund for the purpose of compliance with chapter 370A of



1 *NRS, of the amount of money in that fund, exclusive of interest,*
2 *the amount and date of each deposit to that fund, and the amount*
3 *and date of each withdrawal from that fund.*

4 *4. In addition to the information otherwise required to be*
5 *submitted pursuant to sections 38 to 58, inclusive, of this act, the*
6 *Department may require a distributor or manufacturer of tobacco*
7 *products to submit any additional information, including, without*
8 *limitation, samples of the packaging or labeling of each brand*
9 *family, as is necessary to enable the Department to determine*
10 *whether a manufacturer of tobacco products is in compliance with*
11 *the provisions of sections 38 to 58, inclusive, of this act.*

12 *5. Every distributor shall provide to the Department and*
13 *update as necessary an electronic mail address for receiving any*
14 *notifications as may be required to carry out sections 38 to 58,*
15 *inclusive, of this act.*

16 **Sec. 56. 1.** *To promote compliance with the provisions of*
17 *NRS 370A.140, the Department may adopt regulations requiring a*
18 *manufacturer of tobacco products to make the escrow deposits*
19 *required by NRS 370A.140 in quarterly installments during the*
20 *year in which the sales covered by those deposits are made. The*
21 *Department may require the production of information sufficient*
22 *to enable the Department to determine the adequacy of the amount*
23 *of each quarterly installment.*

24 *2. The Department may adopt such regulations as it deems*
25 *necessary to carry out the provisions of sections 38 to 58,*
26 *inclusive, of this act.*

27 **Secs. 57-79.** (Deleted by amendment.)

28 **Sec. 80.** NRS 370A.150 is hereby amended to read as follows:
29 370A.150 A manufacturer of tobacco products that deposits
30 money into escrow pursuant to subsection 2 of NRS 370A.140 shall
31 receive the interest or other appreciation on the deposit as earned.
32 The principal of the deposit may be released from escrow only
33 under the following circumstances:

34 1. To pay a judgment or settlement on a released claim brought
35 against that manufacturer by this state or by a releasing party located
36 or residing in this state. Money may be released from escrow under
37 this subsection only in the order in which it was deposited into
38 escrow and only to the extent and at the time necessary to make
39 payments required under the judgment or settlement.

40 2. To the extent that the manufacturer establishes that the
41 amount it was required to deposit into escrow *on account of units*
42 *sold in the State* in a particular year was greater than ~~[this state's~~
43 ~~allocable share of the total payments that the manufacturer would~~
44 ~~have been required to make in that year under]~~ the Master
45 Settlement Agreement *payments, as determined pursuant to section*



1 *IX(i) of that Agreement including after final determination of all*
2 *adjustments, that such manufacturer would have been required to*
3 *make on account of such units sold* if the manufacturer had been a
4 participating manufacturer, ~~[as such payments are determined~~
5 ~~pursuant to section IX(i)(2) of that Agreement and before any of the~~
6 ~~adjustments or offsets described in section IX(i)(3) of that~~
7 ~~Agreement other than the inflation adjustment,]~~ the excess must be
8 released from escrow and revert to the manufacturer.

9 3. To the extent not released from escrow under subsection 1 or
10 2, deposits must be released from escrow and revert to the
11 manufacturer 25 years after the date on which they were deposited.

12 **Sec. 81.** NRS 370A.150 is hereby amended to read as follows:

13 370A.150 A manufacturer of tobacco products that deposits
14 money into escrow pursuant to subsection 2 of NRS 370A.140 shall
15 receive the interest or other appreciation on the deposit as earned.
16 The principal of the deposit may be released from escrow only
17 under the following circumstances:

18 1. To pay a judgment or settlement on a released claim brought
19 against that manufacturer by this state or by a releasing party located
20 or residing in this state. Money may be released from escrow under
21 this subsection only in the order in which it was deposited into
22 escrow and only to the extent and at the time necessary to make
23 payments required under the judgment or settlement.

24 2. ~~[To the extent that the manufacturer establishes that the~~
25 ~~amount it was required to deposit into escrow on account of units~~
26 ~~sold in the State in a particular year was greater than the Master~~
27 ~~Settlement Agreement payments, as determined pursuant to section~~
28 ~~IX(i) of that Agreement including after final determination of all~~
29 ~~adjustments, that such manufacturer would have been required to~~
30 ~~make on account of such units sold if the manufacturer had been a~~
31 ~~participating manufacturer, the excess must be released from escrow~~
32 ~~and revert to the manufacturer.~~

33 ~~—3.]~~ To the extent not released from escrow under subsection 1 ,
34 ~~{or 2,}~~ deposits must be released from escrow and revert to the
35 manufacturer 25 years after the date on which they were deposited.

36 **Sec. 82.** NRS 370A.150 is hereby amended to read as follows:

37 370A.150 A manufacturer of tobacco products that deposits
38 money into escrow pursuant to subsection 2 of NRS 370A.140 shall
39 receive the interest or other appreciation on the deposit as earned.
40 The principal of the deposit may be released from escrow only
41 under the following circumstances:

42 1. To pay a judgment or settlement on a released claim brought
43 against that manufacturer by this state or by a releasing party located
44 or residing in this state. Money may be released from escrow under
45 this subsection only in the order in which it was deposited into



* A B 4 6 0 R 3 *

1 escrow and only to the extent and at the time necessary to make
2 payments required under the judgment or settlement.

3 2. *To the extent that the manufacturer establishes that the*
4 *amount it was required to deposit into escrow in a particular year*
5 *was greater than this state's allocable share of the total payments*
6 *that the manufacturer would have been required to make in that*
7 *year under the Master Settlement Agreement if the manufacturer*
8 *had been a participating manufacturer, as such payments are*
9 *determined pursuant to section IX(i)(2) of that Agreement and*
10 *before any of the adjustments or offsets described in section*
11 *IX(i)(3) of that Agreement other than the inflation adjustment, the*
12 *excess must be released from escrow and revert to the*
13 *manufacturer.*

14 3. To the extent not released from escrow under subsection 1
15 **or 2**, deposits must be released from escrow and revert to the
16 manufacturer 25 years after the date on which they were deposited.

17 **Sec. 83.** 1. The first report required by section 55 of this act
18 is due on or before October 20, 2003.

19 2. Notwithstanding the provisions of section 51 of this act, the
20 initial certifications required by that section are due on or before
21 November 15, 2003.

22 3. The Department of Taxation shall create and make available
23 for public inspection the directory required pursuant to section 53 of
24 this act on or before December 31, 2003.

25 **Sec. 84.** 1. This section and sections 1 to 56, inclusive, 58 to
26 80, inclusive, and 83 of this act become effective:

27 (a) Upon passage and approval for the purposes of adopting
28 regulations and taking such other actions as are necessary to carry
29 out the provisions of this act; and

30 (b) On October 1, 2003, for all other purposes.

31 2. Section 57 of this act becomes effective on January 1, 2004.

32 3. Section 81 of this act becomes effective on the date a court
33 of competent jurisdiction enters a judgment determining that the
34 amendatory provisions of section 80 of this act are unconstitutional.

35 4. Section 82 of this act becomes effective on the date a court
36 of competent jurisdiction enters a judgment determining that the
37 amendatory provisions of section 81 of this act are unconstitutional.

