

CHAPTER.....

AN ACT relating to tobacco; revising certain provisions for the enforcement of taxes and restrictions on the sale and use of cigarettes to provide for the enforcement of taxes and restrictions on the sale and use of other tobacco products; requiring tobacco retailers to display certain notices concerning the sale of tobacco to minors; prohibiting the retail sale of cigarettes through the use of certain self-service displays; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the imposition, administration and enforcement of taxes on cigarettes. (NRS 370.001-370.430) Existing law provides separately for the imposition and administration of a tax on products made from tobacco, other than cigarettes. (NRS 370.440-370.503)

Section 3 of this bill provides a common definition for such "other tobacco product." **Sections 2, 4, 9 and 25-28** of this bill assist in the enforcement of the tax on any "other tobacco product" by providing for the treatment of and imposition of criminal penalties regarding contraband "other tobacco products" in the same manner as contraband cigarettes.

Section 41 of this bill requires a tobacco retailer to post a notice that the sale of tobacco to minors is prohibited by law and that the retailer may ask for proof of age to comply with this prohibition, and provides for the imposition of a fine for noncompliance with this requirement. **Section 41** also prohibits the retail sale of cigarettes through the use of certain self-service displays and provides for the imposition of a fine for noncompliance with this prohibition.

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 the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *"Other counterfeit tobacco product" means any other tobacco product or tobacco product package bearing a false manufacturing label.*

Sec. 3. *"Other tobacco product" means any tobacco of any description or any product made from tobacco, other than cigarettes.*

Sec. 4. *"Tobacco product package" means the individual pack, box or other container that contains any other tobacco product. The term does not include a container that itself contains other containers.*

Secs. 5-6. (Deleted by amendment.)

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Sec. 7. NRS 370.001 is hereby amended to read as follows:

370.001 As used in NRS 370.001 to 370.430, inclusive, *and sections 2, 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 370.005 to 370.055, inclusive, *and sections 2, 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 370.025 is hereby amended to read as follows:

370.025 “Contraband ~~{cigarettes}~~ *tobacco products*” means any:

1. Counterfeit cigarettes; ~~{or}~~
2. *Other counterfeit tobacco product; or*
3. Cigarettes ~~{or}~~ *or other tobacco product:*

(a) Exported from or imported into this State, or mailed, shipped, delivered, sold, exchanged, transported, distributed or held for distribution within the borders of this State by any person in violation of any of the provisions of this chapter; or

(b) In any way held in the possession or constructive possession of any person not authorized under this chapter to possess or constructively possess the cigarettes ~~{or}~~ *or other tobacco product.*

Secs. 10-24. (Deleted by amendment.)

Sec. 25. NRS 370.405 is hereby amended to read as follows:

370.405 1. It is unlawful for any person knowingly to sell or to possess for the purpose of sale any ~~{counterfeit-cigarettes,}~~ *contraband tobacco products*. The presence of ~~{counterfeit cigarettes in a cigarette}~~ *any contraband tobacco products in a vending machine* is prima facie evidence of the purpose to sell those ~~{cigarettes,}~~ *products*.

2. A person who violates any provision of subsection 1 is guilty of:

(a) For the first offense involving ~~{less than 400-cigarettes,}~~ *contraband tobacco products having a value of \$25 or more but less than \$250*, a misdemeanor.

(b) For each subsequent offense involving ~~{less than 400 cigarettes,}~~ *contraband tobacco products having a value of \$25 or more but less than \$250*, a category D felony and shall be punished as provided in NRS 193.130.

(c) For the first offense involving ~~{400-or-more-cigarettes,}~~ *contraband tobacco products having a value of \$250 or more*, a gross misdemeanor.

(d) For each subsequent offense involving ~~{400-or-more cigarettes,}~~ *contraband tobacco products having a value of \$250 or more*, a category C felony and shall be punished as provided in NRS 193.130.

Sec. 26. NRS 370.410 is hereby amended to read as follows:

370.410 Except as otherwise provided in NRS 370.405, any person exporting, importing, possessing or constructively possessing contraband ~~{cigarettes}~~ *tobacco products* is guilty of a gross misdemeanor.

Sec. 27. NRS 370.413 is hereby amended to read as follows:

370.413 In order to obtain evidence of any violation of this chapter, the Department, its agents, and all peace officers and revenue-collecting officers of this State may enter and inspect, without a warrant during normal business hours and with a warrant at any other time:

1. The facilities and records of any manufacturer, wholesale dealer or retail dealer; and

2. Any other place where they may have reason to believe contraband ~~{cigarettes}~~ *tobacco products* are stored, warehoused or kept for sale.

Sec. 28. 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 counterfeit stamps and any contraband ~~{cigarettes}~~ *tobacco products* and machinery used to manufacture contraband ~~{cigarettes,}~~ *tobacco products*, found or located in the State of Nevada.

2. A sheriff or other peace officer who seizes stamps, ~~{cigarettes}~~ *contraband tobacco products* or machinery 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}~~ *contraband tobacco products* to the Department if:

(a) The *contraband tobacco products consist of* cigarettes ~~{~~ *except* ~~}~~ *and:*

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

~~{(b)}~~ (2) The Department approves the transmission of the cigarettes ~~{~~ *;* ~~}~~ *or*

(b) The contraband tobacco products consist of any other tobacco products and the Department approves the transmission of the other tobacco products.

4. Upon *the* receipt of ~~{the cigarettes,}~~ *any:*

(a) Cigarettes pursuant to subsection 3, the Department shall dispose of the cigarettes as provided in subsection 4 of NRS 370.270 ~~(1)~~; or

(b) Other tobacco products pursuant to subsection 3, the Department shall:

(1) Sell the other tobacco products to the highest bidder among the licensed wholesale dealers in this State after due notice to all licensed Nevada wholesale dealers has been given by mail to the addresses contained in the Department's records; or

(2) If there is no bidder, or in the opinion of the Department the quantity of the other tobacco products is insufficient, or for any other reason such disposition would be impractical, destroy or dispose of the other tobacco products as the Department may see fit.

↪ The proceeds of all sales pursuant to this paragraph must be classed as revenues derived under the provisions of NRS 370.440 to 370.503, inclusive.

5. The sheriff or other peace officer who seizes any stamps, ~~cigarettes~~ *contraband tobacco products* or machinery pursuant to this section shall:

(a) Destroy the stamps and machinery; and

(b) If he does not transmit the ~~cigarettes~~ *contraband tobacco products* to the Department, destroy the ~~cigarettes.~~ *contraband tobacco products.*

Secs. 29-40. (Deleted by amendment.)

Sec. 41. NRS 202.2493 is hereby amended to read as follows:

202.2493 1. A person shall not sell, distribute or offer to sell cigarettes or smokeless products made from tobacco in any form other than in an unopened package which originated with the manufacturer and bears any health warning required by federal law. A person who violates this subsection shall be punished by a fine of \$100 and a civil penalty of \$100.

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

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

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

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

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

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

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

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

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

6. *The owner of a retail establishment shall, whenever any product made from tobacco is being sold or offered for sale at the establishment, display prominently at the point of sale a notice indicating that:*

(a) The sale of cigarettes and other tobacco products to minors is prohibited by law; and

(b) The retailer may ask for proof of age to comply with this prohibition.

↪ A person who violates this subsection shall be punished by a fine of not more than \$100.

7. *It is unlawful for any retailer to sell cigarettes through the use of any type of display:*

(a) Which contains cigarettes and is located in any area to which customers are allowed access; and

(b) From which cigarettes are readily accessible to a customer without the assistance of the retailer,

↪ except a vending machine used in compliance with NRS 202.2494. A person who violates this subsection shall be punished by a fine of not more than \$500.

8. Any money recovered pursuant to this section as a civil penalty must be deposited in a separate account in the State General Fund to be used for the enforcement of this section and NRS 202.2494.

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Sec. 42. NRS 202.24935 is hereby amended to read as follows:

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

2. A person who violates the provisions of subsection 1 shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500. Any money recovered pursuant to this section as a civil penalty must be deposited in the same manner as money is deposited pursuant to subsection ~~46~~ 8 of NRS 202.2493.

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