

SENATE BILL NO. 48—COMMITTEE ON TAXATION

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 5, 2008

Referred to Committee on Taxation

SUMMARY—Repeals certain requirements regarding the delivery of cigarettes sold to consumers. (BDR 32-270)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to tobacco; repealing certain requirements regarding the delivery of cigarettes sold to consumers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes certain duties regarding the delivery of cigarettes sold to consumers to assist in ensuring compliance with requirements for the taxation of tobacco and the licensing of retail tobacco dealers and to assist in preventing the delivery of cigarettes to children under 18 years of age. (NRS 370.325, 370.329) In *Rowe v. New Hampshire Motor Transp. Ass'n*, 128 S.Ct. 989 (2008), the United States Supreme Court held that the requirements of similar Maine statutes were preempted by federal law. **Section 6** of this bill repeals the preempted requirements of this State and two definitions that are thereby rendered obsolete.

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

Section 1. NRS 370.382 is hereby amended to read as follows:
370.382 1. It is unlawful for a person, with the intent to defraud the State:
(a) To fail to keep or make any record, return, report or inventory, or keep or make any false or fraudulent record, return, report or inventory, required pursuant to NRS 370.080 to ~~370.329,~~ **370.327**, inclusive, or any regulations adopted for the administration or enforcement of those provisions;



(b) To refuse to pay any tax imposed pursuant to NRS 370.080 to ~~{370.329,}~~ 370.327, inclusive, or attempt in any manner to evade or defeat the tax or the payment thereof;

(c) To alter, forge or otherwise counterfeit any stamp;

(d) To sell or possess for the purpose of sale any counterfeit stamp;

(e) To have in his possession any counterfeit stamp, with the intent to use the counterfeit stamp, knowing or having reasonable grounds to believe the stamp to be a counterfeit stamp;

(f) To have in his possession any stamp which he knows has been removed from any cigarette package to which it was affixed;

(g) To affix to any cigarette package a stamp which he knows has been removed from any other cigarette package; or

(h) To fail to comply with any requirement of NRS 370.080 to ~~{370.329,}~~ 370.327, inclusive.

2. A person who violates any of the provisions of subsection 1 is guilty of a category C felony and shall be punished as provided in NRS 193.130.

Sec. 2. NRS 370.395 is hereby amended to read as follows:

370.395 A person who:

1. Knowingly violates any of the provisions of NRS 370.321 ~~to 370.329, inclusive;~~, 370.323 or 370.327; or

2. Knowingly and falsely submits a certification pursuant to paragraph (a) of subsection 1 of NRS 370.323 in the name of another person,

➤ is guilty of a category C felony and shall be punished as provided in NRS 193.130.

Sec. 3. NRS 370.419 is hereby amended to read as follows:

370.419 All fixtures, equipment and other materials and personal property on the premises of any wholesale or retail dealer who, with intent to defraud the State:

1. Fails to keep or make any record, return, report or inventory required pursuant to NRS 370.080 to ~~{370.329,}~~ 370.327, inclusive;

2. Keeps or makes any false or fraudulent record, return, report or inventory required pursuant to NRS 370.080 to ~~{370.329,}~~ 370.327, inclusive;

3. Refuses to pay any tax imposed pursuant to NRS 370.080 to ~~{370.329,}~~ 370.327, inclusive; or

4. Attempts in any manner to evade or defeat the requirements of NRS 370.080 to ~~{370.329,}~~ 370.327, inclusive,

➤ is subject to forfeiture pursuant to NRS 179.1156 to 179.119, inclusive.

Sec. 4. NRS 370.425 is hereby amended to read as follows:

370.425 In addition to any other penalty authorized by law:

1. The Department may:



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(a) Impose a civil penalty of \$1,000 on any person who knowingly:

(1) Omits, neglects or refuses to:

(I) Comply with any duty imposed upon him pursuant to the provisions of NRS 370.080 to 370.315, inclusive; or

(II) Do or cause to be done any of the things required pursuant to those provisions; or

(2) Does anything prohibited by the provisions of NRS 370.080 to 370.315, inclusive.

(b) Impose on each person who violates any of the provisions of NRS 370.321 ~~{to 370.329, inclusive,}~~ , 370.323 or 370.327 a civil penalty of:

(1) Not more than \$1,000 for the first violation; and

(2) Not less than \$1,000 nor more than \$5,000 for each subsequent violation.

2. Any person who fails to pay any tax imposed pursuant to the provisions of NRS 370.080 to ~~{370.329,}~~ 370.327, inclusive, within the time prescribed by law or regulation shall pay a penalty of 500 percent of the tax due but unpaid, in addition to the tax.

Sec. 5. NRS 370.525 is hereby amended to read as follows:

370.525 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 NRS 370.080 to ~~{370.329,}~~ 370.327, inclusive, 370.380, 370.382, 370.385, 370.395, 370.405 or 370.410.

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. 6. NRS 370.044, 370.046, 370.325 and 370.329 are hereby repealed.

Sec. 7. This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTIONS

370.044 “Shipping container” defined. “Shipping container” means a container in which cigarettes are shipped in connection with a delivery sale.



370.046 “Shipping documents” defined. “Shipping documents” means bills of lading, airbills or any other documents used to evidence an undertaking by a delivery service to deliver letters, packages or other containers.

370.325 Duties of person who causes mailing or shipment of cigarettes or who accepts order and delivers cigarettes without using third-party delivery service.

1. A person who causes the mailing or shipment of cigarettes in connection with an order for a delivery sale shall:

(a) Use a method of mailing or shipping that obligates the delivery service to carry out the provisions of NRS 370.329;

(b) Provide to the delivery service retained to deliver the delivery sale evidence that all taxes levied by this State with respect to the delivery sale have been paid to this State; and

(c) Include as part of the shipping documents:

(1) A copy of the retail dealer’s license authorizing the delivery sale; and

(2) A clear and conspicuous statement providing as follows:

DELIVERY SALE OF CIGARETTES: NEVADA LAW PROHIBITS SHIPPING TO CHILDREN UNDER 18 YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES.

2. A person who accepts an order for a delivery sale and delivers the cigarettes without using a third-party delivery service shall comply with all the requirements of NRS 370.329 applicable to a delivery service.

370.329 Duties of delivery service under certain conditions.

1. Except as otherwise provided in subsection 2, a delivery service shall:

(a) Before delivering a shipping container in connection with a delivery sale:

(1) Ensure that the shipping documents include the documents required by paragraph (c) of subsection 1 of NRS 370.325; and

(2) Obtain the evidence required by paragraph (b) of subsection 1 of NRS 370.325 regarding the cigarettes in the shipping container.

(b) When delivering a shipping container in connection with a delivery sale, require:

(1) The purchaser placing the order for the delivery sale, or an adult designated by that purchaser, to sign to accept delivery of the shipping container; and



(2) Proof, in the form of valid identification that was issued by a governmental entity and bears a photograph of the person who signs to accept delivery of the shipping container, demonstrating:

(I) That the person is either the addressee or the adult designated by the addressee; and

(II) If the person appears to be under 27 years of age, that the person is at least 18 years of age.

2. A delivery service is required to comply with the provisions of subsection 1 only if the delivery service:

(a) Is obligated to do so under a method of shipping;

(b) Delivers any container pursuant to shipping documents containing the statement described in paragraph (c) of subsection 1 of NRS 370.325; or

(c) Delivers any container that the delivery service otherwise has reason to know contains cigarettes sold pursuant to a delivery sale.

