

Amendment No. 198

Senate Amendment to Senate Bill No. 79 (BDR 32-291)

Proposed by: Senate Committee on Revenue**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

SJC/BJE



Date: 4/22/2011

S.B. No. 79—Makes various changes relating to the Tobacco Master Settlement Agreement. (BDR 32-291)



SENATE BILL NO. 79—COMMITTEE ON REVENUE

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Revenue

SUMMARY—Makes various changes relating to the Tobacco Master Settlement Agreement. (BDR 32-291)

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

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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; revising provisions relating to the Tobacco Master Settlement Agreement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State of Nevada. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described in the Master Settlement Agreement, to pay substantial sums to the State, to fund a national foundation devoted to the interests of public health and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking. To prevent tobacco product manufacturers who determined not to enter into such a settlement from using a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State would have an eventual source of recovery from those manufacturers if they are proven to have acted culpably, the Nevada Legislature, in 1999, enacted provisions requiring all manufacturers of tobacco products sold in this State to participate in the Master Settlement Agreement or to place money in escrow. (Chapter 370A of NRS) In 2005, the Legislature made a finding that violations of chapter 370A of NRS threatened the integrity of the Master Settlement Agreement, the fiscal soundness of the State and public health, and enacted procedural safeguards to aid in the enforcement of the provisions of chapter 370A of NRS and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the State and public health. (NRS 370.600-370.705) This bill revises those procedural safeguards.

Section 2 of this bill makes a wholesale dealer of cigarettes liable for a proportionate share of the unpaid required escrow deposits of a nonparticipating manufacturer whose cigarettes were stamped or distributed in this State by the wholesale dealer, exempts a wholesale dealer from that liability if the wholesale dealer requires the nonparticipating manufacturer to prepay those escrow deposits and the wholesale dealer obtains verification of the payment of those escrow deposits from the Attorney General, and provides the wholesale dealer with a claim against the nonparticipating manufacturer for the amount of any such ~~payment~~ escrow deposits made by the wholesale dealer. **Section 3** of this bill requires a nonparticipating manufacturer, under certain circumstances, to post a bond approved by the Attorney General for the benefit of the State of Nevada to ensure the payment

of escrow amounts due. **Section 4** of this bill authorizes the suspension or revocation of the license of a wholesale dealer under certain circumstances if a similar license of the wholesale dealer is suspended or revoked in another state. Similarly, **section 4** also authorizes the removal of a nonparticipating manufacturer from the state directory of manufacturers that have provided current and accurate certifications conforming to the requirements of NRS 370.600-370.705, which is maintained by the Department of Taxation, if the manufacturer is removed from the directory of another state based on an act or omission that would, if ~~(done)~~ the act or omission had occurred in this State, be grounds for the removal of the manufacturer from the directory in this State, and under certain other circumstances. **Section 5** of this bill creates the Account for Tobacco Enforcement in the State General Fund, provides permissible uses for the money in the Account and requires that the Account be administered by the Attorney General. **Section 6** of this bill authorizes the Attorney General to apply for available grants and to accept gifts, grants, appropriations and donations to carry out certain enforcement duties. **Sections 7 and 8** of this bill provide civil penalties for certain violations of the provisions of chapters 370 and 370A of NRS and set forth additional penalties that may be imposed if the civil penalties are not paid timely.

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 to 8, inclusive, of this act.

Sec. 2. 1. Except as otherwise provided in subsection 5:

(a) A wholesale dealer is liable for escrow deposits required pursuant to this chapter and chapter 370A of NRS if ~~the~~ :

(1) The wholesale dealer receives notice from the Attorney General or the Department that there is a shortfall in a qualified escrow fund with respect to cigarettes of a nonparticipating manufacturer that were stamped or distributed by the wholesale dealer ~~if~~ ; and

(2) The shortfall is not cured by the wholesale dealer or nonparticipating manufacturer within 90 calendar days after the wholesale dealer receives that notice.

The liability of the wholesale dealer for the escrow deposits must be calculated pursuant to ~~subsection 2.~~

~~2.~~ paragraph (b).

(b) If there is a shortfall in the qualified escrow fund of a nonparticipating manufacturer for a calendar quarter, each wholesale dealer that sold or distributed cigarettes of that nonparticipating manufacturer during that calendar quarter shall deposit into an escrow account designated by the Attorney General an amount equal to the shortfall multiplied by a fraction, the numerator of which is the number of cigarettes of that nonparticipating manufacturer that were sold in or into this State by the wholesale dealer during that calendar quarter, and the denominator of which is the total number of cigarettes of that nonparticipating manufacturer that were sold or distributed by all wholesale dealers in or into this State during that calendar quarter. In making the calculation, any cigarettes of the nonparticipating manufacturer that were sold or distributed in or into this State by a wholesale dealer during the calendar quarter in which the wholesale dealer collected and deposited the required escrow deposit amount on or before the due date for deposits for that quarter must be excluded from both the numerator and the denominator of the fraction.

~~2.~~ 2. To the extent that a wholesale dealer makes any payment with respect to a shortfall pursuant to this section, the wholesale dealer has a claim against the nonparticipating manufacturer for the amount of the payment.

~~4.3. A wholesale dealer may require a nonparticipating manufacturer, as a condition of the agreement of the wholesale dealer to purchase the cigarettes of the nonparticipating manufacturer, to prepay;~~

~~(a) Prepay the escrow deposit amount to the wholesale dealer for deposit by the wholesale dealer on behalf of the nonparticipating manufacturer into the escrow account designated by in the certification of the nonparticipating manufacturer filed with the Attorney General pursuant to NRS 370.665; and~~

~~(b) Require the escrow agent to provide to the wholesale dealer and the Attorney General proof of that prepayment.~~

~~4. Upon the request of a wholesale dealer who requires a nonparticipating manufacturer to comply with the provisions of paragraphs (a) and (b) of subsection 3, the Attorney General shall provide to the wholesale dealer a written verification of whether the nonparticipating manufacturer has made the escrow deposits required from the nonparticipating manufacturer pursuant to this chapter and chapter 370A of NRS for a calendar quarter.~~

~~5. If a wholesale dealer requires a nonparticipating manufacturer to comply with the provisions of paragraph (a) of subsection 3 and receives a written verification from the Attorney General that the nonparticipating manufacturer has made the escrow deposits required from the nonparticipating manufacturer pursuant to this chapter and chapter 370A of NRS for a calendar quarter:~~

~~(a) The wholesale dealer is not liable for any of those escrow deposits required for that calendar quarter;~~

~~(b) The provisions of subsection 1 do not apply to the wholesale dealer with respect to any cigarettes of the nonparticipating manufacturer that were sold or distributed in or into this State during that calendar quarter; and~~

~~(c) The cigarettes of the nonparticipating manufacturer that were sold or distributed in or into this State by the wholesale dealer during that calendar quarter must be excluded entirely from the calculations required by subsection 1.~~

~~Sec. 3. 1. A nonparticipating manufacturer shall post a bond approved by the Attorney General for the benefit of the State of Nevada if:~~

~~(a) The cigarettes of the nonparticipating manufacturer have not been sold in this State during any of the 4 immediately preceding calendar quarters;~~

~~(b) The nonparticipating manufacturer or an affiliate failed to make a full and timely escrow deposit due under this chapter or chapter 370A of NRS during any of the immediately preceding 5 calendar years, unless the failure was neither knowing nor reckless and was promptly cured upon notice; or~~

~~(c) The nonparticipating manufacturer or an affiliate, or any of the brand families of the nonparticipating manufacturer or an affiliate, were removed from the directory of this or any other state during any of the immediately preceding 5 calendar years, unless the removal is determined to have been erroneous or illegal.~~

~~2. The bond must be posted not less than 10 days before the beginning of each calendar quarter as a condition of the nonparticipating manufacturer and its brand families being included in the directory for that quarter. The amount of the bond must be the greater of \$25,000 or the largest required escrow amount due from the nonparticipating manufacturer or its predecessor for any of the immediately preceding 12 calendar quarters.~~

~~3. If a nonparticipating manufacturer that posted a bond has failed to make or have made on its behalf escrow deposits equal to the full amount due for a calendar quarter within 15 business days after the due date for that calendar quarter, the State of Nevada may execute upon the bond in an amount equal to any remaining escrow amount due.~~

4. Any amount that the State of Nevada collects on a bond posted by a nonparticipating manufacturer pursuant to this section:

(a) Must be deposited into a special escrow account established and maintained by the State of Nevada and used for purposes authorized for the use of money in the qualified escrow fund of the nonparticipating manufacturer pursuant to this chapter and chapter 370A of NRS; and

(b) Reduces the escrow amount due from the nonparticipating manufacturer in the dollar amount collected.

5. Escrow obligations above the amount collected on the bond remain due from the nonparticipating manufacturer and, as provided in section 2 of this act, from wholesale dealers that sold the cigarettes of the nonparticipating manufacturer during that calendar quarter.

6. The withholding, use or return of amounts deposited into the special escrow account must be handled in the same manner as amounts deposited in the qualified escrow fund of the nonparticipating manufacturer pursuant to the provisions of this chapter and chapter 370A of NRS.

7. As used in this section, "affiliate" has the meaning ascribed to it in NRS 370A.030.

Sec. 4. 1. The license of a wholesale dealer may be suspended or revoked if a similar license of the wholesale dealer is suspended or revoked in any other state based on an act or omission that would, if the act or omission had occurred in this State, be grounds for the suspension or revocation of the license of the wholesale dealer pursuant to NRS 370.379, unless the wholesale dealer demonstrates that the suspension or revocation of its license in the other state was effected without due process. A wholesale dealer whose license is suspended or revoked in this State pursuant to this subsection is eligible for reinstatement upon the earlier of the date on which the violation in the other state is cured or the date on which the license of the wholesale dealer is reinstated in the other state.

2. A nonparticipating manufacturer and ~~the~~ its brand families ~~of a manufacturer~~ may be denied listing in the directory or removed from the directory for any of the following reasons:

(a) The nonparticipating manufacturer is removed from the directory of another state based on an act or omission that would, if ~~done~~ the act or omission had occurred in this State, be grounds for the removal of the nonparticipating manufacturer from the directory of this State pursuant to NRS 370.675, unless the nonparticipating manufacturer demonstrates that its removal from the directory of the other state was effected without due process. A nonparticipating manufacturer that is removed from the directory of this State pursuant to this paragraph is eligible for reinstatement to the directory upon the earlier of the date on which the violation in the other state is cured or the date on which the nonparticipating manufacturer is reinstated to the directory of the other state.

(b) The nonparticipating manufacturer is ~~under investigation for committing~~ convicted of any crime relating to the manufacture, sale or distribution of tobacco products in this State or another state. If or the reporting of any matter relating thereto. A manufacturer that is removed from the directory of this State pursuant to this paragraph is eligible for reinstatement to the directory upon the earlier of the date on which all such criminal investigations are terminated without the filing of criminal charges or the date on which the manufacturer is exonerated by a court of competent jurisdiction of all criminal charges arising from any such investigation.

1 (c) The nonparticipating manufacturer fails to report the existence or result,
2 including any conviction, of any investigation of the nonparticipating
3 manufacturer which is known to the nonparticipating manufacturer regarding
4 the commission of any crime relating to the manufacture, sale or distribution of
5 tobacco products in this State or another state.

6 (d) The nonparticipating manufacturer fails to report any investigation of
7 the nonparticipating manufacturer which is known to the nonparticipating
8 manufacturer regarding any violation of the laws of any other state based on an
9 act or omission that would, if the act or omission had occurred in this State, be
10 grounds for the removal of the nonparticipating manufacturer from the directory
11 of this State pursuant to NRS 370.675.

12 (e) The nonparticipating manufacturer knowingly makes a false, material
13 statement in any report, filing or other communication provided to this State
14 pursuant to this chapter or chapter 370A of NRS.

15 3. The provisions of NRS 233B.121 to 233B.150, inclusive, apply to:

16 (a) The suspension or revocation of the license of a wholesale dealer
17 pursuant to subsection 1; and

18 (b) The removal of a nonparticipating manufacturer and its brand families
19 from the directory pursuant to subsection 2.

20 Sec. 5. 1. The Account for Tobacco Enforcement is hereby created in the
21 State General Fund. The Attorney General shall administer the Account.

22 2. The money in the Account must only be used to enforce the provisions of
23 NRS 370.600 to 370.705, inclusive, and sections 2 to 8, inclusive, of this act and
24 to pay the expenses incurred by the Attorney General in the discharge of his or
25 her duties, including, without limitation, expenses relating to the provision of
26 training and the payment of the salaries and benefits of employees.

27 3. Money in the Account must remain in the Account and does not revert to
28 the State General Fund at the end of any fiscal year.

29 Sec. 6. 1. ~~The~~ Except as otherwise provided in subsection 2, the
30 Attorney General may apply for any available grant and may accept any gift,
31 grant ~~(, appropriation)~~ or donation to assist in carrying out his or her duties
32 pursuant to NRS 370.600 to 370.705, inclusive, and sections 2 to 8, inclusive, of
33 this act.

34 2. The Attorney General shall not accept any gift, grant or donation from
35 any manufacturer of tobacco products or any other manufacturer, as that term is
36 defined in NRS 370.0315.

37 3. Any money received by the Attorney General pursuant to this section
38 must be deposited in the Account for Tobacco Enforcement.

39 Sec. 7. 1. In addition to or in lieu of any other penalty or remedy provided
40 by law, the Attorney General may seek a civil penalty in an amount not to exceed
41 \$1,000 per day for the failure of a wholesale dealer timely or accurately to comply
42 with any provision of this chapter or chapter 370A of NRS. The license of the
43 wholesale dealer may be suspended or revoked if the wholesale dealer fails to pay
44 such a civil penalty within 30 days after it is imposed.

45 2. In addition to or in lieu of any other penalty or remedy provided by law,
46 the Attorney General may seek a civil penalty in an amount not to exceed \$1,000
47 per day for the failure of a nonparticipating manufacturer timely or accurately to
48 comply with any provision of this chapter or chapter 370A of NRS. A
49 nonparticipating manufacturer and the brand families of a nonparticipating
50 manufacturer may be denied listing in the directory or removed from the
51 directory if the nonparticipating manufacturer fails to pay such a civil penalty
52 within 30 days after it is imposed.

1 3. Any civil penalty collected pursuant to this section must be deposited in
2 the Account for Tobacco Enforcement.

3 Sec. 8. In addition to or in lieu of any other penalty or remedy provided by
4 law, the Attorney General may seek a civil penalty in an amount not to exceed
5 \$20,000 against any wholesale dealer or nonparticipating manufacturer that
6 makes a certification pursuant to this chapter or chapter 370A of NRS which
7 asserts the truth of any material matter that the wholesale dealer or
8 nonparticipating manufacturer knows to be false or inaccurate. Any civil penalty
9 collected pursuant to this section must be deposited in the Account for Tobacco
10 Enforcement. If such a civil penalty is not paid within 30 days after it is imposed
11 against:

12 1. A wholesale dealer, the license of the wholesale dealer may be suspended
13 or revoked.

14 2. A nonparticipating manufacturer, the nonparticipating manufacturer
15 and the brand families of the nonparticipating manufacturer may be denied
16 listing in the directory or removed from the directory.

17 Sec. 9. NRS 370.257 is hereby amended to read as follows:

18 370.257 1. Each manufacturer, wholesale dealer and retail dealer shall
19 provide to the Executive Director and his or her designees and to the Secretary or
20 his or her designee, upon request, access to all the reports and records required by
21 NRS 370.001 to 370.430, inclusive. The Department at its sole discretion may share
22 the records and reports required by those sections with law enforcement officials of
23 the Federal Government, this State, other states, Indian tribes or international
24 authorities.

25 2. Except as otherwise provided in this subsection, the reports submitted by
26 licensees pursuant to NRS 370.001 to 370.430, inclusive, are public records. ~~[Any]~~
27 Unless otherwise directed or ordered by a court of competent jurisdiction, any
28 information contained in those reports about quantities of cigarettes by brand must
29 not be released to anyone other than persons permitted access to those reports
30 pursuant to subsection 1.

31 3. The Department may audit the records of each dealer to determine whether
32 the manufacturer, wholesale dealer or retail dealer has complied with the provisions
33 of NRS 370.001 to 370.430, inclusive.

34 Sec. 10. NRS 370.379 is hereby amended to read as follows:

35 370.379 1. The Department may suspend or revoke the license of a retail or
36 wholesale dealer who violates the provisions of NRS 370.371 to 370.379, inclusive,
37 or any regulation adopted thereunder, after notice to the licensee and a hearing as
38 prescribed by the Department.

39 2. The Department, upon a finding that the licensee has failed to comply with
40 any provision of NRS 370.371 to 370.379, inclusive, or any regulation adopted by
41 the Executive Director, shall, in the case of a first offender, suspend the license of
42 the licensee for not less than 5 nor more than 20 consecutive business days. If the
43 Department finds the offender has been guilty of willful and persistent violations, it
44 may suspend for not more than 6 months or revoke the person's license.

45 3. ~~[A]~~ Except as otherwise provided in section 4 of this act, a person whose
46 license has been revoked may apply to the Department at the end of 1 year for a
47 reinstatement of the license. The Department may reinstate the license if the
48 Department determines that the licensee will comply with the provisions of this
49 chapter and the regulations adopted by the Department.

50 4. A person whose license has been suspended or revoked shall not sell
51 cigarettes or permit cigarettes to be sold during the period of suspension or
52 revocation on the premises occupied by the person or upon other premises
53 controlled by the person. The expiration, transfer, surrender, continuance, renewal

or extension of a license issued pursuant to this chapter does not bar or abate any disciplinary proceedings or action.

Sec. 11. NRS 370.605 is hereby amended to read as follows:

370.605 As used in NRS 370.600 to 370.705, inclusive, *and sections 2 to 8, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 370.610 to 370.660, inclusive, have the meanings ascribed to them in those sections.

Sec. 12. NRS 370.690 is hereby amended to read as follows:

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

2. The Department may adopt such regulations as it deems necessary to carry out the provisions of NRS 370.600 to 370.705, inclusive ~~§~~, *and sections 2 to 8, inclusive, of this act*.

Sec. 13. NRS 370.700 is hereby amended to read as follows:

370.700 1. The Attorney General, on behalf of the Department, may bring an action in the district court of this State to:

(a) Enjoin any threatened or actual violation of the provisions of NRS 370.600 to 370.705, inclusive, *and sections 2 to 8, inclusive, of this act* by a distributor *or manufacturer* and to compel the distributor *or manufacturer* to comply with those provisions; or

(b) Enforce any of the provisions of NRS 370.600 to 370.705, inclusive ~~§~~, *and sections 2 to 8, inclusive, of this act*.

2. In any action brought by the State to enforce the provisions of NRS 370.600 to 370.705, inclusive, *and sections 2 to 8, inclusive, of this act*, the State is entitled to recover any costs of investigation, expert witness fees, costs of the action and reasonable attorney's fees.

3. If a court determines that a person has violated any provision of NRS 370.600 to 370.705, inclusive, *and sections 2 to 8, inclusive, of this act*, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the State Treasurer for deposit in the State General Fund.

4. The remedies and penalties provided in NRS 370.600 to 370.705, inclusive, *and sections 2 to 8, inclusive, of this act* are cumulative to each other and to the remedies and penalties available under any other law of this State.

Sec. 14. NRS 370.705 is hereby amended to read as follows:

370.705 1. If a court of competent jurisdiction finds that the provisions of NRS 370.600 to 370.705, inclusive, *and sections 2 to 8, inclusive, of this act* conflict and cannot be harmonized with the provisions of chapter 370A of NRS, then the provisions of chapter 370A of NRS shall be deemed to control.

2. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of NRS 370.600 to 370.705, inclusive, *and sections 2 to 8, inclusive, of this act* causes chapter 370A of NRS to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of NRS 370.600 to 370.705, inclusive, *and sections 2 to 8, inclusive, of this act* shall be deemed to be invalid.

3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of ~~[NRS 370.600 to 370.705, inclusive.]~~ *this chapter* is for any reason held to be invalid, unlawful or unconstitutional, that decision shall be deemed not to affect the validity of the remaining portions of ~~[NRS 370.600 to 370.705, inclusive.]~~ *this chapter* or any part thereof.