

Amendment No. 929

Senate Amendment to Senate Bill No. 516

(BDR 32-1224)

Proposed by: Senate Committee on Finance

Amendment Box: Replaces Amendment No. 897.

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.

MSN



Date: 5/30/2013

S.B. No. 516—Revises provisions relating to tobacco. (BDR 32-1224)



SENATE BILL NO. 516—COMMITTEE ON FINANCE

(ON BEHALF OF THE OFFICE OF THE ATTORNEY GENERAL)

MAY 17, 2013

Referred to Committee on Finance

SUMMARY—Revises provisions relating to tobacco. (BDR 32-1224)

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 Master Settlement Agreement; revising provisions relating to manufacturers of tobacco products, importers, wholesale dealers and retail dealers of cigarettes; providing for the assignment to the State and the release to an Indian tribe of certain money placed into a qualified escrow fund by a manufacturer of tobacco products; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

On November 23, 1998, leading United States tobacco product manufacturers and the State of Nevada entered into a settlement agreement, entitled the "Master Settlement Agreement," which obligates the manufacturers, in return for a release of past, present and certain future claims against them, to: (1) pay substantial sums to the State; (2) fund a national foundation devoted to the interests of public health; and (3) make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking. In 1999, the Nevada Legislature enacted provisions requiring all manufacturers of tobacco products sold in this State to participate in the Master Settlement Agreement or to place certain 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 and 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. (NRS 370.600-370.705) This bill generally revises existing, and provides additional, procedures and licensing requirements to aid in the statutory enforcement of the Master Settlement Agreement.

Section 4 of this bill requires each wholesale dealer to maintain certain contact information with the Department of Taxation. **Section 5** of this bill requires the Department to adopt certain regulations relating to the suspension or revocation of certain licenses. **Section 6** of this bill provides for the notification of wholesale dealers and retail dealers of cigarettes when a manufacturer or brand family of cigarettes is removed from the directory that lists all manufacturers that have provided current and accurate certifications and all brand families listed in those certifications. **Section 7** of this bill provides that an importer is jointly and severally liable for certain escrow deposits. **Section 8** of this bill authorizes the State to enter into an agreement with an Indian tribe to enforce, administer or implement certain provisions of statute.

Sections 9-18 and 21-26 of this bill generally revise certain existing provisions relating to the regulation of tobacco sales in this State for the purpose of aiding in the enforcement of the Master Settlement Agreement.

~~Sections 19 and 20 of this bill revise certain provisions governing products made from tobacco, other than cigarettes.~~

Sections 30 and 31 of this bill provide for the assignment or release of certain money placed into escrow from the sale of certain cigarettes.

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. *"Importer" means any person in a state or territory of the United States to whom cigarettes that are manufactured outside the United States are shipped, delivered or consigned for resale.*

Sec. 3. *"Qualified tribal land" means any real property:*
1. For which legal title is vested in, or held in trust for the benefit of, an Indian tribe or an individual Native American, and which is subject to ~~any~~ applicable restrictions against alienation pursuant to federal law; ~~restricting or prohibiting alienation~~ and

2. Over which an Indian tribe exercises governmental power.

Sec. 4. *Each wholesale dealer shall:*

1. For the purpose of receiving any notification from the Department pursuant to this chapter, maintain with the Department:

(a) A permanent mailing address; and

(b) An electronic mail address.

2. Provide written notice to the Department of any change in the information specified in subsection 1 not later than 10 days after the change.

Sec. 5. *The Department shall adopt regulations establishing a procedure for the suspension and revocation of any license issued pursuant to NRS 370.001 to 370.430, inclusive, and sections 2 to 5, inclusive, of this act. In adopting the regulations required by this section, the Department shall consider the effect of any suspension or revocation of a license on the inventory of cigarettes that are in the stream of distribution at the time of suspension or revocation.*

Sec. 6. *1. The Department shall notify each wholesale dealer when a manufacturer or brand family is added to or removed from the directory pursuant to NRS 370.675 by sending a notice to the mailing address or electronic mail address of the wholesale dealer provided to the Department pursuant to section 4 of this act.*

2. A wholesale dealer shall, not later than 7 days after receiving a notice pursuant to subsection 1, provide:

(a) A copy of the notice to each retail dealer that is a customer of the wholesale dealer; and

(b) The Department with a list of each retail dealer to which a copy of the notice is provided pursuant to paragraph (a).

3. A retail dealer may, not later than 60 days after receiving a copy of a notice pursuant to subsection 2 that a manufacturer or brand family has been removed from the directory pursuant to NRS 370.675, sell any cigarettes in its possession from the manufacturer or of the brand family. The retail dealer shall, at the expiration of the 60-day period, turn over possession of any unsold

cigarettes to the Department for disposal in the manner provided in subsection 4 of NRS 370.270.

4. A wholesale dealer shall not purchase cigarettes for resale from a manufacturer, or of a brand family, which has been removed from the directory by the Department, or for which the wholesale dealer receives a notice of removal from the Department, until the manufacturer or brand family is reentered in the directory by the Department.

Sec. 7. *1. An importer is jointly and severally liable for the escrow deposit due pursuant to NRS 370A.140 for each cigarette which is intended for sale in this State which the importer causes to be sent to a person who holds a license as a wholesale dealer or license as a retail dealer issued by the Department.*

2. A nonparticipating manufacturer located outside the United States that conducts business in this State shall provide to the Attorney General on a form prescribed by the Attorney General a declaration from each importer that imports the cigarettes of the nonparticipating manufacturer which are intended for sale in this State stating that the importer accepts liability pursuant to subsection 1 and consents to the jurisdiction of the courts of this State for the purposes of enforcing this section.

3. As used in this section, "importer" has the meaning ascribed to it in section 2 of this act.

Sec. 8. *The State may enter into an agreement with an Indian tribe to enforce, administer or otherwise implement any provision of this chapter or chapter 370A of NRS.*

Sec. 9. 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 to 5, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 370.005 to 370.055, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 10. NRS 370.025 is hereby amended to read as follows:

370.025 "Contraband tobacco products" means any:

1. Counterfeit cigarettes;

2. Other counterfeit tobacco product; ~~to~~

3. *Cigarettes or "roll-your-own" tobacco offered for sale in this State by a manufacturer, or cigarettes or "roll-your-own" tobacco of a brand family, that is not listed in the directory created pursuant to NRS 370.675;*

4. *Cigarettes bearing a tribal stamp issued by the Department which are sold or offered for sale at a retail location that is not located on qualified tribal land; or*

5. Cigarettes 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; ~~to~~

(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 other tobacco product ~~to~~; *or*

(c) Being offered for sale in any form other than in an unopened package in violation of subsection 1 of NRS 202.2493.

Sec. 11. NRS 370.070 is hereby amended to read as follows:

370.070 The provisions of NRS 370.001 to 370.430, inclusive, *and sections 2 to 5, inclusive, of this act* do not apply to:

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. 12. NRS 370.155 is hereby amended to read as follows:

370.155 1. Except as otherwise provided in this section, each licensed wholesale cigarette dealer shall furnish a bond executed by the wholesale cigarette dealer as principal, and by a corporation qualified under the laws of this state as surety, payable to the State of Nevada and conditioned upon the payment of all excise taxes required to be precollected by the wholesale cigarette dealer under the provisions of this chapter. Each bond must be in a principal sum equal to the largest amount of tax precollected by the wholesale cigarette dealer in any quarter of the preceding year, or if the information to establish that amount is not available, then in a sum required from a licensee operating under conditions deemed comparable by the Department. No bond may be for less than \$1,000. When cash or a savings certificate, certificate of deposit or investment certificate is used, the amount must be rounded up to the next larger integral multiple of \$100.

2. Except as otherwise provided in this section, each licensed wholesale cigarette dealer who wishes to defer payment on the purchase of revenue stamps or metered machine impressions shall furnish a bond executed by the wholesale cigarette dealer as principal, and by a corporation qualified under the laws of this state as surety, payable to the State of Nevada and conditioned upon the payment of all deferred payments for revenue stamps and metered machine impressions. Each bond must be in a principal sum equal to the maximum amount of revenue stamps or metered machine impressions which the wholesale dealer may have unpaid at any time. No bond may be for less than \$1,000. When cash or a savings certificate, certificate of deposit or investment certificate is used, the amount must be rounded up to the next larger integral multiple of \$100.

3. In lieu of a bond, a licensed wholesale cigarette dealer may deposit with the Department, under such terms as the Department may prescribe, a like amount of lawful money of the United States or any other form of security authorized by NRS 100.065. If security is provided in the form of a savings certificate, certificate of deposit or investment certificate, the certificate must state that the amount is unavailable for withdrawal except upon order of the Department. The Department shall deposit all cash and bonds of the United States or of the State of Nevada received pursuant to this subsection with the State Treasurer as custodian.

4. Upon application and a satisfactory showing, the Department may increase or decrease the amount of a bond required by subsection 1 or 2, based on the amount of excise tax precollected or payments deferred, respectively, by the wholesale cigarette dealer.

5. The Department may waive the requirement of the bond required by subsection 1 or 2, whenever a licensed wholesale cigarette dealer has maintained a satisfactory record of payment of excise taxes or deferred payments, respectively, for a period of 5 consecutive years.

6. A wholesale dealer is not entitled to a refund of any portion of money paid as a bond pursuant to this section if the wholesale dealer has failed to file a report required by this chapter or owes the Department any payment or penalty pursuant to this chapter.

Sec. 13. NRS 370.170 is hereby amended to read as follows:

370.170 1. Except as otherwise provided in this chapter, it is unlawful for any person to give, sell or offer to give or sell any cigarettes in this state unless

there is affixed to each of the *cigarette* packages ~~[- packets or containers an adhesive]~~ a Nevada cigarette revenue stamp ~~for a similar stamp~~ *which is issued by the Department and affixed by a metered stamping machine approved by and registered with the Department or any other method approved by the Department, and which is* for the amount of the tax on all of the cigarettes contained in the *cigarette* package. ~~for other container.~~

2. Each cigarette package sold on qualified tribal land or by an Indian tribe or a member of a tribe for which the Department does not collect a state excise tax pursuant to NRS 370.515 must bear a tribal stamp issued by the Department.

Sec. 14. NRS 370.190 is hereby amended to read as follows:

370.190 1. The Department may sell Nevada cigarette revenue stamps to a licensed dealer. As payment for the stamps, the Department shall deduct from the excise tax collected from the dealer the actual cost incurred by the Department for the stamps and for making the sale.

2. Payment for the revenue stamps or metered machine impressions must be made at the time of purchase unless the wholesale dealer has been authorized to defer payments by the Department. A wholesale dealer may apply to the Department for authorization to defer payments for revenue stamps or metered machine impressions at any time.

3. The Department may provide by regulation for ~~[- payment]~~ :

(a) Payment of the tax by manufacturers without the use of stamps on gifts or samples sent into Nevada when plainly marked "Tax Paid."

(b) Any requirements for the purchase of stamps.

Sec. 15. NRS 370.235 is hereby amended to read as follows:

370.235 1. The Department may adopt regulations establishing:

(a) Reporting requirements for manufacturers and wholesale dealers; and

(b) Procedures for the electronic submission of reports required pursuant to any reporting requirements established under paragraph (a).

2. Any regulations adopted pursuant to subsection 1 relating to reporting requirements for manufacturers ~~[- must]~~ *may* provide for submission to the Department periodic reports of:

(a) The quantity of cigarette packages that were distributed or shipped to another manufacturer or to a wholesale dealer within the borders of this State during the reporting period, and the name and address of each person to whom those products were distributed or shipped;

(b) The quantity of cigarette packages that were distributed or shipped to another facility of the same manufacturer within the borders of this State during the reporting period; and

(c) The quantity of cigarette packages that were distributed or shipped within the borders of this State to Indian tribes or instrumentalities of the Federal Government during the reporting period, and the name and address of each person to whom those products were distributed or shipped.

3. Any regulations adopted pursuant to subsection 1 relating to reporting requirements for wholesale dealers ~~[- must]~~ *may* provide for submission to the Department periodic reports of:

(a) The inventory of stamped and unstamped cigarette packages held by the wholesale dealer for sale or distribution within the borders of this State on hand at the beginning of the reporting period;

(b) The inventory of cigarette packages held by the wholesale dealer for sale or distribution outside of the borders of this State on hand at the beginning of the reporting period;

(c) The quantity of stamped cigarette packages held for sale or distribution within the borders of this State that were received by the wholesale dealer from

another person during the reporting period, and the name and address of each person from whom those products were received;

(d) The quantity of cigarette packages held for sale or distribution outside of the borders of this State that were received by the wholesale dealer from another person during the reporting period, and the name and address of each person from whom those products were received;

(e) The quantity of cigarette packages to which Nevada stamps were affixed that were distributed or shipped to another wholesale dealer or to a retail dealer within the borders of this State during the reporting period, and the name and address of each person to whom those products were distributed or shipped;

(f) The quantity of cigarette packages to which Nevada stamps were affixed that were distributed or shipped to another facility of the same wholesale dealer within the borders of this State during the reporting period;

(g) The quantity of stamped cigarette packages that were distributed or shipped within the borders of this State to Indian tribes or instrumentalities of the Federal Government during the reporting period, and the name and address of each person to whom those products were distributed or shipped;

(h) The quantity of cigarette packages held for distribution outside of the borders of this State that were distributed or shipped outside of the borders of this State during the reporting period;

(i) The inventory of stamped and unstamped cigarette packages held for sale or distribution within the borders of this State on hand at the end of the reporting period;

(j) The inventory of cigarette packages held for sale or distribution outside of the borders of this State on hand at the end of the reporting period;

(k) The number of each type of stamp on hand at the beginning of the reporting period;

(l) The number of each type of stamp purchased or received during the reporting period;

(m) The number of each type of stamp applied during the reporting period; and

(n) The number of each type of stamp on hand at the end of the reporting period.

4. Any reports required by regulations adopted pursuant to subsection 1 must be:

(a) Submitted on forms provided *by or in a format required* by the Department; and

(b) Provided separately for each of the facilities operated by the manufacturer or wholesale dealer.

5. In each report required by regulations adopted pursuant to subsection 1, the information required must be itemized so as to disclose clearly:

(a) The quantities of stamped and unstamped cigarettes to which the report applies; and

(b) The brand and style of cigarettes to which the report applies.

6. The reporting period for any reports required by regulations adopted pursuant to subsection 1 must be for a duration of not less than 1 month and not more than 3 months.

Sec. 16. NRS 370.250 is hereby amended to read as follows:

370.250 1. ~~If any dealer in cigarettes upon which a precollected or advance tax is required to be paid fails to file any report required pursuant to NRS 370.240 with the Department or its agents on or before the date due, the Department may suspend the license of the dealer until the report is received and found to be correct.~~ *The Department may temporarily suspend or permanently revoke a*

1 *license as a wholesale dealer in accordance with the regulations adopted*
2 *pursuant to section 5 of this act if the licensee:*

3 *(a) Fails to file or files an incomplete or inaccurate report or certification*
4 *required by this chapter;*

5 *(b) Fails to pay any tax owed upon cigarettes required by this chapter;*

6 *(c) Fails to cure any shortfall for which the wholesale dealer is liable*
7 *pursuant to NRS 370.683;*

8 *(d) Sells in this State, purchases or possesses any cigarettes or cigarette*
9 *packages in violation of any provision of this chapter; or*

10 *(e) Imports into or exports from this State any cigarettes or cigarette*
11 *packages in violation of any provision of this chapter.*

12 2. ~~That~~ *Except as otherwise provided in subsection 1 or 3, the* Department
13 may temporarily suspend or permanently revoke the license of any licensee for
14 violating, or causing or permitting to be violated, any of the provisions of NRS
15 370.001 to 370.430, inclusive, *and sections 2 to 5, inclusive, of this act* or any
16 regulations adopted for the administration or enforcement of any of those
17 provisions.

18 3. The Department shall permanently revoke the license of any licensee
19 convicted of any felony pursuant to NRS 370.405.

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

21 370.257 1. Each manufacturer, wholesale dealer and retail dealer shall
22 provide to the Executive Director and his or her designees and to the Secretary or
23 his or her designee, upon request, access to all the reports and records required by
24 NRS 370.001 to 370.430, inclusive ~~and~~ *and sections 2 to 5, inclusive, of this act.*
25 The Department at its sole discretion may share the records and reports required by
26 those sections with law enforcement officials of the Federal Government, this State,
27 other states, Indian tribes, ~~and~~ international authorities ~~and~~ *or any data*
28 *clearinghouse or similar entity established for the purposes of enforcing the*
29 *provisions of NRS 370.600 to 370.705, inclusive, and sections 6, 7 and 8 of this*
30 *act or chapter 370A of NRS.*

31 2. Except as otherwise provided in this subsection, the reports submitted by
32 licensees pursuant to NRS 370.001 to 370.430, inclusive, *and sections 2 to 5,*
33 *inclusive, of this act* are public records. Unless otherwise directed or ordered by a
34 court of competent jurisdiction, any information contained in those reports about
35 quantities of cigarettes by brand must not be released to anyone other than persons
36 permitted access to those reports pursuant to subsection 1.

37 3. The Department may audit the records of each dealer to determine whether
38 the manufacturer, wholesale dealer or retail dealer has complied with the provisions
39 of NRS 370.001 to 370.430, inclusive ~~and~~ *and sections 2 to 5, inclusive, of this act.*

40 **Sec. 18.** NRS 370.379 is hereby amended to read as follows:

41 370.379 1. The Department may suspend or revoke the license of a retail or
42 wholesale dealer who violates the provisions of NRS 370.371 to 370.379, inclusive,
43 or any regulation adopted thereunder, after notice to the licensee and a hearing as
44 prescribed by the Department.

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

52 3. Except as otherwise provided in NRS 370.698, a person whose license has
53 been revoked may apply to the Department at the end of 1 year for a reinstatement

of the license. The Department may reinstate the license if the Department determines that the licensee will comply with the provisions of this chapter and the regulations adopted by the Department.

4. A person whose license has been suspended or revoked shall not sell cigarettes or permit cigarettes to be sold during the period of suspension or revocation on the premises occupied by the person or upon other premises 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. 19. ~~NRS 370.440 is hereby amended to read as follows:~~

~~370.440 As used in NRS 370.440 to 370.502, inclusive, unless the context otherwise requires:~~

~~1. "Products made from tobacco, other than cigarettes" means any tobacco of any description or any product made from tobacco other than cigarettes, including, without limitation, tobacco derived products and pasteurized tobacco products.~~

~~2. "Retail dealer" means any person who is engaged in selling products made from tobacco, other than cigarettes, to customers.~~

~~[2.] 3. "Sale" means any transfer, exchange, barter, gift, offer for sale, or distribution for consideration of products made from tobacco, other than cigarettes.~~

~~[2.] 4. "Ultimate consumer" means a person who purchases a product made from tobacco, other than cigarettes, for his or her household or personal use and not for resale.~~

~~[4.] 5. "Wholesale dealer" means any person who:~~

~~(a) Brings or causes to be brought into this State products made from tobacco, other than cigarettes, purchased from the manufacturer or a wholesale dealer and who stores, sells or otherwise disposes of those products within this State;~~

~~(b) Manufactures or produces products made from tobacco, other than cigarettes, within this State and who sells or distributes those products within this State to other wholesale dealers, retail dealers or ultimate consumers; or~~

~~(c) Purchases products made from tobacco, other than cigarettes, solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only.~~

~~[5.] 6. "Wholesale price" means:~~

~~(a) Except as otherwise provided in paragraph (b), the established price for which a manufacturer sells a product made from tobacco, other than cigarettes, to a wholesale dealer before any discount or other reduction is made;~~

~~(b) For a product made from tobacco, other than cigarettes, sold to a retail dealer or an ultimate consumer by a wholesale dealer described in paragraph (b) of subsection [4.] 5, the established price for which the product is sold to the retail dealer or ultimate consumer before any discount or other reduction is made.]~~

(Deleted by amendment.)

Sec. 20. NRS 370.445 is hereby amended to read as follows:

370.445 1. *The Department shall issue a license as a wholesale dealer or a license as a retail dealer to a person who submits a complete application on a form prescribed by the Department and who otherwise complies with the applicable provisions of this chapter and any regulations adopted by the Department. The Department shall not charge any fee for the issuance of a license pursuant to this subsection.*

2. Except as otherwise provided in subsection ~~12.]~~ 3, a person shall not engage in the business of a wholesale dealer or retail dealer in this State unless the person first obtains a license as a wholesale dealer or retail dealer from the Department. A person may be licensed as a wholesale dealer and as a retail dealer.

~~2-3~~ 3. A person who wishes to engage in the business of a retail dealer is not required to obtain a license as a retail dealer pursuant to this section if the person is licensed as a retail cigarette dealer pursuant to ~~this chapter.~~
~~3-1~~ *NRS 370.001 to 370.430, inclusive, and sections 2 to 5, inclusive, of this act.*

4. *The Department may refuse to issue or renew, or may suspend or revoke, a license issued pursuant to this section for any violation of the provisions of NRS 370.440 to 370.503, inclusive.*

5. *The Department may adopt regulations prescribing the form and contents of an application for, or which are otherwise necessary for the issuance of, a license pursuant to this section.*

6. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

Sec. 21. NRS 370.600 is hereby amended to read as follows:

370.600 The Legislature finds that:

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

2. The enactment of the procedural enhancements set forth in NRS 370.600 to 370.705, inclusive, *and sections 6, 7 and 8 of this act* will 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.

Sec. 22. NRS 370.605 is hereby amended to read as follows:

370.605 As used in NRS 370.600 to 370.705, inclusive, *and sections 6, 7 and 8 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. 23. NRS 370.665 is hereby amended to read as follows:

370.665 1. A manufacturer of tobacco products whose cigarettes are sold in this State, whether or not directly or through a distributor, retailer or similar intermediary or intermediaries shall, not later than April 30 of each year, execute and deliver to the Attorney General and the Department, on a form provided by the Department, a certification which certifies under penalty of perjury that, as of the date of that certification, the manufacturer of tobacco products is : ~~either:~~

(a) A participating manufacturer; or

(b) In full compliance with subsection 2 of NRS 370A.140, including any quarterly installment payments required pursuant to NRS 370.690.

2. Except as otherwise provided in NRS 370.670:

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

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

(1) Include:

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

~~and~~

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

(III) The current mailing address of the nonparticipating manufacturer; and

1 (IV) *A valid electronic mail address of the nonparticipating*
2 *manufacturer;*

3 (2) Indicate ~~by an asterisk~~ any brand family sold in the State during the
4 preceding calendar year that is no longer being sold in the State as of the date of the
5 certification; and

6 (3) Identify, by name and address ~~any~~:

7 (I) *Any* other manufacturer of those brand families in the preceding or
8 current calendar year ~~;~~ *and*

9 (II) *Each wholesale dealer that sells or offers for sale in this State*
10 *any brand family of the nonparticipating manufacturer.*

11 ↪ A nonparticipating manufacturer shall update the information required by this
12 paragraph at least 30 calendar days before it adds to or modifies its brand families
13 *or sells or distributes cigarettes in this State through a new wholesale dealer* by
14 executing and delivering a supplemental certification to the Attorney General and
15 the Department.

16 3. In addition to the requirements of subsection 2, the certification of a
17 nonparticipating manufacturer pursuant to this section must certify:

18 (a) That the nonparticipating manufacturer is registered to do business in the
19 State or has appointed an agent for service of process and provided notice thereof as
20 required by NRS 370.680;

21 (b) That the nonparticipating manufacturer has:

22 (1) Established and continues to maintain a qualified escrow fund; and

23 (2) Executed a qualified escrow agreement governing the qualified escrow
24 fund that has been reviewed and approved by the Attorney General;

25 (c) That the nonparticipating manufacturer is in full compliance with chapter
26 370A of NRS and any regulations adopted pursuant thereto;

27 (d) The name, address and telephone number of the financial institution where
28 the nonparticipating manufacturer has established the qualified escrow fund
29 required pursuant to chapter 370A of NRS and any regulations adopted pursuant
30 thereto;

31 (e) The account number of that qualified escrow fund and any subaccount
32 number for this State;

33 (f) The amount the nonparticipating manufacturer placed in that qualified
34 escrow fund for cigarettes sold in the State during the preceding calendar year, the
35 date and amount of each such deposit, and such evidence or verification as may be
36 deemed necessary by the Department to confirm the information required by this
37 paragraph; ~~and~~

38 (g) The amount and date of any withdrawal or transfer of money the
39 nonparticipating manufacturer made at any time from that qualified escrow fund or
40 from any other qualified escrow fund into which it ever made escrow payments
41 pursuant to chapter 370A of NRS and any regulations adopted pursuant thereto ~~;~~
42 *and*

43 (h) *That the nonparticipating manufacturer has submitted to the Attorney*
44 *General a request or consent to the United States Department of the Treasury*
45 *pursuant to 26 U.S.C. § 6103(c) authorizing the Alcohol and Tobacco Tax and*
46 *Trade Bureau of the Department, or in the case of a foreign manufacturer,*
47 *United States Customs and Border Protection of the United States Department of*
48 *Homeland Security, to disclose to the Attorney General the federal excise tax*
49 *returns of the manufacturer and each monthly operational report of the*
50 *manufacturer reported on Alcohol and Tobacco Tax and Trade Bureau Form*
51 *5210.5, and all adjustments, changes and other amendments thereto.*

1 **Sec. 24.** NRS 370.680 is hereby amended to read as follows:

2 370.680 1. Any nonresident or foreign nonparticipating manufacturer *or*
3 *wholesale dealer* that has not registered to do business in the State as a foreign
4 corporation or other business entity must, as a condition precedent :

5 (a) *For a nonparticipating manufacturer*, to having its brand families
6 included or retained in the directory ~~H~~ ; or

7 (b) *For a wholesale dealer, to selling cigarettes in this State*,
8 ↪ appoint and continually engage without interruption the services of an agent in
9 this State to act as its agent for the service of process on whom all process, in any
10 action or proceeding against it concerning or arising out of the enforcement of this
11 chapter ~~H~~ or *chapter 370A of NRS*, may be served in any manner authorized by
12 law. ~~{Such service}~~

13 2. *Service upon an agent pursuant to this section* constitutes legal and valid
14 service of process on the nonparticipating manufacturer ~~H~~ or *wholesale dealer*.
15 The nonparticipating manufacturer *or wholesale dealer* shall provide the name,
16 address, phone number and proof of the appointment and availability of such agent
17 to, and to the satisfaction of, the Attorney General and the Department.

18 ~~{2-}~~ 3. A nonparticipating manufacturer *or wholesale dealer* shall provide
19 notice to the Attorney General and the Department at least 30 calendar days before
20 the termination of the authority of an agent appointed pursuant to this section and
21 shall provide proof to the satisfaction of the Attorney General and the Department
22 of the appointment of a new agent not less than 5 calendar days before the
23 termination of appointment of an existing agent. If an agent terminates his or her
24 appointment as an agent, the nonparticipating manufacturer *or wholesale dealer*
25 shall notify the Attorney General and the Department of that termination within 5
26 calendar days and include with that notification proof to the satisfaction of the
27 Attorney General and the Department of the appointment of a new agent.

28 ~~{3-}~~ 4. Any nonparticipating manufacturer ~~{whose}~~ or *wholesale dealer*
29 *which sells or purchases* cigarettes ~~{are sold}~~ in this State and ~~{who}~~ *which* has not
30 appointed and engaged an agent as required by this section shall be deemed to have
31 appointed the Secretary of State as an agent and may be proceeded against in courts
32 of this State by service of process upon the Secretary of State, except that the
33 appointment of the Secretary of State as an agent does not satisfy the condition
34 precedent for having the brand families of the nonparticipating manufacturer
35 included or retained in the directory.

36 **Sec. 25.** NRS 370.685 is hereby amended to read as follows:

37 370.685 1. Not later than 20 calendar days after the end of each calendar
38 quarter, and more frequently if so directed by the Department, each distributor shall
39 submit such information as the Department requires to facilitate compliance with
40 the provisions of NRS 370.600 to 370.705, inclusive, *and sections 6, 7 and 8 of*
41 *this act*, including, without limitation, a list by brand family of the total number of
42 cigarettes or, in the case of "roll-your-own" tobacco, the equivalent unit count, for
43 which the distributor affixed stamps during the previous calendar quarter or
44 otherwise paid the tax due for those cigarettes. The distributor shall maintain for at
45 least 5 years, and make available to the Department, all invoices and documentation
46 of sales of all cigarettes of nonparticipating manufacturers and any other
47 information relied upon in reporting to the Department.

48 2. The Department may disclose to the Attorney General any information
49 received pursuant to NRS 370.600 to 370.705, inclusive, *and sections 6, 7 and 8 of*
50 *this act* and requested by the Attorney General for purposes of determining
51 compliance with and enforcing the provisions of NRS 370.600 to 370.705,
52 inclusive ~~H~~, *and sections 6, 7 and 8 of this act*. The Department and Attorney
53 General shall share with each other the information received pursuant to the

provisions of NRS 370.600 to 370.705, inclusive, *and sections 6, 7 and 8 of this act* and may share such information with other federal, state or local agencies only for purposes of enforcement of those provisions, the provisions of chapter 370A of NRS or the corresponding laws of other states.

3. The Department may require at any time from a nonparticipating manufacturer proof, from the financial institution in which that manufacturer has established a qualified escrow fund for the purpose of compliance with chapter 370A of NRS, of the amount of money in that fund, exclusive of interest, the amount and date of each deposit to that fund, and the amount and date of each withdrawal from that fund.

4. In addition to the information otherwise required to be submitted pursuant to NRS 370.600 to 370.705, inclusive, *and sections 6, 7 and 8 of this act*, the Department may, *at any time*, require a distributor or manufacturer of tobacco products to submit any additional information ~~including, without limitation, samples of the packaging or labeling of each brand family, or documentation~~ as is necessary to enable the Department to determine whether a manufacturer of tobacco products is *or will continue to be* in compliance with the provisions of ~~NRS 370.600 to 370.705, inclusive.~~

~~5. Every distributor shall provide to the Department and update as necessary an electronic mail address for receiving any notifications required to carry out NRS 370.600 to 370.705, inclusive, this chapter and chapter 370A of NRS.~~

Sec. 26. NRS 370.698 is hereby amended to read as follows:

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 its brand families 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 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 convicted of any crime relating to the manufacture, sale or distribution of tobacco products in this State or another state.

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

(d) The nonparticipating manufacturer fails to report any investigation of the nonparticipating manufacturer which is known to the nonparticipating manufacturer regarding any violation of the laws of 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 removal of the nonparticipating manufacturer from the directory of this State pursuant to NRS 370.675.

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

(f) The nonparticipating manufacturer has a shortfall or fails to make an escrow deposit that is due in another state or territory of the United States, has been given reasonable notice of the shortfall or failure and has failed to cure the shortfall or make the deposit within 30 days after receiving notice of the shortfall or failure.

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

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

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

Sec. 27. Chapter 370A of NRS is hereby amended by adding thereto the provisions set forth as sections 28 to 31, inclusive, of this act.

Sec. 28. *“Qualified tribal land” has the meaning ascribed to it in section 3 of this act.*

Sec. 29. *Any provision of this chapter or chapter 370 of NRS, or any amendment thereto, that causes any provision of this chapter or chapter 370 of NRS to fail to operate as a qualifying statute pursuant to the Master Settlement Agreement is void.*

Sec. 30. 1. *Notwithstanding the provisions of NRS 370A.150, a manufacturer that elects to deposit money into a qualified escrow fund pursuant to NRS 370A.140 may assign to the State the interest of the manufacturer in any money in the qualified escrow fund.*

2. *An assignment executed pursuant to subsection 1 is irrevocable and applies to any money and any interest or other appreciation earned on any money for which the manufacturer executes the assignment.*

3. *The parties to a qualified escrow agreement may amend the agreement for the purposes of executing an assignment pursuant to subsection 1.*

4. *An assignment executed pursuant to subsection 1 must be in writing and be signed by the assignee and the assignor or by an authorized agent or representative of the assignor. An assignment in writing which is duly executed becomes enforceable after a copy of the assignment is delivered to the Attorney General and the financial institution where the qualified escrow fund is maintained.*

5. *Nothing in this section operates to relieve a manufacturer from any obligation or duty imposed pursuant to this chapter or chapter 370 of NRS.*

Sec. 31. 1. *The State may release to an Indian tribe, pursuant to a compact with that tribe, not more than 50 percent of the amounts deposited into a qualified escrow fund pursuant to NRS 370A.140 for cigarettes sold on or after January 1, 2015, in a retail transaction to a consumer on the qualified tribal land of the tribe, if:*

(a) *The tribe is a federally recognized tribe or a tribe that was recognized by the State on or before January 1, 2012, and, in each case, has a reservation or colony in the State;*

(b) The money to be released was timely deposited into escrow in compliance with NRS 370A.140;

(c) State excise tax or tribal excise tax was paid on the cigarettes;

(d) The release occurs not earlier than 1 year after the money is deposited into escrow;

(e) The money released is provided to the tribe itself and used only for the purpose of public safety on the qualified tribal land of the tribe or for social services for tribal members, including, without limitation, health care or education, and not used for any function that could directly or indirectly promote or reduce the costs of cigarette production, marketing or sales;

(f) The money released is not used in any way for the benefit of any manufacturer of tobacco products that is not a participating manufacturer under the Master Settlement Agreement or to facilitate cigarette sales by any such manufacturer of tobacco products; and

(g) The compact with the tribe provides that the taxing and stamping requirements and policies for cigarettes sold on the qualified tribal land of the tribe, including the applicability, amount, collection and refund of taxes, will not be different for any cigarettes of participating manufacturers than for any cigarettes of manufacturers of tobacco products that are not participating manufacturers, and the tribe is in compliance with these provisions of the compact.

2. The total amount released to all Indian tribes from escrow pursuant to this section in any 1 year must not exceed \$1 million in the aggregate.

3. This section applies only ~~if~~ to:

(a) The cigarettes ~~for which money would be released are manufactured by~~ of a manufacturer of tobacco products that existed in the United States market on or before June 1, 2012; and

(b) ~~The~~ A manufacturer of tobacco products involved in the production, distribution or sale of the cigarettes for which money would be released ~~that is~~ not a manufacturer, or an affiliate or successor of such manufacturer, ~~that is~~ affiliated with the Indian tribe or any member of the tribe to which the money would be released.

4. ~~Amounts deposited into a qualified escrow fund for cigarettes which are manufactured by a manufacturer of tobacco products that entered the United States market after June 1, 2012, may not be released under this section.~~

~~5.~~ For the purposes of this section, an Indian tribe with qualified tribal land located in more than one state or territory of the United States is considered to have a reservation or colony in, and to be eligible for the release of money pursuant to this section from, this State only if the largest portion of the qualified tribal land of the tribe is located within this State.

~~6.~~ 5. The Attorney General may withdraw from a qualified escrow fund the money released pursuant to this section. The manufacturers of tobacco products that elect to deposit money into a qualified escrow fund pursuant to NRS 370A.140 and the financial institutions in which such qualified escrow funds are maintained shall make such amendments to their qualified escrow agreements as may be necessary to effectuate a withdrawal of money from the qualified escrow funds pursuant to this section.

~~7.~~ 6. Notwithstanding the provisions of NRS 370A.150, a manufacturer of tobacco products does not have any right to reversion of the money, including, without limitation, the interest or other appreciation earned on the money, released from escrow pursuant to this section.

~~8.~~ 7. If a court of competent jurisdiction invalidates the provisions of subsection ~~6.~~ 5., the money authorized to be released to Indian tribes pursuant to

this section may be paid to the appropriate tribes out of the State General Fund, subject to all conditions and limits provided in this section.

~~¶ 8.~~ *The Attorney General is authorized to enter into compacts on behalf of the State as provided in this section. Any compact so entered into must require the Indian tribe to verify that the conditions set forth in paragraphs (e), (f) and (g) of subsection 1 are met.*

Sec. 32. NRS 370A.010 is hereby amended to read as follows:

370A.010 As used in this chapter, the words and terms defined in NRS 370A.020 to 370A.120, inclusive, *and section 28 of this act* have the meanings ascribed to them in those sections.

Sec. 33. NRS 370A.120 is hereby amended to read as follows:

370A.120 "Units sold" means, with respect to a particular manufacturer of tobacco products for a particular year, the number of individual cigarettes sold in this state, *including, without limitation, any cigarettes sold on any qualified tribal land within the State*, by the manufacturer directly or through a distributor, retailer or similar intermediary or intermediaries during that year, ~~as measured by excise taxes collected by the State on packs, or containers of "roll your own" tobacco, bearing the excise stamp of this state.~~ *for which the State has the authority under federal law to impose excise or a similar tax or to collect escrow deposits. The term does not include any cigarettes sold:*

1. On a federal installation in a transaction that is exempt from state taxation under federal law; or

2. On the qualified tribal land of an Indian tribe to a consumer who is an adult enrolled member of that tribe in a transaction that is exempt from state taxation under federal law.

Sec. 34. NRS 370A.150 is hereby amended to read as follows:

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

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

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

3. In accordance with the provisions of section 31 of this act.

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

Sec. 35. *1. This section and sections 1 to 16, inclusive, 18 to 30, inclusive, and 32 of this act ~~becomes~~ become effective on July 1, 2013.*

2. Sections 17, 31, 33 and 34 of this act become effective on January 1, 2014.