

Amendment No. 159

Assembly Amendment to Assembly Bill No. 83

(BDR 32-175)

Proposed by: Assembly Committee on Taxation**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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

BJF/BJE



Date: 3/30/2015

A.B. No. 83—Revises provisions relating to tobacco. (BDR 32-175)



ASSEMBLY BILL NO. 83—COMMITTEE ON TAXATION

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Taxation

SUMMARY—Revises provisions relating to tobacco. (BDR 32-175)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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; expanding the definition of “manufacturer” to include certain persons manufacturing cigarettes using certain cigarette rolling machines; prohibiting a manufacturer from operating a cigarette rolling machine without a license from the Department of Taxation; authorizing the seizure and destruction of cigarette rolling machines under certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law generally provides for the regulation of cigarettes and other tobacco products, including the regulation and licensing of persons engaged in the manufacturing of cigarettes and other tobacco products. (Chapter 370 of NRS) **Sections 2 and 5** of this bill expand the definition of “manufacturer” to include certain persons producing, filling, rolling, dispensing or otherwise manufacturing cigarettes using certain commercial-grade cigarette rolling machines. **Section 7** of this bill prohibits a manufacturer from operating a cigarette rolling machine without a license from the Department of Taxation. **Section 9** of this bill provides for the seizure and destruction of cigarette rolling machines being used in violation of chapter 370 of NRS.

Existing law generally prohibits a person from conducting business in this State without first obtaining a state business license. Certain persons are deemed to conduct a business in this State for the purpose of obtaining a business license, including a person who is responsible for a business that has a registered agent in this State. (NRS 76.100) **Sections 3 and 10** of this bill provide that certain manufacturers of tobacco are not deemed to conduct a business in this State if the manufacturer maintains a registered agent in this State solely because of the requirement to maintain such an agent pursuant to ~~the Prevent All Cigarette Trafficking Act of 2009. (15 U.S.C. § 376(a)(1))~~ a provision of existing law requiring certain nonresident and foreign manufacturers to maintain a registered agent in this State for certain purposes.

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 and 3 of this act.

Sec. 2. 1. “Cigarette rolling machine” means any machine that:

(a) May be loaded with loose tobacco, cigarette tubes, cigarette papers or any other component related to the production of cigarettes;

(b) Is designed to automatically or mechanically produce, roll, fill, dispense or otherwise manufacture cigarettes;

(c) Is of a commercial grade or otherwise designed or suitable for commercial use; and

(d) Is designed to be powered or operated by a primary source of power other than human power.

2. The term does not include any handheld or manually operated machine or device if the machine or device is:

(a) Used to make cigarettes for the personal consumption of the owner of the machine or device; or

(b) Held by a retail establishment solely for sale to a consumer for the purpose of making cigarettes off the premises of the retail establishment and for personal consumption.

Sec. 3. A manufacturer who maintains a registered agent in this State solely because of the requirements set forth in ~~15 U.S.C. § 376(a)(1)~~ NRS 370.680 and who is not otherwise required to obtain a state business license pursuant to NRS 76.100 is not deemed, pursuant to paragraph (c) of subsection 6 of NRS 76.100, to conduct a business in this State.

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

Sec. 5. NRS 370.0315 is hereby amended to read as follows:

370.0315 **1.** “Manufacturer” means any person who:

~~1. Manufactures, fabricates, assembles, processes or labels a finished cigarette; ~~for~~~~

~~2. Imports, whether directly or indirectly, a finished cigarette into the United States for sale or distribution in this State ~~for~~; or~~

(c) Owns, maintains, operates or permits any other person to operate a cigarette rolling machine for the purpose of producing, filling, rolling, dispensing or otherwise manufacturing cigarettes.

2. The term does not include a natural person who uses a handheld or manually operated machine or device to produce cigarettes using “roll-your-own” tobacco if the cigarettes produced are for personal consumption and not for sale, resale or any other profit-making endeavor.

Sec. 6. 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 and 3 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:

1 (a) Operates pursuant to the provisions of 19 U.S.C. § 1555(b); and
2 (b) To the extent it sells cigarettes, only sells cigarettes that are duty-free
3 merchandise as defined in 19 U.S.C. § 1555(b)(8)(E).

4 **Sec. 7.** NRS 370.080 is hereby amended to read as follows:

5 370.080 1. A person shall not engage in business as a wholesale dealer in
6 the State of Nevada unless that person first secures a license to engage in that
7 activity from the Department.

8 2. A person shall not engage in business as a retail dealer in the State of
9 Nevada unless that person first secures a license to engage in that activity from the
10 Department.

11 3. A manufacturer shall not ~~sell~~ :

12 (a) *Sell* any cigarettes to a wholesale dealer in the State of Nevada ; *or*

13 (b) *Operate or permit any person other than the manufacturer to operate a*
14 *cigarette rolling machine for the purpose of producing, filling, rolling, dispensing*
15 *or otherwise manufacturing cigarettes,*

16 *↪ unless that manufacturer first secures a license to engage in that activity from the*
17 *Department.*

18 4. A separate license is required to engage in each of the activities described
19 in this section.

20 **Sec. 8.** NRS 370.250 is hereby amended to read as follows:

21 370.250 1. The Department may temporarily suspend or permanently
22 revoke a license as a wholesale dealer in accordance with the regulations adopted
23 pursuant to NRS 370.253 if the licensee:

24 (a) Fails to file or files an incomplete or inaccurate report or certification
25 required by this chapter;

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

27 (c) Fails to cure any shortfall for which the wholesale dealer is liable pursuant
28 to NRS 370.683;

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

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

33 2. Except as otherwise provided in subsection 1 or 3, the Department may
34 temporarily suspend or permanently revoke the license of any licensee for violating,
35 or causing or permitting to be violated, any of the provisions of NRS 370.001 to
36 370.430, inclusive, *and sections 2 and 3 of this act* or any regulations adopted for
37 the administration or enforcement of any of those provisions.

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

40 **Sec. 9.** NRS 370.415 is hereby amended to read as follows:

41 370.415 1. The Department, its agents, sheriffs within their respective
42 counties and all other peace officers of the State of Nevada shall seize any
43 counterfeit stamps , ~~and any~~ contraband tobacco products , ~~and~~ machinery used
44 to manufacture contraband tobacco products ~~and~~ *and cigarette rolling machines*
45 *being used in violation of any provision of this chapter that are* found or located
46 in the State of Nevada.

47 2. A sheriff or other peace officer who seizes stamps, contraband tobacco
48 products , ~~and~~ machinery *or cigarette rolling machines* pursuant to this section
49 shall provide written notification of the seizure to the Department not later than 5
50 working days after the seizure. The notification must include the reason for the
51 seizure.

52 3. After consultation with the Department, the sheriff or other peace officer
53 shall transmit the contraband tobacco products to the Department if:

(a) The contraband tobacco products consist of cigarettes 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

(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 any:

(a) Cigarettes pursuant to subsection 3, the Department shall dispose of the cigarettes as provided in subsection 4 of NRS 370.270; 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, contraband tobacco products, ~~and~~ machinery *or cigarette rolling machines* pursuant to this section shall:

(a) Destroy the stamps, ~~and~~ machinery *and cigarette rolling machines*; and

(b) If he or she does not transmit the contraband tobacco products to the Department, destroy the contraband tobacco products.

Sec. 10. NRS 76.100 is hereby amended to read as follows:

76.100 1. A person shall not conduct a business in this State unless and until the person obtains a state business license issued by the Secretary of State. If the person is:

(a) An entity required to file an initial or annual list with the Secretary of State pursuant to this title, the person must obtain the state business license at the time of filing the initial or annual list.

(b) Not an entity required to file an initial or annual list with the Secretary of State pursuant to this title, the person must obtain the state business license before conducting a business in this State.

2. An application for a state business license must:

(a) Be made upon a form prescribed by the Secretary of State;

(b) Set forth the name under which the applicant transacts or intends to transact business, or if the applicant is an entity organized pursuant to this title and on file with the Secretary of State, the exact name on file with the Secretary of State, the entity number as assigned by the Secretary of State, if known, and the location in this State of the place or places of business;

(c) Be accompanied by a fee in the amount of \$200; and

(d) Include any other information that the Secretary of State deems necessary.

➤ If the applicant is an entity organized pursuant to this title and on file with the Secretary of State and the applicant has no location in this State of its place of business, the address of its registered agent shall be deemed to be the location in this State of its place of business.

3. The application must be signed pursuant to NRS 239.330 by:

(a) The owner of a business that is owned by a natural person.

(b) A member or partner of an association or partnership.
(c) A general partner of a limited partnership.
(d) A managing partner of a limited-liability partnership.
(e) A manager or managing member of a limited-liability company.
(f) An officer of a corporation or some other person specifically authorized by the corporation to sign the application.

4. If the application for a state business license is defective in any respect or the fee required by this section is not paid, the Secretary of State may return the application for correction or payment.

5. The state business license required to be obtained pursuant to this section is in addition to any license to conduct business that must be obtained from the local jurisdiction in which the business is being conducted.

6. For the purposes of this chapter, a person shall be deemed to conduct a business in this State if a business for which the person is responsible:

(a) Is organized pursuant to this title, other than a business organized pursuant to:

(1) Chapter 82 or 84 of NRS; or

(2) Chapter 81 of NRS if the business is a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c);

(b) Has an office or other base of operations in this State;

(c) ~~Has~~ *Except as otherwise provided in section 3 of this act, has* a registered agent in this State; or

(d) Pays wages or other remuneration to a natural person who performs in this State any of the duties for which he or she is paid.

7. As used in this section, "registered agent" has the meaning ascribed to it in NRS 77.230.

Sec. 11. This act becomes effective upon passage and approval.