

SENATE BILL NO. 225—SENATORS FARLEY, HARDY, HARRIS,
GUSTAVSON, ATKINSON; GOICOECHEA AND SETTELMAYER

MARCH 9, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the sale and distribution of tobacco products, vapor products and alternative nicotine products. (BDR 15-796)

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

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

AN ACT relating to crimes; prohibiting a person from selling, distributing or offering to sell vapor products and alternative nicotine products to any child under the age of 18 years; requiring the owner of a retail establishment to display a notice containing certain information whenever vapor products or alternative nicotine products are being sold or offered for sale at the establishment; prohibiting a retailer from selling vapor products or alternative nicotine products through the use of certain types of displays; requiring the Attorney General to conduct inspections at locations where vapor products or alternative nicotine products are sold, distributed or offered for sale as necessary to comply with any applicable federal law; imposing certain fines; providing a civil penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law prohibits a person from selling, distributing or offering to sell
2 cigarettes or smokeless products made or derived from tobacco in any form other
3 than in an unopened package which originated with the manufacturer and bears any
4 health warning required by federal law. (NRS 202.2493) **Section 2** of this bill
5 applies such a prohibition to alternative nicotine products. **Section 2** also defines
6 the term "smokeless product made or derived from tobacco."

7 Existing law also prohibits a person from selling, distributing or offering to sell
8 cigarettes, cigarette paper, tobacco or products made or derived from tobacco to
9 any child under the age of 18 years. A person who violates such a provision must



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pay a fine of not more than \$500 and a civil penalty of not more than \$500. (NRS 202.2493) **Section 2** prohibits a person from selling, distributing or offering to sell vapor products or alternative nicotine products to any child under the age of 18 years, and requires a person who violates such a provision to pay the same fine and civil penalty.

Existing law further requires the owner of a retail establishment to display a notice containing information relating to the prohibition against selling cigarettes and other tobacco products to minors whenever any product made or derived from tobacco is being sold or offered for sale at the establishment. A person who violates such a provision must pay a fine of not more than \$100. (NRS 202.2493) **Section 2** requires the owner of a retail establishment to display a notice containing information relating to the prohibition against selling vapor products and alternative nicotine products to minors whenever vapor products or alternative nicotine products are being sold or offered for sale at the establishment, and requires a person who violates such a provision to pay the same fine.

Existing law generally prohibits a retailer from selling cigarettes through the use of any type of display: (1) which contains cigarettes and is located in any area to which customers are allowed access; and (2) from which cigarettes are readily accessible to a customer without the assistance of the retailer. A person who violates such a provision must pay a fine of not more than \$500. (NRS 202.2493) **Section 2** additionally prohibits a retailer from selling vapor products and alternative nicotine products through the use of any such type of display which contains vapor products or alternative nicotine products, and requires a person who violates such a provision to pay the same fine.

Additionally, existing law requires the Attorney General, as necessary to comply with applicable federal law, to conduct random, unannounced inspections at locations where tobacco and products made or derived from tobacco are sold, distributed or offered for sale to inspect for and enforce compliance with certain provisions of law, including the prohibition against selling such products to a child under the age of 18 years. (NRS 202.2493, 202.2496) **Section 3** of this bill requires the Attorney General, as necessary to comply with any applicable federal law, to conduct such an inspection at locations where vapor products or alternative nicotine products are sold, distributed or offered for sale to inspect for and enforce compliance with certain provisions of law relating to the prohibition against selling vapor products and alternative nicotine products to a child under the age of 18 years, as set forth in **section 2**.

Section 1 of this bill defines the terms "vapor product" and "alternative nicotine product" for the purposes of **sections 2 and 3**.

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

Section 1. NRS 202.2485 is hereby amended to read as follows:

202.2485 As used in NRS 202.2485 to 202.2497, inclusive:

1. ***"Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved or ingested by any other means. The term does not include:***

(a) A vapor product;

(b) A product made or derived from tobacco; or



(c) *Any product regulated by the United States Food and Drug Administration pursuant to Subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 351 et seq.*

2. "Distribute" includes furnishing, giving away or providing products made or derived from tobacco or samples thereof at no cost to promote the product, whether or not in combination with a sale.

~~[2.]~~ 3. "Health authority" means the district health officer in a district, or his or her designee, or, if none, the Chief Medical Officer, or his or her designee.

~~[3.]~~ 4. "Product made or derived from tobacco" does not include any product regulated by the United States Food and Drug Administration pursuant to ~~[Chapter]~~ *Subchapter V* of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 351 et seq.

5. *"Vapor product":*

(a) *Means any noncombustible product that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of the shape or size thereof, that can be used to produce vapor or aerosol in a solution or other form.*

(b) *Includes, without limitation:*

(1) *An electronic cigarette, cigar, cigarillo or pipe or a similar product or device; and*

(2) *A vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, cigar, cigarillo or pipe or a similar product or device.*

(c) *Does not include any product regulated by the United States Food and Drug Administration pursuant to Subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 351 et seq.*

Sec. 2. NRS 202.2493 is hereby amended to read as follows:

202.2493 1. A person shall not sell, distribute or offer to sell cigarettes, ~~for~~ *any* smokeless ~~[products]~~ *product* made or derived from tobacco *or any alternative nicotine product* in any form other than in an unopened package which originated with the manufacturer and bears any health warning required by federal law. A person who violates this subsection shall be punished by a fine of \$100 and a civil penalty of \$100. *As used in this subsection, "smokeless product made or derived from tobacco" means any product that consists of cut, ground, powdered or leaf tobacco and is intended to be placed in the oral or nasal cavity.*

2. Except as otherwise provided in subsections 3, 4 and 5, it is unlawful for any person to sell, distribute or offer to sell cigarettes, cigarette paper, tobacco of any description, ~~for~~ products made or derived from tobacco, *vapor products or alternative nicotine*



products to any child under the age of 18 years. A person who violates this subsection shall be punished by a fine of not more than \$500 and a civil penalty of not more than \$500.

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

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

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

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

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

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

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

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

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

(a) A notice indicating that:

(1) The sale of cigarettes , ~~and~~ other tobacco products , *vapor products and alternative nicotine products* to minors is prohibited by law; and

(2) The retailer may ask for proof of age to comply with this prohibition; and

(b) At least one sign that complies with the requirements of NRS 442.340.

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



7. It is unlawful for any retailer to sell cigarettes , *vapor products or alternative nicotine products* through the use of any type of display:

(a) Which contains cigarettes , *vapor products or alternative nicotine products* and is located in any area to which customers are allowed access; and

(b) From which cigarettes , *vapor products or alternative nicotine products* are readily accessible to a customer without the assistance of the retailer,

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

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

Sec. 3. NRS 202.2496 is hereby amended to read as follows:

202.2496 1. As necessary to comply with *any* applicable federal law, the Attorney General shall conduct random, unannounced inspections at locations where tobacco , ~~tand~~ products made or derived from tobacco , *vapor products and alternative nicotine products* are sold, distributed or offered for sale to inspect for and enforce compliance with NRS 202.2493 and 202.2494 ~~and~~ , *as applicable*. For assistance in conducting any such inspection, the Attorney General may contract with:

(a) Any sheriff's department;

(b) Any police department; or

(c) Any other person who will, in the opinion of the Attorney General, perform the inspection in a fair and impartial manner.

2. If the inspector desires to enlist the assistance of a child under the age of 18 for such an inspection, the inspector shall obtain the written consent of the child's parent for such assistance.

3. A child assisting in an inspection pursuant to this section shall, if questioned about his or her age, state his or her true age and that he or she is under 18 years of age.

4. If a child is assisting in an inspection pursuant to this section, the person supervising the inspection shall:

(a) Refrain from altering or attempting to alter the child's appearance to make the child appear to be 18 years of age or older.

(b) Photograph the child immediately before the inspection is to occur and retain any photographs taken of the child pursuant to this paragraph.

5. The person supervising an inspection using the assistance of a child shall, within a reasonable time after the inspection is completed:



(a) Inform a representative of the business establishment from which the child attempted to purchase tobacco , ~~or~~ products made or derived from tobacco , *vapor products or alternative nicotine products* that an inspection has been performed and the results of that inspection.

(b) Prepare a report regarding the inspection. The report must include the following information:

(1) The name of the person who supervised the inspection and that person's position;

(2) The age and date of birth of the child who assisted in the inspection;

(3) The name and position of the person from whom the child attempted to purchase tobacco , ~~or~~ products made or derived from tobacco ~~or~~ , *vapor products or alternative nicotine products*;

(4) The name and address of the establishment at which the child attempted to purchase tobacco , ~~or~~ products made or derived from tobacco ~~or~~ , *vapor products or alternative nicotine products*;

(5) The date and time of the inspection; and

(6) The result of the inspection, including whether the inspection resulted in the sale, distribution or offering for sale of tobacco , ~~or~~ products made or derived from tobacco , *vapor products or alternative nicotine products* to the child.

6. No civil or criminal action based upon an alleged violation of NRS 202.2493 or 202.2494 may be brought as a result of an inspection for compliance in which the assistance of a child has been enlisted unless the inspection has been conducted in accordance with the provisions of this section.

