

ASSEMBLY BILL NO. 59—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Revises various provisions relating to tobacco.
(BDR 15-420)

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 tobacco; increasing the minimum age to purchase tobacco products; revising the punishment for certain prohibited acts relating to the sale of tobacco products; revising certain definitions relating to tobacco products for the purposes of the regulation and taxation of tobacco products; eliminating certain duplicative requirements concerning the sale of cigarettes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a person from selling, distributing or offering to sell cigarettes, cigarette paper or other tobacco products to a child under the age of 18 years. (NRS 202.24935, 370.521) **Sections 1, 2 and 8** of this bill prohibit a person from selling, distributing or offering to sell cigarettes, cigarette paper or other tobacco products to a person under 21 years of age. **Section 3** of this bill revises the provisions governing the random, unannounced inspection of locations that sell tobacco products to make conforming changes which are necessary because of the increase in the minimum age to purchase tobacco products.

Section 2 removes the existing penalty for a person who knowingly distributes cigarettes, cigarette paper or other tobacco products to a person under 21 years of age through a telephonic, computer or electronic network, and **sections 2 and 6** of this bill instead make distributing cigarettes, cigarette paper or other tobacco products to a person under 21 years of age through a telephonic, computer or electronic network punishable by certain administrative, civil or criminal penalties.

Existing law generally defines tobacco products to include cigarettes, cigarette paper, tobacco of any description, products made or derived from tobacco, vapor products and alternative nicotine products. (NRS 370.007-370.055) **Sections 4 and**



5 of this bill revise certain definitions relating to the regulation and taxation of tobacco products to standardize the terminology found throughout NRS.

Section 9 of this bill eliminates a requirement of existing law relating to the mailing or shipment of cigarettes that conflict with requirements regarding the sale of cigarettes through a computer, telephonic or electronic network. **Section 7** of this bill makes conforming changes to remove a reference to the requirements eliminated by **section 9**.

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

Section 1. NRS 202.2493 is hereby amended to read as follows:

202.2493 1. A person shall not sell, distribute or offer to sell cigarettes, any smokeless 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 provided in chapter 370 of NRS.* 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. 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, other tobacco products, vapor products and alternative nicotine products to ~~minors~~ *persons under 21 years of age* 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.

3. It is unlawful for any retailer to sell cigarettes through the use of any type of display:

(a) Which contains cigarettes and is located in any area to which customers are allowed access; and

(b) From which cigarettes are readily accessible to a customer without the assistance of the retailer,



1 ↪ except a vending machine used in compliance with NRS
2 202.2494. A person who violates this subsection shall be punished
3 by a fine of not more than \$500.

4 **Sec. 2.** NRS 202.24935 is hereby amended to read as follows:

5 202.24935 1. It is unlawful for a person to knowingly sell or
6 distribute cigarettes, cigarette paper, tobacco of any description,
7 products made or derived from tobacco, vapor products or
8 alternative nicotine products to a ~~{child}~~ **person** under the age of
9 ~~{18}~~ **21** years through the use of a computer network, telephonic
10 network or other electronic network.

11 2. ~~{A person who violates the provisions of subsection 1 shall~~
12 ~~be punished by a fine of not more than \$500 and a civil penalty of~~
13 ~~not more than \$500. Any money recovered pursuant to this section~~
14 ~~as a civil penalty must be deposited in the same manner as money is~~
15 ~~deposited pursuant to subsection 9 of NRS 370.521.~~

16 ~~—3.1~~ Every person who sells or distributes cigarettes, cigarette
17 paper, tobacco of any description, products made or derived from
18 tobacco, vapor products or alternative nicotine products through the
19 use of a computer network, telephonic network or electronic
20 network shall:

21 (a) Ensure that the packaging or wrapping of the items when
22 they are shipped is clearly marked with the word “cigarettes” or, if
23 the items being shipped are not cigarettes, the words “tobacco
24 products.”

25 (b) Perform an age verification through an independent, third-
26 party age verification service that compares information available
27 from public records to the personal information entered by the
28 person during the ordering process that establishes that the person is
29 over the age of ~~{18}~~ **21** years and use a method of mail, shipping or
30 delivery that requires the signature of a person over the age of ~~{18}~~
31 **21** years before the items are released to the purchaser, unless the
32 person:

33 (1) Requires the customer to:

34 (I) Create an online profile or account with personal
35 information, including, without limitation, a name, address, social
36 security number and a valid phone number, that is verified through
37 publicly available records; or

38 (II) Upload a copy of a government-issued identification
39 card that includes a photograph of the customer; and

40 (2) Sends the package containing the items to the name and
41 address of the customer who ordered the items.

42 **3. A person who violates this section shall be punished as**
43 **provided in chapter 370 of NRS.**



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, 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, 202.2494 and 370.521, 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}~~ *person* 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}~~ *person under 21 years of age* 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 *of the person* to make the ~~{child}~~ *person* appear to be ~~{18}~~ 21 years of age or older.

(b) Photograph the ~~{child}~~ *person attempting to purchase tobacco, products made or derived from tobacco, vapor products or alternative nicotine products* immediately before the inspection is to occur and retain any photographs taken of the ~~{child}~~ *person* pursuant to this paragraph.

5. The person supervising an inspection using the assistance of a ~~{child}~~ *person under 21 years of age* shall, within a reasonable time after the inspection is completed:

(a) Inform a representative of the business establishment from which the ~~{child}~~ *person* attempted to purchase tobacco, 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}~~ *person* who assisted in the inspection;



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

(4) The name and address of the establishment at which the ~~child~~ *person* attempted to purchase tobacco, products made or derived from tobacco, 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, products made or derived from tobacco, vapor products or alternative nicotine products to the ~~child~~ *person under 21 years of age*.

6. No administrative, civil or criminal action based upon an alleged violation of NRS 202.2493, 202.2494 or 370.521 may be brought as a result of an inspection for compliance in which the assistance of a ~~child~~ *person under 21 years of age* has been enlisted *to attempt to purchase tobacco, products made or derived from tobacco, vapor products or alternative nicotine products* unless the inspection has been conducted in accordance with the provisions of this section.

Sec. 4. NRS 370.0285 is hereby amended to read as follows:

370.0285 1. “Delivery sale” means any sale of cigarettes, *cigarette paper or other tobacco products*, whether the seller is located within or outside of the borders of this State, to a consumer in this State for which:

(a) The purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the Internet or any other on-line service; or

(b) The cigarettes , *cigarette paper or other tobacco products* are delivered by mail or the use of another delivery service.

2. For the purpose of this section, any sale of cigarettes , *cigarette paper or other tobacco products* to a natural person in this State who does not hold a current license as a wholesale or retail dealer constitutes a sale to a consumer.

Sec. 5. NRS 370.0318 is hereby amended to read as follows:

370.0318 “Other tobacco product” means any tobacco of any description, any vapor product, any alternative nicotine product or any product made *or derived* from tobacco, other than cigarettes.

Sec. 6. NRS 370.321 is hereby amended to read as follows:

370.321 1. ~~{A person shall not accept an order for a delivery sale unless the person first obtains a license as a retail dealer.~~

~~—2.}~~ A person who accepts an order for a delivery sale shall comply with all of the requirements of this chapter and chapters



202, 370A, 372 and 374 of NRS, and all other laws of this State generally applicable to sales of cigarettes, *cigarette paper or other tobacco products* that occur entirely within this State.

2. *In addition to any other penalty authorized by law, the Attorney General may seek civil penalties against any person engaging in delivery sales in violation of this chapter or chapter 202 of NRS. Each violation is subject to a civil penalty in an amount not to exceed \$1,000. Any civil penalty recovered pursuant to this section for a violation of NRS 202.24935 must be deposited into a separate account in the State General Fund to be used for the enforcement of this section and NRS 202.2493 and 202.2494.*

Sec. 7. NRS 370.395 is hereby amended to read as follows:

370.395 A person who ~~is~~

~~—1. Knowingly~~ *knowingly* violates any of the provisions of NRS 370.321 ~~1, 370.323~~ or 370.327 ~~1; or~~

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

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

Sec. 8. NRS 370.521 is hereby amended to read as follows:

370.521 1. Except as otherwise provided in subsections 2 and 3, a person shall not sell, distribute or offer to sell cigarettes, cigarette paper or other tobacco products to any ~~child~~ *person* under the age of ~~18~~ *21* years.

2. A person shall be deemed to be in compliance with the provisions of subsection 1 if, before the person sells, distributes or offers to sell to another, cigarettes, cigarette paper or other tobacco products, the person:

(a) Demands that the other person present a valid driver's license, permanent resident card, tribal identification card or other written or documentary evidence which shows that the other person is ~~18~~ *21* years of age or older;

(b) Is presented a valid driver's license, permanent resident card, tribal identification card or other written or documentary evidence which shows that the other person is ~~18~~ *21* years of age or older; and

(c) Reasonably relies upon the driver's license, permanent resident card, tribal identification card or other written or documentary evidence presented by the other person.

3. The employer of a ~~child~~ *person* who is under ~~18~~ *21* years of age may, for the purpose of allowing the ~~child~~ *person* to handle or transport cigarettes, cigarette paper or other tobacco products, in the course of the ~~child's~~ *person's* lawful employment, provide



cigarettes, cigarette paper or other tobacco products to the ~~child~~
person under 21 years of age.

4. A person who violates this section is liable for a civil penalty of:

(a) For the first violation within a 24-month period, \$100.

(b) For the second violation within a 24-month period, \$250.

(c) For the third and any subsequent violation within a 24-month period, \$500.

5. If an employee or agent of a licensee has violated this section:

(a) For the first and second violation within a 24-month period at the same premises, the licensee must be issued a warning.

(b) For the third violation within a 24-month period at the same premises, the licensee is liable for a civil penalty of \$500.

(c) For the fourth violation within a 24-month period at the same premises, the licensee is liable for a civil penalty of \$1,250.

(d) For the fifth and any subsequent violation within a 24-month period at the same premises, the licensee is liable for a civil penalty of \$2,500.

6. A peace officer or any person performing an inspection pursuant to NRS 202.2496 may issue a notice of infraction for a violation of this section. A notice of infraction must be issued on a form prescribed by the Department and must contain:

(a) The location at which the violation occurred;

(b) The date and time of the violation;

(c) The name of the establishment at which the violation occurred;

(d) The signature of the person who issued the notice of infraction;

(e) A copy of the section which allegedly is being violated;

(f) Information advising the person to whom the notice of infraction is issued of the manner in which, and the time within which, the person must submit an answer to the notice of infraction; and

(g) Such other pertinent information as the peace officer or person performing the inspection pursuant to NRS 202.2496 determines is necessary.

7. A notice of infraction issued pursuant to subsection 6 or a facsimile thereof must be filed with the Department and retained by the Department and is deemed to be a public record of matters which are observed pursuant to a duty imposed by law and is prima facie evidence of the facts alleged in the notice.

8. A person to whom a notice of infraction is issued pursuant to subsection 6 shall respond to the notice by:



(a) Admitting the violation stated in the notice and paying to the ~~Department~~ *State of Nevada* the applicable civil penalty set forth in subsection 4 or 5.

(b) Denying liability for the infraction by notifying the Department and requesting a hearing in the manner indicated on the notice of infraction. Upon receipt of a request for a hearing pursuant to this paragraph, the Department shall provide the person submitting the request an opportunity for a hearing pursuant to chapter 233B of NRS.

9. Any money collected by the ~~Department~~ *State of Nevada* from a civil penalty pursuant to this section must be deposited in a separate account in the State General Fund to be used for the enforcement of this section and NRS 202.2493 and 202.2494.

10. As used in this section, "licensee" means a person who holds a license issued by the Department pursuant to this chapter.

Sec. 9. NRS 370.323 is hereby repealed.

Sec. 10. 1. This section and sections 1, 2, 3 and 6 to 9, inclusive, of this act become effective upon passage and approval.

2. Sections 4 and 5 of this act become effective on July 1, 2021.

TEXT OF REPEALED SECTION

370.323 Prerequisites to mailing or shipment of cigarettes; requests for electronic mail addresses of prospective purchasers.

1. A person shall not cause the mailing or shipment of cigarettes in connection with an order for a delivery sale unless the person accepting the order first:

(a) Obtains from the prospective purchaser a certification which includes:

(1) Reliable confirmation that the purchaser is at least 18 years of age; and

(2) A statement signed by the prospective purchaser in writing and under penalty of perjury which:

(I) Certifies the prospective purchaser's address and date of birth;

(II) Confirms that the prospective purchaser understands that signing another person's name to such certification is illegal and that sales of cigarettes to children under 18 years of age are illegal under the laws of this State; and

(III) Confirms that the prospective purchaser desires to receive mailings from a tobacco company.



(b) Makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser pursuant to paragraph (a) against any federal or commercially available database established for that purpose.

(c) Sends to the prospective purchaser, by electronic mail or other means, a notice which meets the requirements of subsection 2 and requests confirmation that the order for the delivery sale was placed by the prospective purchaser.

(d) Receives from the prospective purchaser confirmation, pursuant to the request described in paragraph (c), that such person placed the order for the delivery sale.

(e) Receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in that purchaser's name.

2. The notice required by paragraph (c) of subsection 1 must include:

(a) A prominent and clearly legible statement that the sale of cigarettes to children under 18 years of age is illegal;

(b) A prominent and clearly legible statement that the sale of cigarettes is restricted to persons who provide verifiable proof of age in accordance with this section; and

(c) A prominent and clearly legible statement that sales of cigarettes are taxable under this chapter, and an explanation of how the tax has been or is to be paid with respect to the delivery sale.

3. Persons accepting orders for delivery sales may request that prospective purchasers provide their electronic mail addresses.

