

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 legal sales age for tobacco products; revising the punishment for certain prohibited acts relating to the sale of tobacco products; revising provisions relating to delivery sales 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 legal sales age for tobacco products. **Section 3** also requires that, to the extent possible, an inspection of each location must be conducted at least once every 3 years.

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 requires a person who sells cigarettes, cigarette paper or other tobacco products through an electronic network to use an independent, third-party age verification service to establish the age of the customer before sending the



items to the customer. A seller may alternatively require the customer to create an online account which requires the customer to provide certain personal information or a copy of a government-issued identification card. (NRS 202.24935) **Section 2** eliminates the authorization for sellers to require a customer to create an online account, thereby requiring sellers to use an independent, third-party age verification system to establish the age of a customer for each sale.

Existing law defines the term “delivery sale” for the purposes of regulating such sales. (NRS 370.0285) **Section 4** of this bill revises the term to include the sale of cigarette paper and other tobacco products.

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. (NRS 370.323) **Section 9** also repeals the statutory provision creating criminal penalties for the: (1) sale of tobacco without a proper license; (2) sale of tobacco without confirming the age of the buyer; and (3) failure to submit a report of sales of tobacco to the Department of Taxation. (NRS 370.395) **Sections 3.5 and 8.5** of this bill make conforming changes by removing references to the repealed section.

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 **containing**, made or derived from tobacco, vapor product , ~~for~~ alternative nicotine product **or product containing, made or derived from nicotine** 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~~ **any product containing, made or derived from tobacco, vapor product, alternative nicotine product or product containing, made or derived from nicotine to 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,

➤ 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.

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

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

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

~~—3.]~~ Every person who sells or distributes cigarettes, cigarette paper, ~~tobacco of any description,~~ products **containing**, made or derived from tobacco, vapor products, ~~or~~ alternative nicotine products **or products containing, made or derived from nicotine to an ultimate consumer in this State** through the use of a computer network, telephonic network or electronic network shall:

(a) Ensure that the packaging or wrapping of the items when they are shipped is clearly marked with the word “cigarettes” or, if the items being shipped are not cigarettes, the words “tobacco ~~products.”~~ **products”, “vapor products” or “nicotine products,” as applicable.**

(b) ~~[Perform]~~ **Obtain the full name, date of birth and residential address of the purchaser and perform** an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the person during the ordering process that establishes that the person is over the age of ~~18~~ **21**



years. ~~and use a method of mail, shipping or delivery that requires the signature of a person over the age of 18 years before the items are released to the purchaser, unless the person:~~

~~_____ (1) Requires the customer to:~~

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

~~_____ (II) Upload a copy of a government issued identification card that includes a photograph of the customer; and~~

~~_____ (2) Sends the package containing the items to the name and address of the customer who ordered the items.}~~

3. Every person who makes sales as described in subsection 2 must certify annually to the Attorney General that the person uses an independent, third-party age verification service as described in paragraph (b) of subsection 2.

4. In addition to or in lieu of any other civil or criminal remedy provided by law, a person who violates this section is subject to:

(a) A civil penalty in an amount not more than \$1,000 for each violation; and

(b) The suspension or revocation of the license of the person by the Department of Taxation, if the person is licensed pursuant to chapter 370 of NRS.

5. Any violation of subsection 2 constitutes a deceptive trade practice for the purpose of NRS 598.0903 to 598.0999, inclusive.

6. For the purposes of this section, any sale of cigarettes, cigarette paper, products containing, made or derived from tobacco, vapor products, alternative nicotine products or products containing, made or derived from nicotine to a natural person in this State who does not intend to resell the item constitutes a sale to an ultimate consumer.

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 *containing*, made or derived from tobacco, vapor products, ~~[and]~~ alternative nicotine products *and products containing, made or derived from nicotine* are sold, distributed or offered for sale to inspect for and enforce compliance with NRS 202.2493, 202.2494 and 370.521, as applicable. *To the extent possible, an inspection of each location must be conducted pursuant to this section at least once every 3 years.* For assistance in conducting any such inspection, the Attorney General may contract with:

(a) Any sheriff's department;



- 1 (b) Any police department; or
2 (c) Any other person who will, in the opinion of the Attorney
3 General, perform the inspection in a fair and impartial manner.

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

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

10 4. If a ~~{child}~~ **person under 21 years of age** is assisting in an
11 inspection pursuant to this section, the person supervising the
12 inspection shall:

13 (a) Refrain from altering or attempting to alter the ~~{child's}~~
14 appearance **of the person** to make the ~~{child}~~ **person** appear to be
15 ~~{18}~~ 21 years of age or older.

16 (b) Photograph the ~~{child}~~ **person attempting to purchase an**
17 **item described in subsection 1** immediately before the inspection is
18 to occur and retain any photographs taken of the ~~{child}~~ **person**
19 pursuant to this paragraph.

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

23 (a) Inform a representative of the business establishment from
24 which the ~~{child}~~ **person** attempted to purchase ~~{tobacco, products~~
25 ~~made or derived from tobacco, vapor products or alternative~~
26 ~~nicotine products.}~~ **an item described in subsection 1** that an
27 inspection has been performed and the results of that inspection.

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

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

32 (2) The age and date of birth of the ~~{child}~~ **person** who
33 assisted in the inspection;

34 (3) The name and position of the person from whom the
35 ~~{child}~~ **person who assisted in the inspection** attempted to purchase
36 ~~{tobacco, products made or derived from tobacco, vapor products or~~
37 ~~alternative nicotine products.}~~ **an item described in subsection 1;**

38 (4) The name and address of the establishment at which the
39 ~~{child}~~ **person** attempted to purchase ~~{tobacco, products made or~~
40 ~~derived from tobacco, vapor products or alternative nicotine~~
41 ~~products.}~~ **an item described in subsection 1;**

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

43 (6) The result of the inspection, including whether the
44 inspection resulted in the sale, distribution or offering for sale of
45 ~~{tobacco, products made or derived from tobacco, vapor products or~~



~~alternative nicotine products~~ an item described in subsection 1 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 an item described in subsection 1 unless the inspection has been conducted in accordance with the provisions of this section.

Sec. 3.5. NRS 179.121 is hereby amended to read as follows:

179.121 1. All personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes is subject to forfeiture:

(a) The commission of or attempted commission of the crime of murder, robbery, kidnapping, burglary, invasion of the home, grand larceny or theft if it is punishable as a felony;

(b) The commission of or attempted commission of any felony with the intent to commit, cause, aid, further or conceal an act of terrorism;

(c) A violation of NRS 202.445 or 202.446;

(d) The commission of any crime by a criminal gang, as defined in NRS 213.1263; or

(e) A violation of NRS 200.463 to 200.468, inclusive, 201.300, 201.320, 201.395, 202.265, 202.287, 205.473 to 205.513, inclusive, 205.610 to 205.810, inclusive, 370.380, 370.382, ~~370.395,~~ 370.405, 465.070 to 465.086, inclusive, 630.400, 630A.600, 631.400, 632.285, 632.291, 632.315, 633.741, 634.227, 634A.230, 635.167, 636.145, 637.090, 637B.290, 639.100, 639.2813, 640.169, 640A.230, 644A.900 or 654.200.

2. Except as otherwise provided for conveyances forfeitable pursuant to NRS 453.301 or 501.3857, all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony or a violation of NRS 202.287, 202.300 or 465.070 to 465.086, inclusive, are subject to forfeiture except that:

(a) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the felony or violation;

(b) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge, consent or willful blindness;



(c) A conveyance is not subject to forfeiture for a violation of NRS 202.300 if the firearm used in the violation of that section was not loaded at the time of the violation; and

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the felony. If a conveyance is forfeited, the appropriate law enforcement agency may pay the existing balance and retain the conveyance for official use.

3. For the purposes of this section, a firearm is loaded if:

(a) There is a cartridge in the chamber of the firearm;

(b) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver; or

(c) There is a cartridge in the magazine and the magazine is in the firearm or there is a cartridge in the chamber, if the firearm is a semiautomatic firearm.

4. As used in this section, "act of terrorism" has the meaning ascribed to it in NRS 202.4415.

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. (Deleted by amendment.)

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.~~

~~—2.1~~ 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. (Deleted by amendment.)

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

370.521 1. Except as otherwise provided in subsections 2 , 3 and ~~{3,}~~ 4, a person shall not sell, distribute or offer to sell cigarettes, cigarette paper ~~{for other tobacco products,}~~ *any product containing, made or derived from tobacco, vapor product, alternative nicotine product or product containing, made or derived from nicotine* 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,}~~ *any item described in subsection 1,* 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,}~~ *any item described in subsection 1* in the course of the ~~{child's}~~ *person's* lawful employment, provide ~~{cigarettes, cigarette paper or other tobacco products,}~~ *an item described in subsection 1* to the ~~{child,}~~ *person* under 21 years of age.

4. *The provisions of this section do not apply to any product regulated by the United States Food and Drug Administration under Subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 351 et seq.*

5. 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.



~~15-1~~ 6. 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.

~~16-1~~ 7. 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.

~~17-1~~ 8. A notice of infraction issued pursuant to subsection ~~16-1~~ 7 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.

~~18-1~~ 9. A person to whom a notice of infraction is issued pursuant to subsection ~~16-1~~ 7 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 ~~14-1~~ 5 or ~~15-1~~ 6.

(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.



~~19.1~~ **10.** 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.

~~10.1~~ **11.** As used in this section, "licensee" means a person who holds a license issued by the Department pursuant to this chapter.

Sec. 8.5. NRS 370.525 is hereby amended to read as follows:

370.525 1. Except as otherwise provided in subsection 2, a person may institute a civil action in a court of competent jurisdiction for appropriate injunctive relief if the person:

(a) Sells, distributes or manufactures cigarettes; and

(b) Sustains direct economic or commercial injury as a result of a violation of NRS 370.090 to 370.327, inclusive, 370.380, 370.382, 370.385, ~~370.395,~~ 370.405, 370.410 or 370.531 to 370.597, inclusive.

2. Nothing in this section authorizes an action against this State, a political subdivision of this State, or an officer, employee or agency thereof.

Sec. 9. NRS 370.323 and 370.395 are hereby repealed.

Sec. 10. 1. This section and sections 1 to 3.5, inclusive, 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 SECTIONS

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.

370.395 Penalty for violation of NRS 370.321, 370.323 or 370.327. A person who:

1. Knowingly violates any of the provisions of NRS 370.321, 370.323 or 370.327; 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.

