

SENATE BILL NO. 66—COMMITTEE ON JUDICIARY

FEBRUARY 7, 2003

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing certain agreements relating to sale of cigarettes. (BDR 32-186)

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 cigarettes; authorizing a retail dealer to contract or agree with a supplier to participate in any merchandising, advertising, display or other promotional program of the supplier; prohibiting such a contract or agreement from limiting the use of the cigarette category space of the retail dealer or restricting certain other activities engaged in by the retail dealer as a condition for participating in such a program; providing a penalty; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 370 of NRS is hereby amended by adding
- 2 thereto a new section to read as follows:
- 3 ***1. Except as otherwise provided in this section, a retail dealer***
- 4 ***may contract or enter into any other agreement with a supplier to:***
- 5 ***(a) Obtain, participate in or receive payments from the***
- 6 ***supplier in accordance with any merchandising, advertising,***
- 7 ***display or promotional program of the supplier relating to the sale***
- 8 ***of cigarettes;***
- 9 ***(b) Receive compensation from the supplier for providing***
- 10 ***space to advertise, display or promote any product of the supplier;***
- 11 ***or***
- 12 ***(c) Purchase cigarettes from the supplier.***



1 2. A contract or agreement specified in subsection 1 must
2 not:
3 (a) Require the retail dealer to allocate to the supplier for any
4 purpose:
5 (1) All or any portion of the retail dealer's cigarette
6 category space or any other space that is used to display, advertise
7 or place a sign for a product; or
8 (2) A determined amount of space specified in
9 subparagraph (1) as a condition for participating in or receiving
10 payments under a program specified in paragraph (a) of
11 subsection 1;
12 (b) Limit or prohibit the retail dealer's:
13 (1) Use of any cigarette category space; or
14 (2) Conduct relating to or participation in any promotion,
15 program or other activity relating to the sale, display,
16 merchandising, pricing or advertising of any product of another
17 supplier; or
18 (c) Violate any other provision of NRS 370.001 to 370.430,
19 inclusive, or any regulation adopted pursuant to those provisions.
20 3. A person who violates any provision of this section is guilty
21 of a misdemeanor and shall be punished by a fine of not more
22 than \$50 for each offense.
23 4. As used in this section:
24 (a) "Cigarette category space" means all or any portion of the
25 premises of a retail dealer that is reserved, identified or otherwise
26 made available to display a sign, advertisement, promotion or
27 other statement relating to the sale of cigarettes.
28 (b) "Promotion" means a promotion, solicitation or
29 notification that induces or attempts to induce a person to
30 purchase cigarettes or any product relating to cigarettes.
31 (c) "Supplier" means any manufacturer, importer or
32 wholesale dealer who, directly or through an agent, representative,
33 broker or distributor, supplies, sells or delivers to a retail dealer in
34 this state, or offers to supply, sell or deliver to a retail dealer in this
35 state, any cigarettes or any advertisement, merchandise or
36 promotion relating to the sale of cigarettes.
37 **Sec. 2.** NRS 370.001 is hereby amended to read as follows:
38 370.001 As used in NRS 370.001 to 370.430, inclusive, *and*
39 *section 1 of this act*, unless the context otherwise requires, the
40 words and terms defined in NRS 370.005 to 370.055, inclusive,
41 have the meanings ascribed to them in those sections.
42 **Sec. 3.** NRS 370.250 is hereby amended to read as follows:
43 370.250 1. If any dealer in cigarettes upon which a
44 precollected or advance tax is required to be paid fails to report to
45 the Department or its agents on or before the date due, the



1 Department may suspend his license or permit until the report is
2 received and found to be correct.

3 2. The Department may temporarily suspend or permanently
4 revoke the licenses of any cigarette dealer for violating, or causing
5 or permitting to be violated, any of the provisions of NRS 370.001
6 to 370.430, inclusive ~~[]~~, *and section 1 of this act.*

7 **Sec. 4.** NRS 370.3715 is hereby amended to read as follows:
8 370.3715 The Executive Director may adopt regulations ~~for~~
9 ~~the enforcement]~~ *to carry out the provisions* of NRS 370.371 to
10 370.379, inclusive ~~[]~~, *and section 1 of this act.*

11 **Sec. 5.** NRS 370.3735 is hereby amended to read as follows:
12 370.3735 The provisions of NRS 370.371 to 370.379,
13 inclusive, *and section 1 of this act*, do not apply to a sale at
14 wholesale made:

15 1. As an isolated transaction and not in the usual course of
16 business;

17 2. When cigarettes are advertised, offered for sale or sold in a
18 bona fide clearance sale for the purpose of discontinuing trade in the
19 cigarettes, and the advertisement, offer to sell or sale states the
20 reason therefor and the quantity of cigarettes advertised, offered for
21 sale or to be sold;

22 3. When cigarettes are advertised, offered for sale or sold as
23 imperfect or damaged and the advertising, offer to sell or sale states
24 the reason therefor and the quantity of cigarettes advertised, offered
25 for sale or to be sold;

26 4. When cigarettes are sold upon the final liquidation of a
27 business; or

28 5. When cigarettes are advertised, offered for sale or sold by a
29 fiduciary or other officer acting under the order or direction of a
30 court.

31 **Sec. 6.** NRS 370.376 is hereby amended to read as follows:
32 370.376 A contract *or agreement* made by a person in
33 violation of any of the provisions of NRS 370.371 to 370.379,
34 inclusive, *and section 1 of this act*, is void and no recovery thereon
35 may be made.

36 **Sec. 7.** NRS 370.378 is hereby amended to read as follows:
37 370.378 1. An action may be maintained in any court of
38 competent jurisdiction to prevent, restrain or enjoin a violation or
39 threatened violation of any provision of NRS 370.371 to 370.379,
40 inclusive ~~[]~~, *and section 1 of this act.* An action may be instituted
41 by any person injured by a violation or threatened violation of NRS
42 370.371 to 370.379, inclusive, *and section 1 of this act*, or by the
43 Attorney General upon the request of the Executive Director. If in
44 such an action ~~[]~~ a violation or threatened violation is established,
45 the court shall enjoin and restrain ~~[]~~ or otherwise prohibit the



1 violation or threatened violation. In such an action it is not
2 necessary that actual damages to the plaintiff be alleged or proved,
3 but where alleged and proved, the plaintiff, in addition to injunctive
4 relief and costs of the suit, including reasonable attorney's fees, may
5 recover from the defendant the actual damages sustained by the
6 plaintiff.

7 2. If ~~no~~ injunctive relief is *not* sought or required, any person
8 injured by a violation of the provisions of NRS 370.371 to 370.379,
9 inclusive, *and section 1 of this act*, may maintain an action for
10 damages and costs, including attorney's fees, in any court of
11 competent jurisdiction.

12 **Sec. 8.** NRS 370.379 is hereby amended to read as follows:

13 370.379 1. The Department may suspend or revoke the
14 license of a retail or wholesale dealer who violates the provisions of
15 NRS 370.371 to 370.379, inclusive, *and section 1 of this act*, or any
16 regulation adopted ~~[thereunder,]~~ *pursuant to those provisions*, after
17 notice to the licensee and a hearing as prescribed by the Department.

18 2. The Department, upon a finding that the licensee has failed
19 to comply with any provision of NRS 370.371 to 370.379, inclusive,
20 *and section 1 of this act*, or any regulation adopted by the Executive
21 Director, shall, in the case of a first offender, suspend the license of
22 the licensee for not less than 5 nor more than 20 consecutive
23 business days. If the Department finds the offender has been guilty
24 of willful and persistent violations, it may suspend for not more than
25 6 months or revoke the person's license.

26 3. A person whose license has been revoked may apply to the
27 Department at the end of 1 year for a reinstatement of his license.
28 The Department may reinstate the license if the Department
29 determines that the licensee will comply ~~[within]~~ *with* the
30 provisions of this chapter and the regulations adopted by the
31 Department.

32 4. A person whose license has been suspended or revoked shall
33 not sell cigarettes or permit cigarettes to be sold during the period of
34 suspension or revocation on the premises occupied by him or upon
35 *any* other premises controlled by him. The expiration, transfer,
36 surrender, continuance, renewal or extension of a license issued
37 pursuant to this chapter does not bar or abate any disciplinary
38 proceedings or action.

39 **Sec. 9.** The amendatory provisions of this act apply to any
40 contract or agreement specified in section 1 of this act that is or was
41 entered into before, on or after October 1, 2003.

