

Senate Bill No. 62—Committee on Revenue
and Economic Development

CHAPTER.....

AN ACT relating to tobacco products; revising the information that manufacturers of tobacco products are required to indicate in certain certifications submitted to the Department of Taxation and the Attorney General; requiring styles of cigarettes to be included in the directory of cigarette brand families maintained by the Department; revising provisions governing notice of additions to or removals from that directory; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

On November 23, 1998, leading United States tobacco product manufacturers and the State of Nevada entered into a settlement agreement, entitled the "Master Settlement Agreement," which obligates the manufacturers, in return for a release of past, present and certain future claims against them, to: (1) pay substantial sums to the State; (2) fund a national foundation devoted to the interests of public health; and (3) make substantial changes in their advertising and marketing practices and corporate culture. In 1999, the Nevada Legislature enacted provisions requiring all manufacturers of tobacco products sold in this State to participate in the Master Settlement Agreement or to place money in escrow. (Chapter 370A of NRS) In 2005, the Legislature made a finding that violations of chapter 370A of NRS threatened the integrity of the Master Settlement Agreement and the fiscal soundness of the State and public health, and enacted procedural safeguards to aid in the enforcement of the provisions of chapter 370A of NRS. (NRS 370.600-370.705) The procedural safeguards enacted by the Legislature in 2005 include, without limitation: (1) a requirement that each manufacturer of tobacco products execute and deliver to the Department of Taxation and the Attorney General a certification which certifies under penalty of perjury the manufacturer's compliance with the Master Settlement Agreement or the requirement to place certain money in escrow and includes, without limitation, a list of the manufacturer's brand families; (2) a requirement that the Department of Taxation create and maintain a directory that lists all manufacturers of tobacco products that have provided current and accurate certifications and all brand families listed in those certifications; and (3) the imposition of civil and criminal penalties against a person who affixes a revenue stamp to, or sells or offers to sell, any cigarettes of a manufacturer of tobacco products or brand family not included in the directory. (NRS 370.665, 370.675, 370.695, 370.696)

Section 2 of this bill requires a manufacturer of tobacco products to indicate its styles of cigarettes in the certification submitted to the Department of Taxation and the Attorney General under existing law. **Section 3** of this bill requires the Department to include styles of cigarettes in the directory of manufacturers of tobacco products and brand families required to be maintained by existing law. **Section 1** of this bill makes a conforming change so that the provisions of existing law prohibiting the possession or sale of, and authorizing the seizure and disposition of, cigarettes of a brand family not listed in the directory apply to a style of cigarettes not listed in the directory.



Under existing law, the Department of Taxation is required to notify each wholesale dealer of cigarettes when a manufacturer or brand family is added to or removed from the directory required to be maintained by the Department. Existing law requires each wholesale dealer to provide a copy of that notice to each retail dealer that is a customer of the wholesale dealer and provide the Department with a list of each retail dealer to which a copy of the notice is provided. (NRS 370.675, 370.677) **Section 4** of this bill requires these notices to be provided when a style of cigarettes is added to or removed from the directory.

Section 5 of this bill applies the same criminal penalties that apply to a person who affixes a revenue stamp to, or sells or offers to sell, any cigarettes of a manufacturer of tobacco products or brand family not included in the directory to a person who affixes a revenue stamp to, or sells or offers to sell, any style of cigarettes not included in the directory.

Section 6 of this bill revises provisions imposing certain civil penalties on wholesale dealers of cigarettes and manufacturers of tobacco products that do not participate in the Master Settlement Agreement to authorize the imposition of these civil penalties: (1) on all manufacturers of tobacco products rather than only manufacturers of tobacco products that do not participate in the Master Settlement Agreement; and (2) for violations of certain regulations adopted pursuant to existing law governing these wholesale dealers and manufacturers.

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

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

Section 1. NRS 370.025 is hereby amended to read as follows:
370.025 “Contraband tobacco products” means any:

1. Counterfeit cigarettes;
2. Other counterfeit tobacco product;
3. Cigarettes or “roll-your-own” tobacco offered for sale in this State by a manufacturer, or cigarettes or “roll-your-own” tobacco of a brand family ~~or style~~ *or style*, that is not listed in the directory created pursuant to NRS 370.675;
4. Cigarettes bearing a tribal stamp issued by the Department which are sold or offered for sale at a retail location that is not located on qualified tribal land; or
5. Cigarettes or other tobacco product:
 - (a) Exported from or imported into this State, or mailed, shipped, delivered, sold, exchanged, transported, distributed or held for distribution within the borders of this State by any person in violation of any of the provisions of this chapter;
 - (b) In any way held in the possession or constructive possession of any person not authorized under this chapter to possess or constructively possess the cigarettes or other tobacco product; or
 - (c) Being offered for sale in any form other than in an unopened package in violation of subsection 1 of NRS 202.2493.



Sec. 2. NRS 370.665 is hereby amended to read as follows:

370.665 1. A manufacturer of tobacco products whose cigarettes are sold in this State, whether or not directly or through a distributor, retailer or similar intermediary or intermediaries shall, not later than April 30 of each year, execute and deliver to the Attorney General and the Department, on a form provided by the Attorney General, a certification which certifies under penalty of perjury that, as of the date of that certification, the manufacturer of tobacco products is:

- (a) A participating manufacturer; or
- (b) In full compliance with subsection 2 of NRS 370A.140, including any quarterly installment payments required pursuant to NRS 370.690.

2. Except as otherwise provided in NRS 370.670:

(a) A participating manufacturer shall include in its certification pursuant to this section a list of its brand families ~~and~~ *and styles of cigarettes*. The participating manufacturer shall update that list at least 30 calendar days before it adds to or modifies its brand families *or styles of cigarettes* by executing and delivering a supplemental certification to the Attorney General and the Department.

(b) A nonparticipating manufacturer shall, in its certification pursuant to this section:

(1) Include:

(I) A list of all of its brand families and the number of units sold for each brand family that were sold in the State during the preceding calendar year;

(II) A list of all of its brand families *and styles of cigarettes* that have been sold in the State at any time during the current calendar year;

(III) The current mailing address of the nonparticipating manufacturer; and

(IV) A valid electronic mail address of the nonparticipating manufacturer;

(2) Indicate ~~any~~ *each* brand family *and style of cigarettes* sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of the certification; and

(3) Identify, by name and address:

(I) Any other manufacturer of those brand families in the preceding or current calendar year; and

(II) Each wholesale dealer that sells or offers for sale in this State any brand family of the nonparticipating manufacturer.



↳ A nonparticipating manufacturer shall update the information required by this paragraph at least 30 calendar days before it adds to or modifies its brand families *or styles of cigarettes* or sells or distributes cigarettes in this State through a new wholesale dealer by executing and delivering a supplemental certification to the Attorney General and the Department.

3. In addition to the requirements of subsection 2, the certification of a nonparticipating manufacturer pursuant to this section must certify:

(a) That the nonparticipating manufacturer is registered to do business in the State or has appointed an agent for service of process and provided notice thereof as required by NRS 370.680;

(b) That the nonparticipating manufacturer has:

(1) Established and continues to maintain a qualified escrow fund; and

(2) Executed a qualified escrow agreement governing the qualified escrow fund that has been reviewed and approved by the Attorney General;

(c) That the nonparticipating manufacturer is in full compliance with chapter 370A of NRS and any regulations adopted pursuant thereto;

(d) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to chapter 370A of NRS and any regulations adopted pursuant thereto;

(e) The account number of that qualified escrow fund and any subaccount number for this State;

(f) The amount the nonparticipating manufacturer placed in that qualified escrow fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Department or the Attorney General to confirm the information required by this paragraph; and

(g) The amount and date of any withdrawal or transfer of money the nonparticipating manufacturer made at any time from that qualified escrow fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to chapter 370A of NRS and any regulations adopted pursuant thereto.

Sec. 3. NRS 370.675 is hereby amended to read as follows:

370.675 1. The Department shall create and maintain on its Internet website and otherwise make available for public inspection a directory that lists, except as otherwise provided in NRS 370.600 to 370.705, inclusive, all manufacturers of tobacco products that



have provided current and accurate certifications conforming to the requirements of NRS 370.600 to 370.705, inclusive, and all brand families *and styles of cigarettes* that are listed in those certifications. The Department:

(a) Shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the Department determines is not in compliance with NRS 370.600 to 370.705, inclusive, unless the Department has determined that the violation has been cured to its satisfaction.

(b) Shall not include or retain in the directory a manufacturer of tobacco products or brand family if the Department concludes, for a nonparticipating manufacturer, that:

(1) Any escrow payment required pursuant to chapter 370A of NRS for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement which has been approved by the Attorney General; or

(2) Any outstanding final judgment, including any interest thereon, for a violation of chapter 370A of NRS has not been fully satisfied for that manufacturer or brand family.

2. The Department shall update the directory as necessary to correct mistakes and to add or remove a manufacturer of tobacco products , ~~or~~ brand family *or style of cigarettes* to keep the directory in conformity with the requirements of NRS 370.600 to 370.705, inclusive.

3. Any determination of the Department not to include in or to remove from the directory a manufacturer of tobacco products , ~~or~~ brand family *or style of cigarettes* is a final decision for the purposes of judicial review.

Sec. 4. NRS 370.677 is hereby amended to read as follows:

370.677 1. The Department shall notify each wholesale dealer when a manufacturer , ~~or~~ brand family *or style of cigarettes* is added to or removed from the directory pursuant to NRS 370.675 by sending a notice to the mailing address or electronic mail address of the wholesale dealer provided to the Department pursuant to NRS 370.073.

2. A wholesale dealer shall, not later than 7 days after receiving a notice pursuant to subsection 1, provide:

(a) A copy of the notice to each retail dealer that is a customer of the wholesale dealer; and

(b) The Department with a list of each retail dealer to which a copy of the notice is provided pursuant to paragraph (a).



3. A retail dealer may, not later than 60 days after receiving a copy of a notice pursuant to subsection 2 that a manufacturer, ~~{or}~~ brand family *or style of cigarettes* has been removed from the directory pursuant to NRS 370.675, sell any cigarettes in its possession from the manufacturer or of the brand family ~~{or}~~ *or style*. The retail dealer shall, at the expiration of the 60-day period, turn over possession of any unsold cigarettes to the Department for disposal in the manner provided in subsection 4 of NRS 370.270.

4. A wholesale dealer shall not purchase cigarettes for resale from a manufacturer, or of a brand family ~~{or}~~ *or style*, which has been removed from the directory by the Department, or for which the wholesale dealer receives a notice of removal from the Department, until the manufacturer, ~~{or}~~ brand family *or style* is reentered in the directory by the Department.

Sec. 5. NRS 370.695 is hereby amended to read as follows:

370.695 1. It is unlawful for any person to:

(a) Affix a stamp to a package or other container of cigarettes of a manufacturer of tobacco products, ~~{or}~~ brand family *or style* which is not included in the directory; or

(b) Sell, or offer or possess for sale, in this State cigarettes of a manufacturer of tobacco products, ~~{or}~~ brand family *or style* not included in the directory.

2. A person who violates any provision of subsection 1 is guilty of a gross misdemeanor.

3. In addition to any other penalty authorized by law, the Department may impose on each person who violates any provision of subsection 1 a civil penalty for each such violation of not more than \$5,000 or 500 percent of the retail value of the cigarettes involved in the violation, whichever is greater.

4. Any violation of subsection 1 constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

5. For the purposes of this section, each stamp affixed to and each sale or offer to sell cigarettes in violation of subsection 1 constitutes a separate violation.

Sec. 6. NRS 370.696 is hereby amended to read as follows:

370.696 1. In addition to or in lieu of any other penalty or remedy provided by law, the Attorney General may seek a civil penalty in an amount not to exceed \$1,000 per day for the failure of a wholesale dealer timely or accurately to comply with any provision of this chapter or chapter 370A of NRS ~~{or}~~ *or any regulation adopted pursuant thereto*. The license of the wholesale dealer may be suspended or revoked if the wholesale dealer fails to pay such a civil penalty within 30 days after it is imposed.



2. In addition to or in lieu of any other penalty or remedy provided by law, the Attorney General may seek a civil penalty in an amount not to exceed \$1,000 per day for the failure of a ~~{nonparticipating}~~ manufacturer *of tobacco products* timely or accurately to comply with any provision of this chapter or chapter 370A of NRS ~~{ }~~ *or any regulation adopted pursuant thereto*. A ~~{nonparticipating}~~ manufacturer *of tobacco products* and the brand families of a ~~{nonparticipating}~~ manufacturer *of tobacco products* may be denied listing in the directory or removed from the directory if the ~~{nonparticipating}~~ manufacturer *of tobacco products* fails to pay such a civil penalty within 30 days after it is imposed.

3. Any civil penalty collected pursuant to this section must be deposited in the Account for Tobacco Enforcement.

