

SUMMARY—Revises provisions relating to tobacco. (BDR 32-158)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.

Effect on the State: Yes.

AN ACT relating to tobacco; prohibiting the sale, import, export, possession or constructive possession of certain vapor products; prohibiting the sale of cigarettes to persons born after a certain date except on the premises of certain gaming establishments; revising provisions authorizing boards of county commissioners to adopt certain ordinances related to tobacco products; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law makes it a crime for a person to knowingly sell or possess for the purpose of sale a contraband tobacco product. (NRS 370.405) Existing law also makes it a crime for a person to otherwise import, export, possess or constructively possess a contraband tobacco product. (NRS 370.410) **Section 3** of this bill includes as a contraband tobacco product a vapor product that has not been approved by the Federal Government for introduction or delivery for introduction into interstate commerce. **Section 3** thereby makes it a crime for a person to: (1) sell or possess for the purpose of sale such a vapor product; and (2) otherwise import, export, possess or constructively possess such a vapor product. **Section 1** of this bill requires the Department of Taxation to create



and maintain on its Internet website and otherwise make available for public inspection a directory that lists each vapor product that has been approved by the United States Secretary of Health and Human Services for introduction or delivery for introduction into interstate commerce. **Section 2** of this bill applies the definitions in existing law governing cigarettes to **section 1**.

Existing law: (1) prohibits a person from selling, distributing or offering to sell cigarettes, cigarette paper or various other products derived from nicotine to any person under the age of 21 years; (2) provides for the imposition of a civil penalty against a person or business that violates that prohibition; and (3) makes it a misdemeanor to knowingly sell or distribute such products to a person under the age of 21 years through the use of a computer network, telephonic network or other electronic network. (NRS 202.24935, 370.321, 370.521) **Sections 4 and 6** of this bill additionally prohibit the sale, distribution or offer for sale of cigarettes to any person who was born after December 31, 2004, unless the sale, distribution or offer to sell occurs on the premises of a property where gaming is conducted under a nonrestricted license for gaming. **Sections 5 and 7** of this bill make certain revisions to provisions which facilitate compliance with and enforcement of the existing prohibition on the sale, distribution or offer for sale of cigarettes and certain other products to persons under the age of 21 years to apply those provisions to the sale of cigarettes to persons born after December 31, 2004.

Existing law authorizes a board of county commissioners to adopt an ordinance to prohibit a child who is under 18 years of age from: (1) purchasing, attempting to purchase, possessing, attempting to possess or using tobacco products; or (2) falsely representing his or her age to purchase, obtain or possess tobacco products. (NRS 244.3572) **Section 8** of this bill authorizes a



board of county commissioners to adopt such an ordinance concerning a person who is under 21 years of age in accordance with existing state law prohibiting the sale of tobacco products to such a person. (NRS 202.24935, 370.521) **Section 8** also authorizes a board of county commissioners to adopt such an ordinance prohibiting a person born after December 31, 2004, from: (1) purchasing, attempting to purchase, possessing, attempting to possess or smoking cigarettes, except on the premises of a property where gaming is conducted under a nonrestricted license for gaming; or (2) falsely representing his or her age to purchase, obtain or possess cigarettes.

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

Section 1. Chapter 370 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Department shall create and maintain on its Internet website and otherwise make available for public inspection a directory that lists each vapor product that has been approved by the United States Secretary of Health and Human Services for introduction or delivery for introduction into interstate commerce pursuant to 21 U.S.C. § 387j.

2. The Department shall update the directory as necessary to correct mistakes and to add or remove a vapor product to keep the directory in conformity with the requirements of this section.



3. Any determination of the Department not to include in or to remove from the directory a vapor product is a final decision for the purposes of judicial review.

Sec. 2. NRS 370.007 is hereby amended to read as follows:

370.007 As used in NRS 370.007 to 370.430, inclusive, and 370.505 to 370.530, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 370.008 to 370.055, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. 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, 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; ~~for~~
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 ~~{};~~; *or*

6. Vapor product that has not been approved by the United States Secretary of Health and Human Services for introduction or delivery for introduction into interstate commerce pursuant to 21 U.S.C. § 387j.

Sec. 4. NRS 370.521 is hereby amended to read as follows:

370.521 1. Except as otherwise provided in subsections 2, 4 and 5, a person shall not sell, distribute or offer to sell ~~{cigarettes,}~~:

(a) Cigarettes to any person who was born after December 31, 2004, unless the sale, distribution or offer to sell occurs on the premises of a property where gaming is conducted under a nonrestricted license for gaming issued pursuant to NRS 463.170; or

(b) Cigarettes, cigarette paper, any product containing, made or derived from tobacco, any vapor product, any alternative nicotine product or any product containing, made or derived from nicotine to any person under the age of 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 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 *was born after December 31, 2004, or* is 21 years of age or older ~~{};~~, *as applicable;*



(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 *was born after December 31, 2004, or* is 21 years of age or older ~~[]~~, *as applicable*; 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. Except as otherwise provided in this subsection, a person shall not sell, distribute or offer to sell cigarettes, cigarette paper or other tobacco products to any person under 40 years of age without first performing age verification through enhanced controls that utilize a scanning technology or other automated, software-based system to verify that the person *was born after December 31, 2004, or* is 21 years of age or older ~~[]~~, *as applicable*. A person who violates this subsection is liable for a civil penalty of \$100 for each offense. The provisions of this subsection do not apply to a person selling, distributing or offering to sell cigarettes, cigarette paper or other tobacco products in a face-to-face transaction that occurs in an area within a casino where loitering by persons who are under 21 years of age is already prohibited pursuant to NRS 463.350. As used in this subsection, "casino" means an establishment which holds a nonrestricted license as defined in NRS 463.0177 and which is operating 16 or more slot machines together with any other game, race book or sports pool.

4. The employer of a person who *was born after December 31, 2004, or* is under 21 years of age, *as applicable*, may, for the purpose of allowing the person to handle or transport any item described in subsection 1 in the course of the person's lawful employment, provide an item described in subsection 1 to ~~[the] that~~ person. ~~[under 21 years of age.]~~



5. 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.

6. A person who violates subsection 1 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.

7. If an employee or agent of a licensee has violated subsection 1:

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

(b) For the second violation within a 24-month period at the same premises, the licensee is liable for a civil penalty of \$5,000.

(c) For the third violation within a 24-month period at the same premises, the licensee is liable for a civil penalty of \$7,500.

(d) For the fourth and any subsequent violation within a 24-month period at the same premises, the licensee is liable for a civil penalty of \$10,000.

8. 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.

9. A notice of infraction issued pursuant to subsection 8 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.

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

(a) Admitting the violation stated in the notice and paying to the State of Nevada the applicable civil penalty set forth in subsection 3, 6 or 7.

(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.



11. Any money collected by the 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.

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

Sec. 5. 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 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~~ *Except as otherwise provided in subsection 3, the* owner of a retail establishment shall, whenever any product containing, made or derived from tobacco, vapor product, 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,~~ 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 *and the sale of cigarettes at the establishment to a person born after December 31, 2004*, 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. *The owner of a retail establishment located on the premises of a property where gaming is conducted under a nonrestricted license for gaming issued pursuant to NRS 463.170 shall, whenever any product containing, made or derived from tobacco, vapor product, 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 at the establishment of cigarettes, 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.*

4. 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. 6. 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]~~ *through the use of a computer network, telephonic network or other electronic network:*

(a) *Cigarette* paper, products containing, made or derived from tobacco, vapor products, alternative nicotine products or products containing, made or derived from nicotine to a person under the age of 21 years ~~[through the use of a computer network, telephonic network or other electronic network.]; and~~

(b) *Cigarettes to a person born after December 31, 2004.*

2. Every person who sells or distributes cigarettes, cigarette paper, products containing, made or derived from tobacco, vapor products, 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,” “vapor products” or “nicotine products,” as applicable.

(b) 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 21 years ~~[]~~ *or was born on or before December 31, 2004, as applicable.*

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. 7. 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 products containing, made or derived from tobacco, vapor products, 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;
- (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 person assisting in an inspection pursuant to this section shall, if questioned about his or her age, state his or her true age.

4. If a 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 appearance of the person to make the person appear to be 21 years of age or older.

(b) Photograph the person attempting to purchase an item described in subsection 1 immediately before the inspection is to occur and retain any photographs taken of the person pursuant to this paragraph.

5. *If a person who was born after December 31, 2004, is assisting in the inspection of a location where cigarettes are sold, distributed or offered for sale, other than the premises of a*



property where gaming is conducted under a nonrestricted license for gaming issued pursuant to NRS 463.170, the person supervising the inspection shall:

(a) Refrain from altering or attempting to alter the appearance of the person to make the person appear to have been born on or before December 31, 2004.

(b) Photograph the person attempting to purchase an item described in subsection 1 immediately before the inspection is to occur and retain any photographs taken of the person pursuant to this paragraph.

6. The person supervising an inspection ~~[using the assistance of a person under 21 years of age]~~ *described in subsection 4 or 5* shall, within a reasonable time after the inspection is completed:

(a) Inform a representative of the business establishment from which the person attempted to purchase an item described in subsection 1 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 person who assisted in the inspection;
- (3) The name and position of the person from whom the person who assisted in the inspection attempted to purchase an item described in subsection 1;
- (4) The name and address of the establishment at which the person attempted to purchase an item described in subsection 1;



(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 an item described in subsection 1 to the person under 21 years of age ~~[(1)]~~ *or who was born after December 31, 2004, as applicable.*

~~[(6)]~~ 7. 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 person under 21 years of age has been enlisted to attempt to purchase an item described in subsection 1 , *or in which the assistance of a person who was born after December 31, 2004, has been enlisted to purchase cigarettes,* unless the inspection has been conducted in accordance with the provisions of this section.

Sec. 8. NRS 244.3572 is hereby amended to read as follows:

244.3572 1. A board of county commissioners may adopt an ordinance to establish an offense related to tobacco that may include provisions which prohibit a ~~[(child)]~~ *person* who ~~[(is)]~~ :

(a) Is under the age of ~~[(18)]~~ *21* years from:

~~[(a)]~~ *(1)* Purchasing or attempting to purchase tobacco products;

~~[(b)]~~ *(2)* Possessing or attempting to possess tobacco products;

~~[(c)]~~ *(3)* Using tobacco products; or

~~[(d)]~~ *(4)* Falsely representing that he or she is ~~[(18)]~~ *21* years of age or older to purchase, possess or obtain tobacco products.

(b) Was born after December 31, 2004, from:



(1) Purchasing or attempting to purchase cigarettes, except on the premises of a property where gaming is conducted under a nonrestricted license for gaming issued pursuant to NRS 463.170;

(2) Possessing or attempting to possess cigarettes, except on the premises of a property where gaming is conducted under a nonrestricted license for gaming issued pursuant to NRS 463.170;

(3) Smoking cigarettes, except on the premises of a property where gaming is conducted under a nonrestricted license for gaming issued pursuant to NRS 463.170; or

(4) Falsely representing that he or she was born on or before December 31, 2004, to purchase, possess or obtain cigarettes.

2. An ordinance adopted pursuant to this section must provide that the provisions of the ordinance do not apply to a ~~child~~ *person* who is under the age of ~~18~~ *21* years *or was born after December 31, 2004, as applicable*, and who is:

- (a) Assisting in an inspection pursuant to NRS 202.2496;
- (b) Handling or transporting tobacco products in the course of his or her lawful employment;
- (c) Handling or transporting tobacco products in the presence of his or her parent, spouse or legal guardian who is ~~18~~ *21* years of age or older ~~;~~ *or was born on or before December 31, 2004, as applicable*; or

(d) Possessing or using tobacco products for an established religious purpose.

3. As used in this section, “tobacco products” means cigarettes, cigarette paper, tobacco of any description or products made or derived from tobacco. As used in this subsection, the term



“products made or derived from tobacco” does not include any product regulated by the United States Food and Drug Administration pursuant to Chapter V of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 351 et seq.

Sec. 9. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 8, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2026, for all other purposes.

