

ASSEMBLY BILL NO. 450—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LEGISLATIVE COMMITTEE
ON HEALTH CARE)

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Imposes certain requirements concerning vapor products and alternative nicotine products. (BDR 15-355)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: No.

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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 crimes; prohibiting the use of vapor products in certain locations; imposing requirements for the packaging and labeling of certain vapor products and alternative nicotine products; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 The Nevada Clean Indoor Air Act generally prohibits smoking tobacco within
2 indoor places of employment, within school buildings and on school property but
3 allows smoking tobacco in certain areas or establishments. (NRS 202.2483)
4 **Section 1** of this bill amends the Nevada Clean Indoor Air Act to prohibit the use
5 of vapor products in the same locations where smoking tobacco is prohibited.
6 **Section 2** of this bill makes a technical correction to the definition of
7 “distribute” to include the furnishing, giving away or providing of cigarettes,
8 cigarette paper, tobacco of any description, vapor products or alternative nicotine
9 products, or samples thereof.
10 Existing law sets forth certain prohibitions relating to the sale, distribution or
11 offer of sale of cigarettes, smokeless products made or derived from tobacco or
12 alternative nicotine products in any form except in certain specified packaging.
13 (NRS 202.2493) **Section 3** of this bill prohibits the sale, distribution or offer of sale
14 of: (1) certain vapor cartridges or other containers of nicotine that are not packaged
15 in compliance with the federal Poison Prevention Packaging Act of 1970, 15 U.S.C.
16 § 1471, et seq., and any regulations adopted pursuant thereto; and (2) vapor



17 products or alternative nicotine products that do not bear labels which include
18 certain required information.

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

1 **Section 1.** NRS 202.2483 is hereby amended to read as
2 follows:

3 202.2483 1. Except as otherwise provided in subsection 3,
4 smoking tobacco in any form *or using a vapor product* is prohibited
5 within indoor places of employment including, but not limited to,
6 the following:

- 7 (a) Child care facilities;
- 8 (b) Movie theatres;
- 9 (c) Video arcades;
- 10 (d) Government buildings and public places;
- 11 (e) Malls and retail establishments;
- 12 (f) All areas of grocery stores; and
- 13 (g) All indoor areas within restaurants.

14 2. Without exception, smoking tobacco in any form *or using a*
15 *vapor product* is prohibited within school buildings and on school
16 property.

17 3. Smoking tobacco *or using a vapor product* is not prohibited
18 in:

19 (a) Areas within casinos where loitering by minors is already
20 prohibited by state law pursuant to NRS 463.350;

21 (b) Completely enclosed areas with stand-alone bars, taverns
22 and saloons in which patrons under 21 years of age are prohibited
23 from entering;

24 (c) Age-restricted stand-alone bars, taverns and saloons;

25 (d) Strip clubs or brothels;

26 (e) Retail tobacco stores;

27 (f) The area of a convention facility in which a meeting or trade
28 show is being held, during the time the meeting or trade show is
29 occurring, if the meeting or trade show:

30 (1) Is not open to the public;

31 (2) Is being produced or organized by a business relating to
32 tobacco *or vapor products* or a professional association for
33 convenience stores; and

34 (3) Involves the display of tobacco *products or vapor*
35 *products*; and

36 (g) Private residences, including private residences which may
37 serve as an office workplace, except if used as a child care, an adult
38 day care or a health care facility.



1 4. A supervisor on duty or employee of an age-restricted stand-
2 alone bar, tavern or saloon or a stand-alone bar, tavern or saloon
3 shall not allow a person who is under 21 years of age to loiter in an
4 age-restricted stand-alone bar, tavern or saloon or an area of a stand-
5 alone bar, tavern or saloon where smoking ~~is~~ *and the use of vapor*
6 *products are* allowed pursuant to this section. A person who
7 violates the provisions of this subsection is guilty of a misdemeanor.

8 5. If a supervisor on duty or employee of an age-restricted
9 stand-alone bar, tavern or saloon or a stand-alone bar, tavern or
10 saloon violates the provisions of subsection 4, the age-restricted
11 stand-alone bar, tavern or saloon or stand-alone bar, tavern or saloon
12 is liable for a civil penalty of:

13 (a) For the first offense, \$1,000.

14 (b) For a second or subsequent offense, \$2,000.

15 6. In any prosecution or other proceeding for a violation of the
16 provisions of subsection 4 or 5, it is no excuse for a supervisor,
17 employee, age-restricted bar, tavern or saloon, or stand-alone bar,
18 tavern or saloon alleged to have committed the violation to plead
19 that a supervisor or employee believed that the person who was
20 permitted to loiter was 21 years of age or older.

21 7. In areas or establishments where smoking ~~is~~ *and the use of*
22 *vapor products are* not prohibited by this section, nothing in state
23 law shall be construed to prohibit the owners of said establishments
24 from voluntarily creating nonsmoking sections or designating the
25 entire establishment as smoke free ~~is~~ *or vapor product free.*

26 8. Nothing in state law shall be construed to restrict local
27 control or otherwise prohibit a county, city or town from adopting
28 and enforcing local tobacco *or vapor products* control measures that
29 meet or exceed the minimum applicable standards set forth in this
30 section.

31 9. "No Smoking" signs or the international "No Smoking"
32 symbol ~~shall~~ *must* be clearly and conspicuously posted in every
33 public place and place of employment where smoking ~~is~~ *and the*
34 *use of vapor products are* prohibited by this section. Each public
35 place and place of employment where smoking ~~is~~ *and the use of*
36 *vapor products are* prohibited shall post, at every entrance, a
37 conspicuous sign clearly stating that smoking ~~is~~ *and the use of*
38 *vapor products are* prohibited. All ashtrays and other smoking
39 paraphernalia ~~shall~~ *must* be removed from any area where
40 smoking ~~is~~ *and the use of vapor products are* prohibited.

41 10. Health authorities, police officers of cities or towns,
42 sheriffs and their deputies shall, within their respective jurisdictions,
43 enforce the provisions of this section and shall issue citations for
44 violations of this section pursuant to NRS 202.2492 and 202.24925.



1 11. No person or employer shall retaliate against an employee,
2 applicant or customer for exercising any rights afforded by, or
3 attempts to prosecute a violation of, this section.

4 12. For the purposes of this section, the following terms have
5 the following definitions:

6 (a) "Age-restricted stand-alone bar, tavern or saloon" means an
7 establishment:

8 (1) Devoted primarily to the sale of alcoholic beverages to be
9 consumed on the premises;

10 (2) In which food service or sales may or may not be
11 incidental food service or sales, in the discretion of the operator of
12 the establishment;

13 (3) In which patrons under 21 years of age are prohibited at
14 all times from entering the premises; and

15 (4) That must be located within:

16 (I) A physically independent building that does not share
17 a common entryway or indoor area with a restaurant, public place or
18 any other indoor workplace where smoking ~~is~~ *and the use of*
19 *vapor products are* prohibited by this section; or

20 (II) A completely enclosed area of a larger structure,
21 which may include, without limitation, a strip mall or an airport,
22 provided that indoor windows must remain closed at all times and
23 doors must remain closed when not actively in use.

24 (b) "Casino" means an entity that contains a building or large
25 room devoted to gambling games or wagering on a variety of
26 events. A casino must possess a nonrestricted gaming license as
27 described in NRS 463.0177 and typically uses the word 'casino' as
28 part of its proper name.

29 (c) "Child care facility" has the meaning ascribed to it in
30 NRS 441A.030.

31 (d) "Completely enclosed area" means an area that is enclosed
32 on all sides by any combination of solid walls, windows or doors
33 that extend from the floor to the ceiling.

34 (e) "Government building" means any building or office space
35 owned or occupied by:

36 (1) Any component of the Nevada System of Higher
37 Education and used for any purpose related to the System;

38 (2) The State of Nevada and used for any public purpose; or

39 (3) Any county, city, school district or other political
40 subdivision of the State and used for any public purpose.

41 (f) "Health authority" has the meaning ascribed to it in
42 NRS 202.2485.

43 (g) "Incidental food service or sales" means the service of
44 prepackaged food items including, but not limited to, peanuts,
45 popcorn, chips, pretzels or any other incidental food items that are



1 exempt from food licensing requirements pursuant to subsection 2
2 of NRS 446.870.

3 (h) "Place of employment" means any enclosed area under the
4 control of a public or private employer which employees frequent
5 during the course of employment including, but not limited to, work
6 areas, restrooms, hallways, employee lounges, cafeterias, conference
7 and meeting rooms, lobbies and reception areas.

8 (i) *"Product made or derived from tobacco" has the meaning*
9 *ascribed to it in NRS 202.2485.*

10 (j) "Public places" means any enclosed areas to which the public
11 is invited or in which the public is permitted.

12 ~~(k)~~ (k) "Restaurant" means a business which gives or offers for
13 sale food, with or without alcoholic beverages, to the public, guests
14 or employees, as well as kitchens and catering facilities in which
15 food is prepared on the premises for serving elsewhere.

16 ~~(l)~~ (l) "Retail tobacco store" means a retail store utilized
17 primarily for the sale of tobacco products *or vapor products* and
18 accessories *for those products* and in which the sale of other
19 products is merely incidental.

20 ~~(m)~~ (m) "School building" means all buildings on the grounds
21 of any public school described in NRS 388.020 and any private
22 school as defined in NRS 394.103.

23 ~~(n)~~ (n) "School property" means the grounds of any public
24 school described in NRS 388.020 and any private school as defined
25 in NRS 394.103.

26 ~~(o)~~ (o) "Stand-alone bar, tavern or saloon" means an
27 establishment:

28 (1) Devoted primarily to the sale of alcoholic beverages to be
29 consumed on the premises;

30 (2) In which food service or sales may or may not be
31 incidental food service or sales, in the discretion of the operator of
32 the establishment;

33 (3) In which smoke *from a product made or derived from*
34 *tobacco or vapor from a vapor product* from such establishments
35 does not infiltrate into areas where smoking ~~is~~ *and the use of*
36 *vapor products are* prohibited under the provisions of this section;
37 and

38 (4) That must be housed in either:

39 (I) A physically independent building that does not share
40 a common entryway or indoor area with a restaurant, public place or
41 any other indoor workplaces where smoking ~~is~~ *and the use of*
42 *vapor products are* prohibited by this section; or

43 (II) A completely enclosed area of a larger structure, such
44 as a strip mall or an airport, provided that indoor windows must



1 remain shut at all times and doors must remain closed when not
2 actively in use.

3 ~~(p)~~ (p) *“Vapor product” has the meaning ascribed to it in*
4 *NRS 202.2485.*

5 (q) “Video arcade” has the meaning ascribed to it in paragraph
6 (d) of subsection 3 of NRS 453.3345.

7 13. Any statute or regulation inconsistent with this section is
8 null and void.

9 14. The provisions of this section are severable. If any
10 provision of this section or the application thereof is declared by a
11 court of competent jurisdiction to be invalid or unconstitutional,
12 such declaration shall not affect the validity of the section as a
13 whole or any provision thereof other than the part declared to be
14 invalid or unconstitutional.

15 **Sec. 2.** NRS 202.2485 is hereby amended to read as follows:

16 202.2485 As used in NRS 202.2485 to 202.2497, inclusive:

17 1. “Alternative nicotine product” means any noncombustible
18 product containing nicotine that is intended for human consumption,
19 whether chewed, absorbed, dissolved or ingested by any other
20 means. The term does not include:

21 (a) A vapor product;

22 (b) A product made or derived from tobacco; or

23 (c) Any product regulated by the United States Food and Drug
24 Administration under Subchapter V of the Federal Food, Drug, and
25 Cosmetic Act, 21 U.S.C. §§ 351 et seq.

26 2. “Distribute” includes furnishing, giving away or providing
27 *cigarettes, cigarette paper, tobacco of any description,* products
28 made or derived from tobacco , *vapor products or alternative*
29 *nicotine products,* or samples thereof , at no cost to promote the
30 product, whether or not in combination with a sale.

31 3. “Health authority” means the district health officer in a
32 district, or his or her designee, or, if none, the Chief Medical
33 Officer, or his or her designee.

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

38 5. “Vapor product”:

39 (a) Means any noncombustible product containing nicotine that
40 employs a heating element, power source, electronic circuit or other
41 electronic, chemical or mechanical means, regardless of the shape or
42 size thereof, that can be used to produce vapor from nicotine in a
43 solution or other form.

44 (b) Includes, without limitation:



1 (1) An electronic cigarette, cigar, cigarillo or pipe or a
2 similar product or device; and

3 (2) A vapor cartridge or other container of nicotine in a
4 solution or other form that is intended to be used with or in an
5 electronic cigarette, cigar, cigarillo or pipe or a similar product or
6 device.

7 (c) Does not include any product regulated by the United States
8 Food and Drug Administration pursuant to Subchapter V of the
9 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 351 et seq.

10 **Sec. 3.** NRS 202.2493 is hereby amended to read as follows:

11 202.2493 1. A person shall not sell, distribute or offer to sell
12 cigarettes, any smokeless product made or derived from tobacco or
13 any alternative nicotine product in any form other than in an
14 unopened package which originated with the manufacturer and
15 bears any health warning required by federal law. A person who
16 violates this subsection shall be punished by a fine of \$100 and a
17 civil penalty of \$100. As used in this subsection, "smokeless
18 product made or derived from tobacco" means any product that
19 consists of cut, ground, powdered or leaf tobacco and is intended to
20 be placed in the oral or nasal cavity.

21 2. *A person shall not sell, distribute or offer to sell:*

22 (a) *A vapor cartridge or other container of nicotine that is*
23 *intended to be used with or in an electronic cigarette, cigar,*
24 *cigarillo or pipe or a similar product or device that is not packaged*
25 *in compliance with the Poison Prevention Packaging Act of 1970,*
26 *15 U.S.C. §§ 1471 et seq., and any regulations adopted pursuant*
27 *thereto.*

28 (b) *Vapor products or alternative nicotine products that do not*
29 *bear a label which includes:*

30 (1) *The ingredients of the product;*

31 (2) *The amount of nicotine in the product; and*

32 (3) *A notice prohibiting the sale, distribution or offer of*
33 *sale of the product to a person who is under the age of 18 years.*

34 *↪ A person who violates this subsection shall be punished by a*
35 *fine of \$100 and a civil penalty of \$100.*

36 3. Except as otherwise provided in subsections ~~3~~ 4 , 5 and
37 ~~5~~ 6, it is unlawful for any person to sell, distribute or offer to sell
38 cigarettes, cigarette paper, tobacco of any description, products
39 made or derived from tobacco, vapor products or alternative
40 nicotine products to any child under the age of 18 years. A person
41 who violates this subsection shall be punished by a fine of not more
42 than \$500 and a civil penalty of not more than \$500.

43 ~~3~~ 4. A person shall be deemed to be in compliance with the
44 provisions of subsection ~~2~~ 3 if, before the person sells, distributes
45 or offers to sell to another, cigarettes, cigarette paper, tobacco of any



1 description, products made or derived from tobacco, vapor products
2 or alternative nicotine products, the person:

3 (a) Demands that the other person present a valid driver's
4 license or other written or documentary evidence which shows that
5 the other person is 18 years of age or older;

6 (b) Is presented a valid driver's license or other written or
7 documentary evidence which shows that the other person is 18 years
8 of age or older; and

9 (c) Reasonably relies upon the driver's license or written or
10 documentary evidence presented by the other person.

11 ~~15-1~~ 5. The employer of a child who is under 18 years of age
12 may, for the purpose of allowing the child to handle or transport
13 tobacco, products made or derived from tobacco, vapor products or
14 alternative nicotine products, in the course of the child's lawful
15 employment, provide tobacco, products made or derived from
16 tobacco, vapor products or alternative nicotine products to the child.

17 ~~15-1~~ 6. With respect to any sale made by an employee of a
18 retail establishment, the owner of the retail establishment shall be
19 deemed to be in compliance with the provisions of subsection ~~12-1~~ 3
20 if the owner:

21 (a) Had no actual knowledge of the sale; and

22 (b) Establishes and carries out a continuing program of training
23 for employees which is reasonably designed to prevent violations of
24 subsection ~~12-1~~ 3.

25 ~~16-1~~ 7. The owner of a retail establishment shall, whenever any
26 product made or derived from tobacco, vapor product or alternative
27 nicotine product is being sold or offered for sale at the
28 establishment, display prominently at the point of sale:

29 (a) A notice indicating that:

30 (1) The sale of cigarettes, other tobacco products, vapor
31 products and alternative nicotine products to minors is prohibited by
32 law; and

33 (2) The retailer may ask for proof of age to comply with this
34 prohibition; and

35 (b) At least one sign that complies with the requirements of
36 NRS 442.340.

37 ➔ A person who violates this subsection shall be punished by a fine
38 of not more than \$100.

39 ~~17-1~~ 8. It is unlawful for any retailer to sell cigarettes through
40 the use of any type of display:

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

43 (b) From which cigarettes are readily accessible to a customer
44 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 ~~18-1~~ 9. Any money recovered pursuant to this section as a civil
5 penalty must be deposited in a separate account in the State
6 General Fund to be used for the enforcement of this section and
7 NRS 202.2494.

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

9 202.24935 1. It is unlawful for a person to knowingly sell or
10 distribute cigarettes, cigarette paper, tobacco of any description or
11 products made or derived from tobacco to a child under the age of
12 18 years through the use of the Internet.

13 2. A person who violates the provisions of subsection 1 shall
14 be punished by a fine of not more than \$500 and a civil penalty of
15 not more than \$500. Any money recovered pursuant to this section
16 as a civil penalty must be deposited in the same manner as money is
17 deposited pursuant to subsection ~~18-1~~ 9 of NRS 202.2493.

18 3. Every person who sells or distributes cigarettes, cigarette
19 paper, tobacco of any description or products made or derived from
20 tobacco through the use of the Internet shall adopt a policy to
21 prevent a child under the age of 18 years from obtaining cigarettes,
22 cigarette paper, tobacco of any description or products made or
23 derived from tobacco from the person through the use of the
24 Internet. The policy must include, without limitation, a method for
25 ensuring that the person who delivers such items obtains the
26 signature of a person who is over the age of 18 years when
27 delivering the items, that the packaging or wrapping of the items
28 when they are shipped is clearly marked with the word "cigarettes"
29 or the words "tobacco products," and that the person complies with
30 the provisions of 15 U.S.C. § 376. A person who fails to adopt a
31 policy pursuant to this subsection is guilty of a misdemeanor and
32 shall be punished by a fine of not more than \$500.



