

Amendment No. 396

Assembly Amendment to Assembly Bill No. 360	(BDR 32-864)
Proposed by: Assembly Committee on Revenue	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date		SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



ASSEMBLY BILL NO. 360 ~~[ASSEMBLYMAN]~~ ASSEMBLYMEN HAFEN ; AND HARDY

MARCH 22, 2021

Referred to Committee on Revenue

SUMMARY—Revises provisions relating to ~~[vapor]~~ tobacco products. (BDR 32-864)

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 ~~[vapor]~~ tobacco products; requiring a ~~[manufacturer of vapor products sold in this State to certify that it has complied with certain federal requirements and submit a list of its vapor products sold in this State to the Department of Taxation; requiring the Department of Taxation to create and maintain a directory of certain vapor products; prohibiting the sale of vapor products not included in the directory maintained by the Department;]~~ person to conduct age verification through enhanced controls before selling cigarettes, cigarette paper or other tobacco products to a person under 40 years of age; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 ~~[Before marketing a tobacco product that was not commercially marketed in the United~~
2 ~~States before February 15, 2007, or a modification of a tobacco product where the modified~~
3 ~~product was commercially marketed in the United States after February 15, 2007, federal law~~
4 ~~requires a manufacturer of such a tobacco product to obtain from the United States Secretary~~
5 ~~of Health and Human Services an order that the tobacco product is substantially similar to a~~
6 ~~tobacco product commercially marketed as of February 15, 2007, or an order of exemption.~~
7 ~~(21 U.S.C. § 387j(a)(2)(A)) Section 2 of this bill requires a manufacturer of vapor products~~
8 ~~whose vapor products are sold in this State to execute and deliver to the Department of~~
9 ~~Taxation on or before April 30 of each year a certification that the manufacturer of vapor~~
10 ~~products is in compliance with these federal requirements with respect to each vapor product~~
11 ~~of the manufacturer to which those requirements apply. Section 2 requires the manufacturer to~~
12 ~~include in this certification a list of each vapor product of the manufacturer that is sold in this~~
13 ~~State and to update this list at least 30 days before modifying the selection of vapor products~~
14 ~~sold in this State.~~
15 ~~— Section 3 of this bill requires the Department of Taxation to create and maintain a~~
16 ~~directory of vapor products which are listed in the certifications submitted by vapor product~~
17 ~~manufacturers. Section 3 prohibits the sale of vapor products not included in the directory~~
18 ~~maintained by the Department.] Existing law prohibits a person from selling, distributing~~
19 ~~or offering to sell cigarettes, cigarette paper or other tobacco products to a child under~~
20 ~~the age of 18 years. (NRS 202.24935, 370.521) Section 5 of this bill prohibits a person~~
21 ~~from selling, distributing or offering to sell cigarettes, cigarette paper or other tobacco~~
22 ~~products to a person under 40 years of age without first conducting age verification~~

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through enhanced controls to verify that the person is at least 18 years of age and imposes a civil penalty of \$100 on a person who fails to do so.
Section 6 of this bill makes a conforming change.

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

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~~Section 1. [Chapter 370 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.] (Deleted by amendment.)~~

~~Sec. 2. [1. A manufacturer of vapor products whose vapor products are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall, not later than April 30 of each year, execute and deliver to the Department, on a form provided by the Department, a certification which certifies under penalty of perjury that, as of the date of that certification, the manufacturer of vapor products is in compliance with 21 U.S.C. § 387j and any regulations adopted pursuant thereto with respect to each vapor product of the manufacturer sold in this State to which 21 U.S.C. § 387j and any regulations adopted pursuant thereto apply.~~

~~2. A manufacturer of vapor products shall include in its certification pursuant to this section a list of each vapor product of the manufacturer sold in this State, including, without limitation, those vapor products to which 21 U.S.C. § 387j and any regulations adopted pursuant thereto do not apply. The manufacturer shall update that list at least 30 calendar days before it adds to or modifies the selection of vapor products sold in this State by executing and delivering a supplemental certification to the Department.] (Deleted by amendment.)~~

~~Sec. 3. [1. The Department shall create and maintain on its Internet website and otherwise make available for public inspection a directory that lists all manufacturers of vapor products that have provided current and accurate certifications conforming to the requirements of section 2 of this act and all vapor products that are listed in those certifications. The Department shall not include or retain in the directory the vapor product of any manufacturer that has failed to provide the required certification or whose certification has been determined by the Department to be not in compliance with the requirements of section 2 of this act, unless the Department has determined that the violation has been cured to its satisfaction.~~

~~2. The Department shall update the directory as necessary to correct mistakes and to add or remove vapor products or a manufacturer of vapor products 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 or manufacturer of vapor products is a final decision for the purposes of judicial review.~~

~~4. It is unlawful for a person to sell or offer for sale vapor products not included in the directory.] (Deleted by amendment.)~~

~~Sec. 4. [NRS 370.440 is hereby amended to read as follows:
370.440 As used in NRS 370.440 to 370.503, inclusive, and sections 2 and 3 of this act, unless the context otherwise requires:~~

~~1. "Alternative nicotine product" has the meaning ascribed to it in NRS 370.008.~~

~~2. "Other tobacco product" has the meaning ascribed to it in NRS 370.0318.~~

~~2. "Retail dealer" means any person who is engaged in selling other tobacco products to ultimate consumers.~~

~~4. "Sale" means any transfer, exchange, barter, gift, offer for sale, or distribution for consideration of other tobacco products.~~

~~5. "Ultimate consumer" means a person who purchases one or more other tobacco products for his or her household or personal use and not for resale.~~

~~6. "Wholesale dealer of other tobacco products" means any person who:~~

~~(a) Maintains a place of business in this State, purchases other tobacco products from the manufacturer or a wholesale dealer and possesses, receives, sells or otherwise disposes of such other tobacco products to wholesale dealers or retail dealers within this State;~~

~~(b) Does not maintain a place of business in this State and sells or otherwise disposes of other tobacco products by any means, including, without limitation, through an Internet website, to wholesale dealers, retail dealers or ultimate consumers within this State; or~~

~~(c) Manufactures, produces, fabricates, assembles, processes, labels or finishes other tobacco products within this State.~~

~~7. "Wholesale price" means:~~

~~(a) Except as otherwise provided in paragraph (b), the price for which other tobacco products are sold to a wholesale dealer of other tobacco products, valued in money, whether paid in money or otherwise, without any discount or other reduction on account of any of the following:~~

~~(1) Trade discounts, cash discounts, special discounts or deals, cash rebates or any other reduction from the regular sales price;~~

~~(2) The cost of materials used, labor or service cost, interest charged, losses or any other expenses;~~

~~(3) The cost of transportation of the other tobacco products before its purchase by the wholesale dealer of other tobacco products;~~

~~(4) Any services that are a part of the sale, including, without limitation, shipping, freight, warehousing, customer service, advertising or any other service related to the sale; or~~

~~(5) The amount of any tax, not including any excise tax, imposed by the United States upon or with respect to the other tobacco product.~~

~~(b) For other tobacco products sold to a retail dealer or an ultimate consumer by a wholesale dealer of other tobacco products described in paragraph (c) of subsection 6, the established price for which the other tobacco product is sold to the retail dealer or ultimate consumer before any discount or other reduction is made.]~~

~~(Deleted by amendment.)~~

Sec. 5. NRS 370.521 is hereby amended to read as follows:

370.521 1. Except as otherwise provided in subsections 2 and ~~[3.]~~ 4, a person shall not sell, distribute or offer to sell cigarettes, cigarette paper or other tobacco products to any child under the age of 18 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, 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 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 years of age or older; and

1 (c) Reasonably relies upon the driver's license, permanent resident card, tribal
2 identification card or other written or documentary evidence presented by the other
3 person.

4 3. A person shall not sell, distribute or offer to sell cigarettes, cigarette
5 paper or other tobacco products to any person under 40 years of age without first
6 performing age verification through enhanced controls that utilize a scanning
7 technology or other automated, software-based system to verify that the person is
8 18 years of age or older. A person who violates this subsection is liable for a civil
9 penalty of \$100 for each offense.

10 4. The employer of a child who is under 18 years of age may, for the purpose
11 of allowing the child to handle or transport cigarettes, cigarette paper or other
12 tobacco products, in the course of the child's lawful employment, provide
13 cigarettes, cigarette paper or other tobacco products to the child.

14 ~~4.4~~ 5. A person who violates ~~this section~~ subsection 1 is liable for a civil
15 penalty of:

16 (a) For the first violation within a 24-month period, \$100.

17 (b) For the second violation within a 24-month period, \$250.

18 (c) For the third and any subsequent violation within a 24-month period, \$500.

19 ~~5.5~~ 6. If an employee or agent of a licensee has violated ~~this section~~
20 subsection 1:

21 (a) For the first and second violation within a 24-month period at the same
22 premises, the licensee must be issued a warning.

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

25 (c) For the fourth violation within a 24-month period at the same premises, the
26 licensee is liable for a civil penalty of \$1,250.

27 (d) For the fifth and any subsequent violation within a 24-month period at the
28 same premises, the licensee is liable for a civil penalty of \$2,500.

29 ~~6.6~~ 7. A peace officer or any person performing an inspection pursuant to
30 NRS 202.2496 may issue a notice of infraction for a violation of this section. A
31 notice of infraction must be issued on a form prescribed by the Department and
32 must contain:

33 (a) The location at which the violation occurred;

34 (b) The date and time of the violation;

35 (c) The name of the establishment at which the violation occurred;

36 (d) The signature of the person who issued the notice of infraction;

37 (e) A copy of the section which allegedly is being violated;

38 (f) Information advising the person to whom the notice of infraction is issued
39 of the manner in which, and the time within which, the person must submit an
40 answer to the notice of infraction; and

41 (g) Such other pertinent information as the peace officer or person performing
42 the inspection pursuant to NRS 202.2496 determines is necessary.

43 ~~7.7~~ 8. A notice of infraction issued pursuant to subsection ~~6~~ 7 or a
44 facsimile thereof must be filed with the Department and retained by the Department
45 and is deemed to be a public record of matters which are observed pursuant to a
46 duty imposed by law and is prima facie evidence of the facts alleged in the notice.

47 ~~8.8~~ 9. A person to whom a notice of infraction is issued pursuant to
48 subsection ~~6~~ 7 shall respond to the notice by:

49 (a) Admitting the violation stated in the notice and paying to the Department
50 the applicable civil penalty set forth in subsection ~~4-6~~ 3, 5 ~~4~~ or 6.

51 (b) Denying liability for the infraction by notifying the Department and
52 requesting a hearing in the manner indicated on the notice of infraction. Upon
53 receipt of a request for a hearing pursuant to this paragraph, the Department shall

1 provide the person submitting the request an opportunity for a hearing pursuant to
2 chapter 233B of NRS.

3 ~~10.~~ 10. Any money collected by the Department from a civil penalty
4 pursuant to this section must be deposited in a separate account in the State General
5 Fund to be used for the enforcement of this section and NRS 202.2493 and
6 202.2494.

7 ~~11.~~ 11. As used in this section, “licensee” means a person who holds a
8 license issued by the Department pursuant to this chapter.

9 **Sec. 6. NRS 202.24935 is hereby amended to read as follows:**

10 202.24935 1. It is unlawful for a person to knowingly sell or distribute
11 cigarettes, cigarette paper, tobacco of any description, products made or derived
12 from tobacco, vapor products or alternative nicotine products to a child under the
13 age of 18 years through the use of a computer network, telephonic network or other
14 electronic network.

15 2. A person who violates the provisions of subsection 1 shall be punished by a
16 fine of not more than \$500 and a civil penalty of not more than \$500. Any money
17 recovered pursuant to this section as a civil penalty must be deposited in the same
18 manner as money is deposited pursuant to subsection ~~10.~~ 10. of NRS 370.521.

19 3. Every person who sells or distributes cigarettes, cigarette paper, tobacco of
20 any description, products made or derived from tobacco, vapor products or
21 alternative nicotine products through the use of a computer network, telephonic
22 network or electronic network shall:

23 (a) Ensure that the packaging or wrapping of the items when they are shipped
24 is clearly marked with the word “cigarettes” or, if the items being shipped are not
25 cigarettes, the words “tobacco products.”

26 (b) Perform an age verification through an independent, third-party age
27 verification service that compares information available from public records to the
28 personal information entered by the person during the ordering process that
29 establishes that the person is over the age of 18 years and use a method of mail,
30 shipping or delivery that requires the signature of a person over the age of 18 years
31 before the items are released to the purchaser, unless the person:

32 (1) Requires the customer to:

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

36 (II) Upload a copy of a government-issued identification card that
37 includes a photograph of the customer; and

38 (2) Sends the package containing the items to the name and address of the
39 customer who ordered the items.

40 **Sec. 7. This act becomes effective on January 1, 2023.**