STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

December 18, 2013

To: Non-Participating Tobacco Manufacturers and Nevada-Licensed Wholesale Dealers

In June 2013, the Nevada Legislature passed Senate Bill 516 ("SB 516"), which amended Nevada Revised Statutes ("NRS") Chapters 370 and 370A. The amendments in SB 516 to NRS Chapters 370 and 370A affect tobacco manufacturers ("manufacturer") and wholesaler dealers doing business in the State of Nevada. This letter summarizes the notable amendments to these chapters, but is not intended to serve as legal advice. Each manufacturer and wholesale dealer is strongly encouraged to read the full text of SB 516 and the amended NRS Chapters.

As a primary matter, SB 516 amends the definition of "Units Sold" under NRS 370A.120 for the purpose of calculating escrow payments. Under NRS 370A.120, the definition of "Units Sold" now encompasses "Cigarette"[1] sales in the State of Nevada, **including "Cigarette" sales on tribal land**, by a manufacturer either directly or through a distributor, retailer or other intermediary. There are limited exceptions to this general definition, which include sales on a federal installation exempt from state excise tax and sales on tribal land to adult members of that tribe. NRS 370A.120(1-2). For the purpose of implementing and enforcing the definition of "Units Sold," the Nevada Attorney General's Office will presume that all "Cigarette" sales on tribal land in Nevada are to non-tribal

[1] **NRS 370A.050 Cigarette defined.** "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

1. Any roll of tobacco wrapped in paper or in any other substance not containing tobacco;
2. Tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or
3. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subsection 1.

The term includes "roll-your-own" tobacco, that is, any tobacco which because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes. For the purposes of this section, 0.09 ounces of "roll-your-own" tobacco constitutes one individual cigarette.

members. Therefore, escrow will be due on all "Cigarette" sales in Nevada, including "Cigarette" sales on tribal land, each quarter.

NRS 370A.153 and 370A.157 expand upon the potential uses for escrow principal and escrow interest or other appreciation. Under NRS 370A.153(1), a manufacturer may assign to the State of Nevada the interest or other appreciation accrued by the funds the manufacturer deposited in escrow. Any assignment made under this section is irrevocable. NRS 370A.153(2). In addition, NRS 370A.157 permits the State to enter into a compact with a tribe for the release of not more than 50 percent of the amounts deposited into an escrow fund for cigarettes sold on or after January 1, 2015, in a retail transaction to a consumer on tribal land of the tribe if certain statutory conditions are met. To allow for the release of these funds, NRS 370A.157(5) requires each manufacturer to amend its escrow agreement to provide the Nevada Attorney General with authority to withdraw this money from escrow if a release to a tribe is authorized under the law. The Nevada Attorney General will provide each manufacturer with a proposed amendment to its escrow agreement to allow for this withdrawal.

NRS 370.698 now includes an amendment which requires a manufacturer to remain current on its escrow payment obligations in other states and territories of the United States to qualify for or maintain tobacco directory listing in Nevada. Specifically, NRS 370.698(2)(f) gives the State grounds to either deny an application for tobacco directory listing or remove a manufacturer from the tobacco directory if the manufacturer has an escrow deficiency in another state or territory, has been given reasonable notice of the escrow deficiency, and has failed to cure the deficiency within 30 days after receiving the notice.

For wholesale dealers, the Nevada Department of Taxation ("Department") added provisions to NRS Chapter 370 to provide guidance in disposing of cigarette brands that have been removed from the tobacco directory. NRS 370.677 requires the Department to notify each wholesale dealer when a manufacturer or brand family is added to or removed from the tobacco directory. Within seven days of receiving this notice, the wholesale dealer must provide a copy of the notice to each of its retail dealer customers and provide the Department with a list of the retail dealers that the notice was sent to. In the case of manufacturer or brand family removal from the tobacco directory, the retail dealer is not permitted to sell any cigarettes from the manufacturer or brand family 60 days after receiving notice from its wholesale dealer. NRS 370.677(3). After the 60 day period has expired, the remaining cigarettes in the retail dealer's possession must be turned over to the Department for disposal as provided for under NRS 370.270. *Id.* Wholesaler dealers are not permitted the same 60 day window under the law. *See generally* NRS 370.677. Delisted tobacco product in a wholesaler dealer's possession is considered contraband at the point in time the wholesale dealer receives notice of its removal from the tobacco directory. NRS 370.025(3). Contraband tobacco products must be turned over to the Department immediately for disposal as provided for under NRS 370.415.

Once again, this letter simply serves to call manufacturers' and wholesale dealers' attention to SB 516's notable amendments to NRS Chapters 370 and 370A. There are other amendments to these chapters which are not summarized in this letter. The full text of SB 516 is attached to this letter. Once again, our Office encourages all manufacturers and wholesale dealers to read SB 516 in its entirety and the amended NRS Chapters. Please do not hesitate to contact our Office with any questions.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: _____
FREDERICK J. PERDOMO
Deputy Attorney General
(775) 684-1250
fperdomo@ag.nv.gov

FJP/fch

Senate Bill No. 516–Committee on Finance

CHAPTER.....

AN ACT relating to tobacco; revising provisions relating to the Master Settlement Agreement; revising provisions relating to manufacturers of tobacco products, importers, wholesale dealers and retail dealers of cigarettes; providing for the assignment to the State and the release to an Indian tribe of certain money placed into a qualified escrow fund by a manufacturer of tobacco products; 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, with the intention of reducing underage smoking. 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 certain 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) This bill generally revises existing, and provides additional, procedures and licensing requirements to aid in the statutory enforcement of the Master Settlement Agreement.

Section 4 of this bill requires each wholesale dealer to maintain certain contact information with the Department of Taxation. **Section 5** of this bill requires the Department to adopt certain regulations relating to the suspension or revocation of certain licenses. **Section 6** of this bill provides for the notification of wholesale dealers and retail dealers of cigarettes when a manufacturer or brand family of cigarettes is removed from the directory that lists all manufacturers that have provided current and accurate certifications and all brand families listed in those certifications. **Section 7** of this bill provides that an importer is jointly and severally liable for certain escrow deposits. **Section 8** of this bill authorizes the State to enter into an agreement with an Indian tribe to enforce, administer or implement certain provisions of statute.

Sections 9-18 and 21-26 of this bill generally revise certain existing provisions relating to the regulation of tobacco sales in this State for the purpose of aiding in the enforcement of the Master Settlement Agreement.

Sections 30 and 31 of this bill provide for the assignment or release of certain money placed into escrow from the sale of certain cigarettes.

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. Chapter 370 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. ***"Importer" means any person in a state or territory of the United States to whom cigarettes that are manufactured outside the United States are shipped, delivered or consigned for resale.***

Sec. 3. ***"Qualified tribal land" means any real property:***

1. For which legal title is vested in, or held in trust for the benefit of, an Indian tribe or an individual Native American, and which is subject to restrictions against alienation pursuant to federal law; and

2. Over which an Indian tribe exercises governmental power.

Sec. 4. ***Each wholesale dealer shall:***

1. For the purpose of receiving any notification from the Department pursuant to this chapter, maintain with the Department:

(a) A permanent mailing address; and

(b) An electronic mail address.

2. Provide written notice to the Department of any change in the information specified in subsection 1 not later than 10 days after the change.

Sec. 5. ***The Department shall adopt regulations establishing a procedure for the suspension and revocation of any license issued pursuant to NRS 370.001 to 370.430, inclusive, and sections 2 to 5, inclusive, of this act. In adopting the regulations required by this section, the Department shall consider the effect of any suspension or revocation of a license on the inventory of cigarettes that are in the stream of distribution at the time of suspension or revocation.***

Sec. 6. ***1. The Department shall notify each wholesale dealer when a manufacturer or brand family 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 section 4 of this act.***

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 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. 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, 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 is reentered in the directory by the Department.

Sec. 7. *1. An importer is jointly and severally liable for the escrow deposit due pursuant to NRS 370A.140 for each cigarette which is intended for sale in this State which the importer causes to be sent to a person who holds a license as a wholesale dealer or license as a retail dealer issued by the Department.*

2. A nonparticipating manufacturer located outside the United States that conducts business in this State shall provide to the Attorney General on a form prescribed by the Attorney General a declaration from each importer that imports the cigarettes of the nonparticipating manufacturer which are intended for sale in this State stating that the importer accepts liability pursuant to subsection 1 and consents to the jurisdiction of the courts of this State for the purposes of enforcing this section.

3. As used in this section, "importer" has the meaning ascribed to it in section 2 of this act.

Sec. 8. *The State may enter into an agreement with an Indian tribe to enforce, administer or otherwise implement any provision of this chapter or chapter 370A of NRS.*

Sec. 9. NRS 370.001 is hereby amended to read as follows:

370.001 As used in NRS 370.001 to 370.430, inclusive, ***and sections 2 to 5, inclusive, of this act,*** unless the context otherwise requires, the words and terms defined in NRS 370.005 to 370.055, inclusive, ***and sections 2 and 3 of this act*** have the meanings ascribed to them in those sections.

Sec. 10. 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; ~~[or]~~

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, 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; ~~[or]~~

(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. 11. NRS 370.070 is hereby amended to read as follows:

370.070 The provisions of NRS 370.001 to 370.430, inclusive, ***and sections 2 to 5, inclusive, of this act*** do not apply to:

1. Common carriers while engaged in interstate commerce which sell or furnish cigarettes on their trains, buses or airplanes;

2. A person entering this state with a quantity of cigarettes for household or personal use which is exempt from federal import duty; and

3. A duty-free sales enterprise as defined in 19 U.S.C. § 1555(b)(8)(D) that:

(a) Operates pursuant to the provisions of 19 U.S.C. § 1555(b); and

(b) To the extent it sells cigarettes, only sells cigarettes that are duty-free merchandise as defined in 19 U.S.C. § 1555(b)(8)(E).

Sec. 12. NRS 370.155 is hereby amended to read as follows:

370.155 1. Except as otherwise provided in this section, each licensed wholesale cigarette dealer shall furnish a bond executed by the wholesale cigarette dealer as principal, and by a corporation qualified under the laws of this state as surety, payable to the State of Nevada and conditioned upon the payment of all excise taxes required to be precollected by the wholesale cigarette dealer under the provisions of this chapter. Each bond must be in a principal sum

equal to the largest amount of tax precollected by the wholesale cigarette dealer in any quarter of the preceding year, or if the information to establish that amount is not available, then in a sum required from a licensee operating under conditions deemed comparable by the Department. No bond may be for less than $1,000. When cash or a savings certificate, certificate of deposit or investment certificate is used, the amount must be rounded up to the next larger integral multiple of $100.

2. Except as otherwise provided in this section, each licensed wholesale cigarette dealer who wishes to defer payment on the purchase of revenue stamps or metered machine impressions shall furnish a bond executed by the wholesale cigarette dealer as principal, and by a corporation qualified under the laws of this state as surety, payable to the State of Nevada and conditioned upon the payment of all deferred payments for revenue stamps and metered machine impressions. Each bond must be in a principal sum equal to the maximum amount of revenue stamps or metered machine impressions which the wholesale dealer may have unpaid at any time. No bond may be for less than $1,000. When cash or a savings certificate, certificate of deposit or investment certificate is used, the amount must be rounded up to the next larger integral multiple of $100.

3. In lieu of a bond , a licensed wholesale cigarette dealer may deposit with the Department, under such terms as the Department may prescribe, a like amount of lawful money of the United States or any other form of security authorized by NRS 100.065. If security is provided in the form of a savings certificate, certificate of deposit or investment certificate, the certificate must state that the amount is unavailable for withdrawal except upon order of the Department. The Department shall deposit all cash and bonds of the United States or of the State of Nevada received pursuant to this subsection with the State Treasurer as custodian.

4. Upon application and a satisfactory showing, the Department may increase or decrease the amount of a bond required by subsection 1 or 2, based on the amount of excise tax precollected or payments deferred, respectively, by the wholesale cigarette dealer.

5. The Department may waive the requirement of the bond required by subsection 1 or 2, whenever a licensed wholesale cigarette dealer has maintained a satisfactory record of payment of excise taxes or deferred payments, respectively, for a period of 5 consecutive years.

6. A wholesale dealer is not entitled to a refund of any portion of money paid as a bond pursuant to this section if the wholesale dealer has failed to file a report required by this chapter or owes the Department any payment or penalty pursuant to this chapter.

Sec. 13. NRS 370.170 is hereby amended to read as follows:

370.170 ***1.*** Except as otherwise provided in this chapter, it is unlawful for any person to give, sell or offer to give or sell any cigarettes in this state unless there is affixed to each of the ***cigarette*** packages ~~[, packets or containers an adhesive]~~ ***a*** Nevada cigarette revenue stamp ~~[or a similar stamp]~~ ***which is issued by the Department and*** affixed by a metered stamping machine approved by and registered with the Department ***or any other method approved by the Department, and which is*** for the amount of the tax on all of the cigarettes contained in the ***cigarette*** package **.** ~~[or other container.]~~

2. Each cigarette package sold on qualified tribal land or by an Indian tribe or a member of a tribe for which the Department does not collect a state excise tax pursuant to NRS 370.515 must bear a tribal stamp issued by the Department.

Sec. 14. NRS 370.190 is hereby amended to read as follows:

370.190 1. The Department may sell Nevada cigarette revenue stamps to a licensed dealer. As payment for the stamps, the Department shall deduct from the excise tax collected from the dealer the actual cost incurred by the Department for the stamps and for making the sale.

2. Payment for the revenue stamps or metered machine impressions must be made at the time of purchase unless the wholesale dealer has been authorized to defer payments by the Department. A wholesale dealer may apply to the Department for authorization to defer payments for revenue stamps or metered machine impressions at any time.

3. The Department may provide by regulation for ~~[payment]~~ ***:***

(a) Payment of the tax by manufacturers without the use of stamps on gifts or samples sent into Nevada when plainly marked "Tax Paid."

(b) Any requirements for the purchase of stamps.

Sec. 15. NRS 370.235 is hereby amended to read as follows:

370.235 1. The Department may adopt regulations establishing:

(a) Reporting requirements for manufacturers and wholesale dealers; and

(b) Procedures for the electronic submission of reports required pursuant to any reporting requirements established under paragraph (a).

2. Any regulations adopted pursuant to subsection 1 relating to reporting requirements for manufacturers ~~[must]~~ ***may*** provide for submission to the Department periodic reports of:

(a) The quantity of cigarette packages that were distributed or shipped to another manufacturer or to a wholesale dealer within the borders of this State during the reporting period, and the name and address of each person to whom those products were distributed or shipped;

(b) The quantity of cigarette packages that were distributed or shipped to another facility of the same manufacturer within the borders of this State during the reporting period; and

(c) The quantity of cigarette packages that were distributed or shipped within the borders of this State to Indian tribes or instrumentalities of the Federal Government during the reporting period, and the name and address of each person to whom those products were distributed or shipped.

3. Any regulations adopted pursuant to subsection 1 relating to reporting requirements for wholesale dealers ~~[must]~~ ***may*** provide for submission to the Department periodic reports of:

(a) The inventory of stamped and unstamped cigarette packages held by the wholesale dealer for sale or distribution within the borders of this State on hand at the beginning of the reporting period;

(b) The inventory of cigarette packages held by the wholesale dealer for sale or distribution outside of the borders of this State on hand at the beginning of the reporting period;

(c) The quantity of stamped cigarette packages held for sale or distribution within the borders of this State that were received by the wholesale dealer from another person during the reporting period, and the name and address of each person from whom those products were received;

(d) The quantity of cigarette packages held for sale or distribution outside of the borders of this State that were received by the wholesale dealer from another person during the reporting period, and the name and address of each person from whom those products were received;

(e) The quantity of cigarette packages to which Nevada stamps were affixed that were distributed or shipped to another wholesale dealer or to a retail dealer within the borders of this State during the

reporting period, and the name and address of each person to whom those products were distributed or shipped;

(f) The quantity of cigarette packages to which Nevada stamps were affixed that were distributed or shipped to another facility of the same wholesale dealer within the borders of this State during the reporting period;

(g) The quantity of stamped cigarette packages that were distributed or shipped within the borders of this State to Indian tribes or instrumentalities of the Federal Government during the reporting period, and the name and address of each person to whom those products were distributed or shipped;

(h) The quantity of cigarette packages held for distribution outside of the borders of this State that were distributed or shipped outside of the borders of this State during the reporting period;

(i) The inventory of stamped and unstamped cigarette packages held for sale or distribution within the borders of this State on hand at the end of the reporting period;

(j) The inventory of cigarette packages held for sale or distribution outside of the borders of this State on hand at the end of the reporting period;

(k) The number of each type of stamp on hand at the beginning of the reporting period;

(l) The number of each type of stamp purchased or received during the reporting period;

(m) The number of each type of stamp applied during the reporting period; and

(n) The number of each type of stamp on hand at the end of the reporting period.

4. Any reports required by regulations adopted pursuant to subsection 1 must be:

(a) Submitted on forms provided ***by or in a format required*** by the Department; and

(b) Provided separately for each of the facilities operated by the manufacturer or wholesale dealer.

5. In each report required by regulations adopted pursuant to subsection 1, the information required must be itemized so as to disclose clearly:

(a) The quantities of stamped and unstamped cigarettes to which the report applies; and

(b) The brand and style of cigarettes to which the report applies.

6. The reporting period for any reports required by regulations adopted pursuant to subsection 1 must be for a duration of not less than 1 month and not more than 3 months.

Sec. 16. NRS 370.250 is hereby amended to read as follows:

370.250 1. ~~[If any dealer in cigarettes upon which a precollected or advance tax is required to be paid fails to file any report required pursuant to NRS 370.240 with the Department or its agents on or before the date due, the Department may suspend the license of the dealer until the report is received and found to be correct.]~~ ***The Department may temporarily suspend or permanently revoke a license as a wholesale dealer in accordance with the regulations adopted pursuant to section 5 of this act if the licensee:***

(a) Fails to file or files an incomplete or inaccurate report or certification required by this chapter;

(b) Fails to pay any tax owed upon cigarettes required by this chapter;

(c) Fails to cure any shortfall for which the wholesale dealer is liable pursuant to NRS 370.683;

(d) Sells in this State, purchases or possesses any cigarettes or cigarette packages in violation of any provision of this chapter; or

(e) Imports into or exports from this State any cigarettes or cigarette packages in violation of any provision of this chapter.

2. ~~[The]~~ ***Except as otherwise provided in subsection 1 or 3, the*** Department may temporarily suspend or permanently revoke the license of any licensee for violating, or causing or permitting to be violated, any of the provisions of NRS 370.001 to 370.430, inclusive, ***and sections 2 to 5, inclusive, of this act*** or any regulations adopted for the administration or enforcement of any of those provisions.

3. The Department shall permanently revoke the license of any licensee convicted of any felony pursuant to NRS 370.405.

Sec. 17. NRS 370.257 is hereby amended to read as follows:

370.257 1. Each manufacturer, wholesale dealer and retail dealer shall provide to the Executive Director and his or her designees and to the Secretary or his or her designee, upon request, access to all the reports and records required by NRS 370.001 to 370.430, inclusive ~~[.]~~ ***, and sections 2 to 5, inclusive, of this act.*** The Department at its sole discretion may share the records and reports required by those sections with law enforcement officials of the Federal Government, this State, other states, Indian tribes , ~~[or]~~ international authorities ~~[.]~~ ***or any data clearinghouse or similar entity established for the purposes of enforcing the provisions of NRS 370.600 to 370.705, inclusive, and sections 6, 7 and 8 of this act or chapter 370A of NRS.***

2. Except as otherwise provided in this subsection, the reports submitted by licensees pursuant to NRS 370.001 to 370.430, inclusive, ***and sections 2 to 5, inclusive, of this act*** are public records. Unless otherwise directed or ordered by a court of competent jurisdiction, any information contained in those reports about quantities of cigarettes by brand must not be released to anyone other than persons permitted access to those reports pursuant to subsection 1.

3. The Department may audit the records of each dealer to determine whether the manufacturer, wholesale dealer or retail dealer has complied with the provisions of NRS 370.001 to 370.430, inclusive ~~[.]~~ ***, and sections 2 to 5, inclusive, of this act.***

Sec. 18. NRS 370.379 is hereby amended to read as follows:

370.379 1. The Department may suspend or revoke the license of a retail or wholesale dealer who violates the provisions of NRS 370.371 to 370.379, inclusive, or any regulation adopted thereunder, after notice to the licensee and a hearing as prescribed by the Department.

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

3. Except as otherwise provided in NRS 370.698, a person whose license has been revoked may apply to the Department at the end of 1 year for a reinstatement of the license. The Department may reinstate the license if the Department determines that the licensee will comply with the provisions of this chapter and the regulations adopted by the Department.

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

Sec. 19. (Deleted by amendment.)

Sec. 20. NRS 370.445 is hereby amended to read as follows:

370.445 1. ***The Department shall issue a license as a wholesale dealer or a license as a retail dealer to a person who***

submits a complete application on a form prescribed by the Department and who otherwise complies with the applicable provisions of this chapter and any regulations adopted by the Department. The Department shall not charge any fee for the issuance of a license pursuant to this subsection.

2. Except as otherwise provided in subsection ~~[2.]~~ ***3,*** a person shall not engage in the business of a wholesale dealer or retail dealer in this State unless the person first obtains a license as a wholesale dealer or retail dealer from the Department. A person may be licensed as a wholesale dealer and as a retail dealer.

~~[2.]~~ ***3.*** A person who wishes to engage in the business of a retail dealer is not required to obtain a license as a retail dealer pursuant to this section if the person is licensed as a retail cigarette dealer pursuant to ~~[this chapter.~~

~~3.]~~ ***NRS 370.001 to 370.430, inclusive, and sections 2 to 5, inclusive, of this act.***

4. The Department may refuse to issue or renew, or may suspend or revoke, a license issued pursuant to this section for any violation of the provisions of NRS 370.440 to 370.503, inclusive.

5. The Department may adopt regulations prescribing the form and contents of an application for, or which are otherwise necessary for the issuance of, a license pursuant to this section.

6. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

Sec. 21. NRS 370.600 is hereby amended to read as follows:

370.600 The Legislature finds that:

1. Violations of the provisions of chapter 370A of NRS threaten the integrity of the Master Settlement Agreement, the fiscal soundness of the State and public health.

2. The enactment of the procedural enhancements set forth in NRS 370.600 to 370.705, inclusive, ***and sections 6, 7 and 8 of this act*** will aid in the enforcement of the provisions of chapter 370A of NRS and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the State and public health.

Sec. 22. NRS 370.605 is hereby amended to read as follows:

370.605 As used in NRS 370.600 to 370.705, inclusive, ***and sections 6, 7 and 8 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 370.610 to 370.660, inclusive, have the meanings ascribed to them in those sections.

Sec. 23. 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 Department, a certification which certifies under penalty of perjury that, as of the date of that certification, the manufacturer of tobacco products is ***:*** ~~[either:]~~

(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. The participating manufacturer shall update that list at least 30 calendar days before it adds to or modifies its brand families 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; ~~[and]~~

(II) A list of all of its brand families 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 ~~[, by an asterisk,]~~ any brand family 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 ~~[, any]~~ ***:***

(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 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 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 ~~[.]~~ ***; and***

(h) That the nonparticipating manufacturer has submitted to the Attorney General a request or consent to the United States Department of the Treasury pursuant to 26 U.S.C. § 6103(c) authorizing the Alcohol and Tobacco Tax and Trade Bureau of the Department, or in the case of a foreign manufacturer, United States Customs and Border Protection of the United States Department of Homeland Security, to disclose to the Attorney General the federal excise tax returns of the manufacturer and each monthly operational report of the manufacturer reported on Alcohol and Tobacco Tax and Trade Bureau Form 5210.5, and all adjustments, changes and other amendments thereto.

Sec. 24. NRS 370.680 is hereby amended to read as follows:

370.680 1. Any nonresident or foreign nonparticipating manufacturer ***or wholesale dealer*** that has not registered to do business in the State as a foreign corporation or other business entity must, as a condition precedent ***:***

(a) For a nonparticipating manufacturer, to having its brand families included or retained in the directory ~~[.]~~ ***; or***

(b) For a wholesale dealer, to selling cigarettes in this State,

➥ appoint and continually engage without interruption the services of an agent in this State to act as its agent for the service of process on whom all process, in any action or proceeding against it concerning or arising out of the enforcement of this chapter ~~[.]~~ ***or chapter 370A of NRS,*** may be served in any manner authorized by law. ~~[Such service]~~

2. Service upon an agent pursuant to this section constitutes legal and valid service of process on the nonparticipating manufacturer ~~[.]~~ ***or wholesale dealer.*** The nonparticipating manufacturer ***or wholesale dealer*** shall provide the name, address, phone number and proof of the appointment and availability of such agent to, and to the satisfaction of, the Attorney General and the Department.

~~[2.]~~ ***3.*** A nonparticipating manufacturer ***or wholesale dealer*** shall provide notice to the Attorney General and the Department at least 30 calendar days before the termination of the authority of an agent appointed pursuant to this section and shall provide proof to the satisfaction of the Attorney General and the Department of the appointment of a new agent not less than 5 calendar days before the termination of appointment of an existing agent. If an agent terminates his or her appointment as an agent, the nonparticipating manufacturer ***or wholesale dealer*** shall notify the Attorney General and the Department of that termination within 5 calendar days and include with that notification proof to the satisfaction of the Attorney General and the Department of the appointment of a new agent.

~~[3.]~~ ***4.*** Any nonparticipating manufacturer ~~[whose]~~ ***or wholesale dealer which sells or purchases*** cigarettes ~~[are sold]~~ in this State and ~~[who]~~ ***which*** has not appointed and engaged an agent as required by this section shall be deemed to have appointed the Secretary of State as an agent and may be proceeded against in courts of this State by service of process upon the Secretary of State, except that the appointment of the Secretary of State as an agent does not satisfy the condition precedent for having the brand

families of the nonparticipating manufacturer included or retained in the directory.

Sec. 25. NRS 370.685 is hereby amended to read as follows:

370.685 1. Not later than 20 calendar days after the end of each calendar quarter, and more frequently if so directed by the Department, each distributor shall submit such information as the Department requires to facilitate compliance with the provisions of NRS 370.600 to 370.705, inclusive, ***and sections 6, 7 and 8 of this act,*** including, without limitation, a list by brand family of the total number of cigarettes or, in the case of "roll-your-own" tobacco, the equivalent unit count, for which the distributor affixed stamps during the previous calendar quarter or otherwise paid the tax due for those cigarettes. The distributor shall maintain for at least 5 years, and make available to the Department, all invoices and documentation of sales of all cigarettes of nonparticipating manufacturers and any other information relied upon in reporting to the Department.

2. The Department may disclose to the Attorney General any information received pursuant to NRS 370.600 to 370.705, inclusive, ***and sections 6, 7 and 8 of this act*** and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of NRS 370.600 to 370.705, inclusive ~~[.]~~ , ***and sections 6, 7 and 8 of this act.*** The Department and Attorney General shall share with each other the information received pursuant to the provisions of NRS 370.600 to 370.705, inclusive, ***and sections 6, 7 and 8 of this act*** and may share such information with other federal, state or local agencies only for purposes of enforcement of those provisions, the provisions of chapter 370A of NRS or the corresponding laws of other states.

3. The Department may require at any time from a nonparticipating manufacturer proof, from the financial institution in which that manufacturer has established a qualified escrow fund for the purpose of compliance with chapter 370A of NRS, of the amount of money in that fund, exclusive of interest, the amount and date of each deposit to that fund, and the amount and date of each withdrawal from that fund.

4. In addition to the information otherwise required to be submitted pursuant to NRS 370.600 to 370.705, inclusive, ***and sections 6, 7 and 8 of this act,*** the Department may ***, at any time,*** require a distributor or manufacturer of tobacco products to submit any additional information ~~[, including, without limitation, samples of the packaging or labeling of each brand family.]~~ ***or documentation*** as is necessary to enable the Department to

determine whether a manufacturer of tobacco products is ***or will continue to be*** in compliance with the provisions of ~~[NRS 370.600 to 370.705, inclusive.~~

~~5. Every distributor shall provide to the Department and update as necessary an electronic mail address for receiving any notifications required to carry out NRS 370.600 to 370.705, inclusive.]~~ ***this chapter and chapter 370A of NRS.***

Sec. 26. NRS 370.698 is hereby amended to read as follows:

370.698 1. The license of a wholesale dealer may be suspended or revoked if a similar license of the wholesale dealer is suspended or revoked in any other state based on an act or omission that would, if the act or omission had occurred in this State, be grounds for the suspension or revocation of the license of the wholesale dealer pursuant to NRS 370.379, unless the wholesale dealer demonstrates that the suspension or revocation of its license in the other state was effected without due process. A wholesale dealer whose license is suspended or revoked in this State pursuant to this subsection is eligible for reinstatement upon the earlier of the date on which the violation in the other state is cured or the date on which the license of the wholesale dealer is reinstated in the other state.

2. A nonparticipating manufacturer and its brand families may be denied listing in the directory or removed from the directory for any of the following reasons:

(a) The nonparticipating manufacturer is removed from the directory of another state based on an act or omission that would, if the act or omission had occurred in this State, be grounds for the removal of the nonparticipating manufacturer from the directory of this State pursuant to NRS 370.675, unless the nonparticipating manufacturer demonstrates that its removal from the directory of the other state was effected without due process. A nonparticipating manufacturer that is removed from the directory of this State pursuant to this paragraph is eligible for reinstatement to the directory upon the earlier of the date on which the violation in the other state is cured or the date on which the nonparticipating manufacturer is reinstated to the directory of the other state.

(b) The nonparticipating manufacturer is convicted of any crime relating to the manufacture, sale or distribution of tobacco products in this State or another state.

(c) The nonparticipating manufacturer fails to report the existence or result, including any conviction, of any investigation of the nonparticipating manufacturer which is known to the nonparticipating manufacturer regarding the commission of any

crime relating to the manufacture, sale or distribution of tobacco products in this State or another state.

(d) The nonparticipating manufacturer fails to report any investigation of the nonparticipating manufacturer which is known to the nonparticipating manufacturer regarding any violation of the laws of any other state based on an act or omission that would, if the act or omission had occurred in this State, be grounds for the removal of the nonparticipating manufacturer from the directory of this State pursuant to NRS 370.675.

(e) The nonparticipating manufacturer knowingly makes a false, material statement in any report, filing or other communication provided to this State pursuant to this chapter or chapter 370A of NRS.

(f) The nonparticipating manufacturer has a shortfall or fails to make an escrow deposit that is due in another state or territory of the United States, has been given reasonable notice of the shortfall or failure and has failed to cure the shortfall or make the deposit within 30 days after receiving notice of the shortfall or failure.

3. The provisions of NRS 233B.121 to 233B.150, inclusive, apply to:

(a) The suspension or revocation of the license of a wholesale dealer pursuant to subsection 1; and

(b) The removal of a nonparticipating manufacturer and its brand families from the directory pursuant to subsection 2.

Sec. 27. Chapter 370A of NRS is hereby amended by adding thereto the provisions set forth as sections 28 to 31, inclusive, of this act.

Sec. 28. ***"Qualified tribal land" has the meaning ascribed to it in section 3 of this act.***

Sec. 29. ***Any provision of this chapter or chapter 370 of NRS, or any amendment thereto, that causes any provision of this chapter or chapter 370 of NRS to fail to operate as a qualifying statute pursuant to the Master Settlement Agreement is void.***

Sec. 30. ***1. Notwithstanding the provisions of NRS 370A.150, a manufacturer that elects to deposit money into a qualified escrow fund pursuant to NRS 370A.140 may assign to the State the interest of the manufacturer in any money in the qualified escrow fund.***

2. An assignment executed pursuant to subsection 1 is irrevocable and applies to any money and any interest or other appreciation earned on any money for which the manufacturer executes the assignment.

3. The parties to a qualified escrow agreement may amend the agreement for the purposes of executing an assignment pursuant to subsection 1.

4. An assignment executed pursuant to subsection 1 must be in writing and be signed by the assignee and the assignor or by an authorized agent or representative of the assignor. An assignment in writing which is duly executed becomes enforceable after a copy of the assignment is delivered to the Attorney General and the financial institution where the qualified escrow fund is maintained.

5. Nothing in this section operates to relieve a manufacturer from any obligation or duty imposed pursuant to this chapter or chapter 370 of NRS.

Sec. 31. *1. The State may release to an Indian tribe, pursuant to a compact with that tribe, not more than 50 percent of the amounts deposited into a qualified escrow fund pursuant to NRS 370A.140 for cigarettes sold on or after January 1, 2015, in a retail transaction to a consumer on the qualified tribal land of the tribe, if:*

(a) The tribe is a federally recognized tribe or a tribe that was recognized by the State on or before January 1, 2012, and, in each case, has a reservation or colony in the State;

(b) The money to be released was timely deposited into escrow in compliance with NRS 370A.140;

(c) State excise tax or tribal excise tax was paid on the cigarettes;

(d) The release occurs not earlier than 1 year after the money is deposited into escrow;

(e) The money released is provided to the tribe itself and used only for the purpose of public safety on the qualified tribal land of the tribe or for social services for tribal members, including, without limitation, health care or education, and not used for any function that could directly or indirectly promote or reduce the costs of cigarette production, marketing or sales;

(f) The money released is not used in any way for the benefit of any manufacturer of tobacco products that is not a participating manufacturer under the Master Settlement Agreement or to facilitate cigarette sales by any such manufacturer of tobacco products; and

(g) The compact with the tribe provides that the taxing and stamping requirements and policies for cigarettes sold on the qualified tribal land of the tribe, including the applicability, amount, collection and refund of taxes, will not be different for

any cigarettes of participating manufacturers than for any cigarettes of manufacturers of tobacco products that are not participating manufacturers, and the tribe is in compliance with these provisions of the compact.

2. The total amount released to all Indian tribes from escrow pursuant to this section in any 1 year must not exceed $1 million in the aggregate.

3. This section applies only to:

(a) The cigarettes of a manufacturer of tobacco products that existed in the United States market on or before June 1, 2012; and

(b) A manufacturer of tobacco products involved in the production, distribution or sale of the cigarettes for which money would be released that is not a manufacturer, or an affiliate or successor of such manufacturer, affiliated with the Indian tribe or any member of the tribe to which the money would be released.

4. For the purposes of this section, an Indian tribe with qualified tribal land located in more than one state or territory of the United States is considered to have a reservation or colony in, and to be eligible for the release of money pursuant to this section from, this State only if the largest portion of the qualified tribal land of the tribe is located within this State.

5. The Attorney General may withdraw from a qualified escrow fund the money released pursuant to this section. The manufacturers of tobacco products that elect to deposit money into a qualified escrow fund pursuant to NRS 370A.140 and the financial institutions in which such qualified escrow funds are maintained shall make such amendments to their qualified escrow agreements as may be necessary to effectuate a withdrawal of money from the qualified escrow funds pursuant to this section.

6. Notwithstanding the provisions of NRS 370A.150, a manufacturer of tobacco products does not have any right to reversion of the money, including, without limitation, the interest or other appreciation earned on the money, released from escrow pursuant to this section.

7. If a court of competent jurisdiction invalidates the provisions of subsection 5, the money authorized to be released to Indian tribes pursuant to this section may be paid to the appropriate tribes out of the State General Fund, subject to all conditions and limits provided in this section.

8. The Attorney General is authorized to enter into compacts on behalf of the State as provided in this section. Any compact so entered into must require the Indian tribe to verify that the

conditions set forth in paragraphs (e), (f) and (g) of subsection 1 are met.

Sec. 32. NRS 370A.010 is hereby amended to read as follows:

370A.010 As used in this chapter, the words and terms defined in NRS 370A.020 to 370A.120, inclusive, ***and section 28 of this act*** have the meanings ascribed to them in those sections.

Sec. 33. NRS 370A.120 is hereby amended to read as follows:

370A.120 "Units sold" means, with respect to a particular manufacturer of tobacco products for a particular year, the number of individual cigarettes sold in this state ***, including, without limitation, any cigarettes sold on any qualified tribal land within the State,*** by the manufacturer directly or through a distributor, retailer or similar intermediary or intermediaries during that year, ~~[as measured by excise taxes collected by the State on packs, or containers of "roll-your-own" tobacco, bearing the excise stamp of this state.]~~ ***for which the State has the authority under federal law to impose excise or a similar tax or to collect escrow deposits. The term does not include any cigarettes sold:***

1. On a federal installation in a transaction that is exempt from state taxation under federal law; or

2. On the qualified tribal land of an Indian tribe to a consumer who is an adult enrolled member of that tribe in a transaction that is exempt from state taxation under federal law.

Sec. 34. NRS 370A.150 is hereby amended to read as follows:

370A.150 A manufacturer of tobacco products that deposits money into escrow pursuant to subsection 2 of NRS 370A.140 shall receive the interest or other appreciation on the deposit as earned. The principal of the deposit may be released from escrow only under the following circumstances:

1. To pay a judgment or settlement on a released claim brought against that manufacturer by this State or by a releasing party located or residing in this State. Money may be released from escrow under this subsection only in the order in which it was deposited into escrow and only to the extent and at the time necessary to make payments required under the judgment or settlement.

2. To the extent that the manufacturer establishes that the amount it was required to deposit into escrow on account of units sold in the State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold if the manufacturer had been a

participating manufacturer, the excess must be released from escrow and revert to the manufacturer.

3. ***In accordance with the provisions of section 31 of this act.***

4. To the extent not released from escrow under subsection 1 ~~[or 2,]~~ ***, 2 or 3,*** deposits must be released from escrow and revert to the manufacturer 25 years after the date on which they were deposited.

Sec. 35. 1. This section and sections 1 to 16, inclusive, 18 to 30, inclusive, and 32 of this act become effective on July 1, 2013.

2. Sections 17, 31, 33 and 34 of this act become effective on January 1, 2014.