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## Commercial Transactions; regulating tobacco wholesalers

NEV. REV. STAT. § 370.— (new); §§ 370.001, 370.010, 370.055, 370.505 (amended).

AB 277 (Committee on Taxation); 1989 STAT. Ch. 129

AB 287 (Committee on Commerce); 1989 STAT. Ch. 661

Existing law requires a retail tobacco dealer<sup>1</sup> to pay a wholesale dealer<sup>2</sup> for all purchases by certain dates.<sup>3</sup> Chapter 129 prevents a wholesale tobacco dealer from extending credit to a retail dealer to circumvent the provisions of existing law.<sup>4</sup> Violation of Chapter 129 is punishable by a fine, revocation of the wholesaler's license, or both.<sup>5</sup>

Chapter 661 prevents a wholesale tobacco dealer from attempting to influence the market by selling cigarettes<sup>6</sup> at less than their basic cost.<sup>7</sup> Chapter 661 also prohibits a retail dealer from purchasing or attempting to purchase cigarettes below the wholesaler's cost.<sup>8</sup> Chap-

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1. See NEV. REV. STAT § 370.033 (1987) (definition of retail dealer).

2. See *id.* § 370.055 (1987) (amended by 1989 Nev. Stat. ch. 661, sec. 19, at 1517 (definition of wholesale dealer)).

3. *Id.* § 370.505 (1987) (requiring that tobacco products delivered between the 1st and 16th of a given month be paid for on or before the 29th of that month, and deliveries after the 16th be paid on or before the 14th of the next month).

4. 1989 Nev. Stat. ch. 129, sec. 1, at 285 (amending NEV. REV. STAT. § 370.505).

5. *Id.* The first violation is punishable with a penalty of \$500, and the second and subsequent violations with a penalty of \$1000; if there are three violations within a one year period, the dealer will be fined \$5000, the dealer's licence will be revoked, or both. *Id.* The Department of Taxation is responsible for the investigation of alleged violations. *Id.*

6. See NEV. REV. STAT. § 370.010 (1987) (amended by 1989 Nev. Stat. ch. 661, sec. 18, at 1517) (definition of a cigarette).

7. 1989 Nev. Stat. ch. 661, sec. 5, at 1514 (enacting NEV. REV. STAT. § 370.—). Cigarette rebates which result in the sale of cigarettes below cost are prohibited. *Id.* See *id.* sec. 2, at — enacting NEV. REV. STAT. § 370.— (definition of basic cost of cigarettes). Several states have enacted legislation to regulate unfair competition in cigarette sales. See, e.g., ARK. STAT. ANN. § 4-75-701 (1987); DEL. CODE ANN. tit. 6, § 2602 (Supp. 1988); OHIO REV. CODE ANN. § 1333.12 (Anderson 1979); OKLA. STAT. tit. 62, § 332 (1974); PA. STAT. ANN. tit. 73, § 231.2 (Purdon 1971); S.D. CODIFIED LAWS ANN. § 37-10-2 (1986); TENN. CODE ANN. § 67-4-1001 (Supp. 1988). See generally *Island Tobacco Co. v. R. J. Reynolds Tobacco Co.*, 513 F. Supp. 726, 733-36 (D. Hawaii 1981) (under federal law, tobacco price discrimination with intent to destroy competition may be a violation of the Clayton Act (as amended by the Robinson-Patman Act) or the Sherman Antitrust Act, or both).

8. 1989 Nev. Stat. ch. 661, sec. 5, at — (enacting NEV. REV. STAT. § 370.—). An attempt by a retailer to purchase cigarettes below wholesale cost is prima facie evidence of an intent to injure competition. *Id.* A retail dealer is also prohibited from attempting to procure a rebate that would result in a sale of cigarettes below wholesale cost. *Id.* The cost of cigarettes purchased at a forced sale or bankruptcy proceeding may not be used to justify a price lower than the replacement cost of cigarettes purchased through ordinary trade channels. *Id.* sec. 7, at 1515 (enacting NEV. REV. STAT. § 370.—). The price of cigarettes sold between wholesale dealers must be above the basic cost of cigarettes. *Id.* sec. 9, at 1515 (enacting NEV. REV. STAT. § 370.—). See generally *id.* sec. 2, at 1514 (definition of basic cost of cigarettes).

ter 661 does not apply to certain wholesale transactions.<sup>9</sup> Violation of Chapter 661 is punishable by a fine<sup>10</sup> and the suspension or revocation of the offending party's license.<sup>11</sup> Chapter 661 enables any injured party to pursue a civil remedy for injunctive relief, damages, or both.<sup>12</sup>

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9. *Id.* sec. 10, at 1516 (enacting NEV. REV. STAT. § 370.\_\_\_\_). Exceptions to Chapter 661 include isolated or promotional transactions, clearance items, damaged merchandise, liquidation sales, and sales under the direction of the court. *See id.* at 1516 (isolated transactions are transactions outside the normal course of business); *id.* sec. 7, at 1515 (enacting NEV. REV. STAT. § 370.\_\_\_\_) (promotional merchandise is merchandise provided free for promotional purposes). Any advertisement for a clearance item must state the reason for the sale and the quantity offered. *Id.* sec. 10, at \_\_\_\_ (enacting NEV. REV. STAT. § 370.\_\_\_\_). Any advertising for damaged merchandise must state that the product is damaged and the quantity offered. *Id.* at 1516. The price of merchandise sold under an exception to Chapter 661 is not considered the price of a competitor for purposes of this Act. *Id.* sec. 11, at 1516 (enacting NEV. REV. STAT. § 370.\_\_\_\_).

10. *Id.* sec. 16, at 1517 (enacting NEV. REV. STAT. § 370.\_\_\_\_) (fine not to exceed \$50 per offense).

11. *Id.* sec. 16, at 1517 (enacting NEV. REV. STAT. § 370.\_\_\_\_). The Department of Taxation may suspend or permanently revoke a violator's licence for a willful violation of Chapter 661. *Id.*

12. *Id.* sec. 15, at 1516 (enacting NEV. REV. STAT. § 370.\_\_\_\_) When actual damages are established in a suit for injunctive relief, an injured party may recover costs, including reasonable attorney fees, and actual damages. *Id.* A contract made in violation of Chapter 661 is void. *Id.* sec. 13, at 1516 (enacting NEV. REV. STAT. § 370.\_\_\_\_).