

AMENDMENTS TO LB 395

(Amendments to Final Reading copy)

Introduced by Preister, 5

1 1. Insert the following new sections:

2 Sec. 22. Section 69-2706, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 69-2706 (1)(a) Every tobacco product manufacturer whose
5 cigarettes are sold in this state, whether directly or through a
6 distributor, retailer, or similar intermediary or intermediaries,
7 shall execute and deliver on a form prescribed by the Tax
8 Commissioner a certification to the Tax Commissioner and the
9 Attorney General no later than the thirtieth day of April
10 each year, certifying under penalty of perjury that, as of the
11 date of such certification, such tobacco product manufacturer
12 either is a participating manufacturer or is in full compliance
13 with subdivision (2) of section 69-2703, including all quarterly
14 installment payments required by such rules and regulations as may
15 be adopted and promulgated by the Tax Commissioner. subsection (4)
16 of section 69-2708.

17 (b) A participating manufacturer shall include in its
18 certification a list of its brand families. The participating
19 manufacturer shall update such list thirty calendar days prior to
20 any addition to or modification of its brand families by executing
21 and delivering a supplemental certification to the Tax Commissioner
22 and the Attorney General.

1 (c) A nonparticipating manufacturer shall include in its
2 certification (i) a list of all of its brand families and the
3 number of units sold for each brand family that were sold in the
4 state during the preceding calendar year and (ii) a list of all of
5 its brand families that have been sold in the state at any time
6 during the current calendar year (A) indicating by an asterisk any
7 brand family sold in the state during the preceding or current
8 calendar year that is no longer being sold in the state as of the
9 date of such certification and (B) identifying by name and address
10 any other manufacturer of such brand families in the preceding
11 calendar year. The nonparticipating manufacturer shall update such
12 list thirty calendar days prior to any addition to or modification
13 of its brand families by executing and delivering a supplemental
14 certification to the Tax Commissioner and the Attorney General.

15 (d) In the case of a nonparticipating manufacturer, such
16 certification shall further certify:

17 (i) That such nonparticipating manufacturer is registered
18 to do business in the state or has appointed an agent for service
19 of process and provided notice thereof as required by section
20 69-2707;

21 (ii) That such nonparticipating manufacturer has
22 established and continues to maintain a qualified escrow fund
23 pursuant to a qualified escrow agreement that has been reviewed and
24 approved by the Attorney General or has been submitted for review
25 by the Attorney General;

26 (iii) That such nonparticipating manufacturer is in full
27 compliance with subdivision (2) of section 69-2703 and this section

1 and any rules and regulations adopted and promulgated pursuant
2 thereto; ~~and~~

3 (iv) (A) The name, address, and telephone number of
4 the financial institution where the nonparticipating manufacturer
5 has established such qualified escrow fund required pursuant to
6 subdivision (2) of section 69-2703 and all rules and regulations
7 adopted and promulgated pursuant thereto; (B) the account number of
8 such qualified escrow fund and any subaccount number for the State
9 of Nebraska; (C) the amount such nonparticipating manufacturer
10 placed in such fund for cigarettes sold in the state during the
11 preceding calendar year, the dates and amount of each such deposit,
12 and such evidence or verification as may be deemed necessary by the
13 Attorney General to confirm the foregoing; and (D) the amounts and
14 dates of any withdrawal or transfer of funds the nonparticipating
15 manufacturer made at any time from such fund or from any other
16 qualified escrow fund into which it ever made escrow payments
17 pursuant to subdivision (2) of section 69-2703 and all rules and
18 regulations adopted and promulgated pursuant thereto; and -

19 (v) That such nonparticipating manufacturer consents to
20 be sued in the district courts of the State of Nebraska for
21 purposes of the state (A) enforcing any provision of sections
22 69-2703 to 69-2710 and any rules and regulations adopted and
23 promulgated thereunder or (B) bringing a released claim as defined
24 in section 69-2702.

25 (e) A tobacco product manufacturer shall not include a
26 brand family in its certification unless (i) in the case of a
27 participating manufacturer, the participating manufacturer affirms

1 that the brand family is to be deemed to be its cigarettes for
2 purposes of calculating its payments under the Master Settlement
3 Agreement for the relevant year in the volume and shares determined
4 pursuant to the Master Settlement Agreement and (ii) in the case of
5 a nonparticipating manufacturer, the nonparticipating manufacturer
6 affirms that the brand family is to be deemed to be its cigarettes
7 for purposes of subdivision (2) of section 69-2703. Nothing in
8 this section shall be construed as limiting or otherwise affecting
9 the state's right to maintain that a brand family constitutes
10 cigarettes of a different tobacco product manufacturer for purposes
11 of calculating payments under the Master Settlement Agreement or
12 for purposes of section 69-2703.

13 (f) Tobacco product manufacturers shall maintain all
14 invoices and documentation of sales and other such information
15 relied upon for such certification for a period of five years
16 unless otherwise required by law to maintain them for a greater
17 period of time.

18 (2) The Tax Commissioner shall develop, maintain, and
19 make available for public inspection or publish on its web site
20 a directory listing all tobacco product manufacturers that have
21 provided current and accurate certifications conforming to the
22 requirements of subsection (1) of this section and all brand
23 families that are listed in such certifications except:

24 (a) The Tax Commissioner shall not include or retain in
25 such directory the name or brand families of any tobacco product
26 manufacturer that has failed to provide the required certification
27 or whose certification the commissioner determines is not in

1 compliance with subdivisions (1)(c) and (d) of this section unless
2 the Tax Commissioner has determined that such violation has been
3 cured to his or her satisfaction;

4 (b) Neither a tobacco product manufacturer nor brand
5 family shall be included or retained in the directory if the
6 Attorney General recommends and notifies the Tax Commissioner who
7 concludes, in the case of a nonparticipating manufacturer, that (i)
8 any escrow payment required pursuant to subdivision (2) of section
9 69-2703 or subsection (4) of section 69-2708 for any period for
10 any brand family, whether or not listed by such nonparticipating
11 manufacturer, has not been fully paid into a qualified escrow
12 fund governed by a qualified escrow agreement that has been
13 approved by the Attorney General or (ii) any outstanding final
14 judgment, including interest thereon, for violations of section
15 69-2703 has not been fully satisfied for such brand family and such
16 manufacturer;

17 (c) The Tax Commissioner shall update the directory no
18 later than May 15 of each year to reflect certifications made on
19 or before April 30 as required in subsection (1) of this section.
20 The Tax Commissioner shall continuously update the directory as
21 necessary in order to correct mistakes and to add or remove a
22 tobacco product manufacturer or brand family to keep the directory
23 in conformity with the requirements of sections 69-2704 to 69-2710;

24 (d) The Tax Commissioner shall transmit by email or other
25 practicable means to each stamping agent notice of any removal
26 from the directory of any tobacco product manufacturer or brand
27 family. Unless otherwise provided by agreement between the stamping

1 agent and a tobacco product manufacturer, the stamping agent shall
2 be entitled to a refund from a tobacco product manufacturer for
3 any money paid by the stamping agent to the tobacco product
4 manufacturer for any cigarettes of the tobacco product manufacturer
5 still held by the stamping agent on the date of notice by the
6 Tax Commissioner of the removal from the directory of that tobacco
7 product manufacturer or the brand family or for any cigarettes
8 returned to the stamping agent by its customers under subsection
9 (2) of section 69-2709. The Tax Commissioner shall not restore to
10 the directory the tobacco product manufacturer or the brand family
11 until the tobacco product manufacturer has paid the stamping agent
12 any refund due; and

13 (e) Every stamping agent shall provide and update as
14 necessary an electronic mail address to the Tax Commissioner for
15 the purpose of receiving any notifications as may be required by
16 sections 69-2704 to 69-2710.

17 (3) The failure of the Tax Commissioner to provide notice
18 of any intended removal from the directory as required under
19 subdivision (2)(d) of this section or the failure of a stamping
20 agent to receive such notice shall not relieve the stamping agent
21 of its obligations under sections 69-2704 to 69-2710.

22 ~~(3)~~ (4) It shall be unlawful for any person (a) to affix
23 a Nebraska stamp to a package or other container of cigarettes
24 of a tobacco product manufacturer or brand family not included in
25 the directory or (b) to sell, offer, or possess for sale in this
26 state cigarettes of a tobacco product manufacturer or brand family
27 intended for sale in this state not included in the directory.

1 Sec. 23. Section 69-2707, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 69-2707 (1) Any nonresident or foreign nonparticipating
4 manufacturer that has not registered to do business in the state
5 as a foreign corporation or business entity shall, as a condition
6 precedent to having its brand families included or retained in the
7 directory created in subsection (2) of section 69-2706, appoint
8 and continually engage without interruption the services of an
9 agent in the United States to act as agent for the service of
10 process on whom all process, and any action or proceeding against
11 it concerning or arising out of the enforcement of sections 69-2703
12 to 69-2710, may be served in any manner authorized by law. Such
13 service shall constitute legal and valid service of process on the
14 nonparticipating manufacturer. The nonparticipating manufacturer
15 shall provide the name, address, telephone number, and proof of the
16 appointment and availability of such agent to the Tax Commissioner
17 and Attorney General.

18 (2) The nonparticipating manufacturer shall provide
19 notice to the Tax Commissioner and Attorney General thirty calendar
20 days prior to termination of the authority of an agent and shall
21 further provide proof to the satisfaction of the Attorney General
22 of the appointment of a new agent no less than five calendar
23 days prior to the termination of an existing agent appointment.
24 In the event an agent terminates an agency appointment, the
25 nonparticipating manufacturer shall notify the Tax Commissioner and
26 Attorney General of the termination within five calendar days and
27 shall include proof to the satisfaction of the Attorney General of

1 the appointment of a new agent.

2 (3) Any nonparticipating manufacturer whose products are
3 sold in this state who has not appointed and engaged the services
4 of an agent as required by this section shall be deemed to have
5 appointed the Secretary of State as its agent for service of
6 process. The appointment of the Secretary of State as agent shall
7 not satisfy the condition precedent required in subsection (1)
8 of this section to have the nonparticipating manufacturer's brand
9 families included or retained in the directory.

10 Sec. 24. Section 69-2708, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 69-2708 (1) Not later than twenty calendar days after
13 the end of each calendar quarter, and more frequently if so
14 directed by the Tax Commissioner, each stamping agent shall submit
15 such information as the Tax Commissioner requires to facilitate
16 compliance with sections 69-2704 to 69-2710, including, but not
17 limited to, a list by brand family of the total number of
18 cigarettes or, in the case of roll-your-own, the equivalent stick
19 count for which the stamping agent affixed stamps during the
20 previous calendar quarter or otherwise paid the tax due for such
21 cigarettes. The stamping agent shall maintain, and make available
22 to the Tax Commissioner, all invoices and documentation of sales
23 of all nonparticipating manufacturer cigarettes and any other
24 information relied upon in reporting to the Tax Commissioner for a
25 period of five years.

26 (2) The Attorney General may require at any time from the
27 nonparticipating manufacturer proof, from the financial institution

1 in which such manufacturer has established a qualified escrow fund
2 for the purpose of compliance with section 69-2703, of the amount
3 of money in such fund, exclusive of interest, the amounts and dates
4 of each deposit to such fund, and the amounts and dates of each
5 withdrawal from such fund.

6 (3) In addition to the information required to be
7 submitted pursuant to subsection (1) of this section, the Tax
8 Commissioner or Attorney General may require a stamping agent,
9 distributor, or tobacco product manufacturer to submit any
10 additional information, including, but not limited to, samples of
11 the packaging or labeling of each brand family, as is necessary
12 to enable the Tax Commissioner or Attorney General to determine
13 whether a tobacco product manufacturer is in compliance with
14 sections 69-2704 to 69-2710.

15 (4) To promote compliance with sections 69-2704 to
16 69-2707, a tobacco product manufacturer subject to the requirements
17 of subdivision (1)(c) of section 69-2706 shall make the escrow
18 deposits required by section 69-2703 in quarterly installments
19 during the year in which the sales covered by such deposits are
20 made: if (a) it is the first year Through the end of the calendar
21 year following the year the tobacco product manufacturer is listed
22 in the directory established pursuant to section 69-2706; (b) if
23 the tobacco product manufacturer is removed from then subsequently
24 relisted in the directory, then for all periods following the
25 relisting through the end of the calendar year following the year
26 the tobacco product manufacturer is relisted in the directory;
27 (c) if the tobacco product manufacturer has failed to make a

1 complete and timely escrow deposit for any calendar year as
2 required by section 69-2703, or for any quarter as required in
3 this section; or ~~(e)~~ (d) if the tobacco product manufacturer has
4 failed to pay any judgment, including any civil penalty ordered
5 under section 69-2703 or 69-2709. The Tax Commissioner may require
6 production of information sufficient to enable the Tax Commissioner
7 to determine the adequacy of the amount of the installment
8 deposit. The Tax Commissioner may adopt and promulgate rules and
9 regulations implementing how tobacco product manufacturers subject
10 to the requirements of subdivision (1)(c) of section 69-2706 make
11 quarterly payments.

12 Sec. 25. Section 69-2709, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 69-2709 (1) In addition to or in lieu of any other civil
15 or criminal remedy provided by law, upon a determination that a
16 stamping agent has violated subsection ~~(3)~~ (4) of section 69-2706
17 or any rule or regulation adopted and promulgated pursuant thereto,
18 the Tax Commissioner may revoke or suspend the license of any
19 stamping agent in the manner provided by section 77-2615.01. For
20 each violation hereof, the Tax Commissioner may also impose a civil
21 penalty in an amount not to exceed the greater of five hundred
22 percent of the retail value of the cigarettes or five thousand
23 dollars upon a determination of violation of subsection ~~(3)~~ (4) of
24 section 69-2706 or any rules or regulations adopted and promulgated
25 pursuant thereto. Such penalty shall be imposed in the manner
26 provided by section 77-2615.01.

27 (2) Any cigarettes that have been sold, offered for sale,

1 or possessed for sale in this state in violation of subsection
2 ~~(3)~~ (4) of section 69-2706 shall be deemed contraband under
3 section 77-2620 and such cigarettes shall be subject to seizure
4 and forfeiture as provided in section 77-2620, except that all
5 such cigarettes so seized and forfeited shall be destroyed and not
6 resold. The stamping agent shall notify its customers for a brand
7 family with regard to any notice of removal of a tobacco product
8 manufacturer or a brand family from the directory and give its
9 customers a seven-day period for the return of cigarettes that
10 become contraband.

11 (3) The Attorney General, on behalf of the Tax
12 Commissioner, may seek an injunction to restrain a threatened
13 or actual violation of subsection ~~(3)~~ (4) of section 69-2706 or
14 subsection (1) or (4) of section 69-2708 by a stamping agent and to
15 compel the stamping agent to comply with any of such subsections.
16 In any action brought pursuant to this section, the state shall
17 be entitled to recover the costs of investigation, costs of the
18 action, and reasonable attorney's fees.

19 (4) It is unlawful for a person to (a) sell or distribute
20 cigarettes for sale in this state or (b) acquire, hold, own,
21 possess, transport, import, or cause to be imported cigarettes that
22 the person knows or should know are intended for distribution or
23 sale in the state in violation of subsection ~~(3)~~ (4) of section
24 69-2706. A violation of this section is a Class III misdemeanor.

25 (5) If a court determines that a person has violated any
26 portion of sections 69-2704 to 69-2710, the court shall order the
27 payment of any profits, gains, gross receipts, or other benefits

1 from the violation to be remitted to the State Treasurer for
2 distribution in accordance with Article VII, section 5, of the
3 Constitution of Nebraska. Unless otherwise expressly provided, the
4 remedies or penalties provided by sections 69-2704 to 69-2710 are
5 cumulative to each other and to the remedies or penalties available
6 under all applicable laws of this state.

7 Sec. 28. Original sections 69-2706, 69-2707, 69-2708, and
8 69-2709, Reissue Revised Statutes of Nebraska, are repealed.

9 2. On page 1, line 1, after the semicolon insert "to
10 amend sections 69-2706, 69-2707, 69-2708, and 69-2709, Reissue
11 Revised Statutes of Nebraska;"; in line 3 after the first
12 semicolon insert "to change provisions relating to tobacco product
13 manufacturers; to harmonize provisions;"; and in line 4 after the
14 semicolon insert "to repeal the original sections;".

15 3. On page 9, line 17, strike "24" and insert "29"; in
16 line 18 strike "22, and 23" and insert "and 27" and in line 19
17 after the period insert "Sections 22, 23, 24, 25, 26, and 28 of
18 this act become operative three calendar months after adjournment
19 of this legislative session.".

20 4. Renumber the remaining sections accordingly.