

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 501**

Introduced by Mines, 18

Read first time January 17, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to cigarette tax; to amend sections 59-1520,  
2 59-1523, 77-2601, 77-2602.01, 77-2602.03, 77-2603,  
3 77-2604, 77-2605, 77-2607, 77-2608, 77-2610, 77-2612,  
4 77-2613, 77-2614, 77-2615, 77-2615.01, 77-2620, and  
5 77-2621, Reissue Revised Statutes of Nebraska; to name  
6 the act; to provide for reporting and collection of tax  
7 by direct sellers; to prohibit delivery of cigarettes  
8 as prescribed; to harmonize provisions; to provide  
9 severability; and to repeal the original sections.  
10 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 59-1520, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           59-1520 It is unlawful for any person to:

4           (1) Sell or distribute in this state, acquire, hold,  
5 own, possess, or transport for sale or distribution in this state,  
6 or import or cause to be imported into this state for sale or  
7 distribution in this state, any cigarettes that do not comply  
8 with all requirements imposed by or pursuant to federal law and  
9 regulations, including, but not limited to:

10           (a) The filing of ingredients lists pursuant to section  
11 7 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.  
12 1335a, as such section existed on May 1, 2001;

13           (b) The permanent imprinting on the primary packaging of  
14 the precise package warning labels in the precise format specified  
15 in section 4 of the Federal Cigarette Labeling and Advertising Act,  
16 15 U.S.C. 1333, as such section existed on May 1, 2001;

17           (c) The rotation of label statements pursuant to section  
18 4(c) of the Federal Cigarette Labeling and Advertising Act, 15  
19 U.S.C. 1333(c), as such section existed on May 1, 2001;

20           (d) The restrictions on the importation, transfer, and  
21 sale of previously exported tobacco products pursuant to section  
22 9302 of Public Law 105-33, the Balanced Budget Act of 1997, as such  
23 section existed on May 1, 2001;

24           (e) The requirements of Title IV of Public Law 106-476,  
25 the Imported Cigarette Compliance Act of 2000, as the act existed

1 on May 1, 2001; and

2 (f) The federal trademark and copyright laws;

3 (2) Alter a package of cigarettes, prior to sale or  
4 distribution to the ultimate consumer, so as to remove, conceal, or  
5 obscure:

6 (a) Any statement, label, stamp, sticker, or notice  
7 indicating that the manufacturer did not intend the cigarettes to  
8 be sold, distributed, or used in the United States, including,  
9 but not limited to, labels stating "For Export Only", "U.S. Tax  
10 Exempt", "For Use Outside U.S.", or similar wording; or

11 (b) Any health warning that is not the precise package  
12 warning statement in the precise format specified in section 4 of  
13 the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333,  
14 as such section existed on May 1, 2001;

15 (3) Affix any tax stamps or meter impression required  
16 pursuant to ~~sections 77-2601 to 77-2615~~ the Cigarette Tax Act  
17 to the package of any cigarettes that does not comply with the  
18 requirements of subdivision (1) of this section or that is altered  
19 in violation of subdivision (2) of this section; and

20 (4) Import or reimport into the United States for sale or  
21 distribution under any trade name, trade dress, or trademark that  
22 is the same as, or is confusingly similar to, any trade name, trade  
23 dress, or trademark used for cigarettes manufactured in the United  
24 States for sale or distribution in the United States.

25 Sec. 2. Section 59-1523, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           59-1523 (1) The cigarette tax division of the Tax  
3 Commissioner may, after notice and hearing, revoke or suspend  
4 for any violation of section 59-1520 the license or licenses of any  
5 person licensed under the provisions of sections 28-1418 to 28-1429  
6 or ~~sections 77-2601 to 77-2622.~~ the Cigarette Tax Act.

7           (2) Cigarettes that are acquired, held, owned, possessed,  
8 transported, sold, or distributed in or imported into this state in  
9 violation of section 59-1520 are declared to be contraband goods  
10 and are subject to seizure and forfeiture. Any cigarettes so seized  
11 and forfeited shall be destroyed. Such cigarettes shall be declared  
12 to be contraband goods whether the violation of section 59-1520 is  
13 knowing or otherwise.

14           Sec. 3. Section 77-2601, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           77-2601 (1) Sections 77-2601 to 77-2622 and sections 19  
17 and 20 of this act shall be known and may be cited as the Cigarette  
18 Tax Act.

19           (2) For purposes of sections 77-2601 to 77-2615, the  
20 Cigarette Tax Act:

21           ~~(1)~~ (a) Person means and includes every individual, firm,  
22 association, joint-stock company, partnership, limited liability  
23 company, syndicate, and corporation;

24           ~~(2)~~ (b) Wholesale dealer means a person who sells  
25 cigarettes to licensed retail dealers other than branch stores

1 operated by or connected with such wholesale dealer for purposes of  
2 resale and is licensed under section 28-1423;

3 ~~(3)~~ (c) Retail dealer includes every person other than  
4 a wholesale dealer engaged in the business of selling cigarettes  
5 in this state irrespective of quantity, amount, or number of sales  
6 thereof;

7 ~~(4)~~ (d) Tax Commissioner means the Tax Commissioner of  
8 the State of Nebraska;

9 ~~(5)~~ (e) Cigarette means any roll for smoking made wholly  
10 or in part of tobacco irrespective of size or shape and whether or  
11 not such tobacco is flavored, adulterated, or mixed with any other  
12 ingredient, the wrapper or cover of which is made of paper or any  
13 other material excepting tobacco; and

14 ~~(6)~~ (f) Consumer means any person, firm, association,  
15 partnership, limited liability company, joint-stock company,  
16 syndicate, or corporation not having a license to sell cigarettes;  
17 and -

18 (g) Direct seller means any person receiving orders over  
19 the Internet, mail order, or other means and delivering cigarettes  
20 or contracting another or otherwise causing cigarettes to be  
21 delivered to a consumer located in this state.

22 Sec. 4. Section 77-2602.01, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 77-2602.01 The impact of the tax levied by ~~Chapter 77,~~  
25 ~~article 26,~~ the Cigarette Tax Act, is hereby declared to be on the

1 vendee, user, consumer, or possessor of cigarettes in this state,  
2 and when such tax is paid by any other person, such payment shall  
3 be construed as an advance payment, and shall thereafter be added  
4 to the price of the cigarettes and recovered from the ultimate  
5 consumer or user. In making sales of cigarettes in this state,  
6 a wholesaler, direct seller, or jobber may separately state and  
7 show upon the invoice covering such sale the amount of the tax on  
8 cigarettes sold. The tax shall be evidenced by appropriate stamps  
9 attached to each package of cigarettes sold, and the tax shall  
10 be collected by the retailer or direct seller from the user or  
11 consumer. The provisions of this section shall in no way affect the  
12 method of collection of such tax on cigarettes as now provided by  
13 existing law.

14           Sec. 5. Section 77-2602.03, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           77-2602.03 The increase in the tax shall apply to  
17 all unused stamps, meter impressions, and packages of stamped  
18 cigarettes owned by cigarette wholesalers or direct sellers at  
19 12:01 a.m. on the day the increase becomes operative. On the date  
20 any change in the tax takes effect, each cigarette wholesaler  
21 and direct seller shall take an inventory of all unused stamps,  
22 meter impressions, and packages of stamped cigarettes owned by the  
23 cigarette wholesaler or direct seller at 12:01 a.m. The additional  
24 tax shall be remitted with the return for the last month preceding  
25 the date any change in the tax takes effect. The Tax Commissioner

1 shall credit to each wholesaler or direct seller an amount equal  
2 to the additional tax on two weeks of such wholesaler's or direct  
3 seller's average purchases of tax stamps.

4 Sec. 6. Section 77-2603, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 77-2603 (1) The tax, as levied in section 77-2602, shall  
7 be paid and the stamps or cigarette tax meter impressions shall be  
8 affixed or printed with a cigarette tax meter by the (a) person  
9 having possession and ownership of such cigarettes after the same  
10 shall have come to rest in this state and intended to be sold  
11 or given away in this state or (b) direct seller delivering,  
12 contracting for delivery, or otherwise causing cigarettes to be  
13 shipped to a consumer located in this state. Nothing in ~~sections~~  
14 ~~77-2601 to 77-2615~~ the Cigarette Tax Act shall be construed to  
15 require a wholesale dealer to fix the retail price or to require  
16 any retailer or direct seller to sell at any particular price.  
17 Subject to such rules and regulations as the Tax Commissioner shall  
18 prescribe, tax meter machines may be used when approved by the  
19 Tax Commissioner to affix a suitable stamp or impression on each  
20 package of cigarettes.

21 (2) Before any wholesale dealer or direct seller is  
22 issued a permit to affix stamps or cigarette tax meter impressions,  
23 the wholesale dealer or direct seller shall make application to  
24 the Tax Commissioner on a form provided by the Tax Commissioner  
25 to engage in such activity and, if approval is given by the Tax

1 Commissioner, the ~~dealer~~ wholesale dealer or direct seller shall  
2 furnish a corporate surety bond, conditioned to faithfully comply  
3 with all the requirements of ~~sections 77-2601 to 77-2615,~~ the act,  
4 in a sum not less than one thousand dollars. Nothing in ~~sections~~  
5 ~~77-2601 to 77-2615~~ the act shall prevent the Tax Commissioner  
6 from affixing the stamps or meter impressions in lieu of the  
7 provisions for affixing stamps and meter impressions by wholesalers  
8 as determined by such rules and regulations adopted by the Tax  
9 Commissioner.

10 (3) No direct seller shall receive orders for cigarettes  
11 to be delivered to a customer located in this state or otherwise  
12 cause cigarettes to be delivered to a customer located in this  
13 state unless the direct seller has a current cigarette retailers  
14 license obtained from the Tax Commissioner under section 77-2612.

15 Sec. 7. Section 77-2604, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 77-2604 Every wholesale dealer, and retail dealer, and  
18 direct seller who is subject to ~~sections 77-2601 to 77-2622~~ the  
19 Cigarette Tax Act shall make and file with the Tax Commissioner, on  
20 or before the tenth day of each calendar month on blanks furnished  
21 by the Tax Commissioner, true, correct, and sworn reports covering,  
22 for the last preceding calendar month, the number of cigarettes  
23 purchased, from whom purchased, the specific kinds and brands  
24 thereof, the manufacturer, if known, and such other matters and in  
25 such detail as the Tax Commissioner may require.



1           Sec. 8. Section 77-2605, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-2605 The books, records, papers, receipts, invoices  
4 and supply of cigarettes of any person, including wholesale  
5 dealers, and retail dealers, direct sellers, and persons  
6 transporting cigarettes, subject to the provisions of ~~sections~~  
7 ~~77-2601 to 77-2615~~ the Cigarette Tax Act which pertain to the  
8 purchase or sale of cigarettes shall be subject to inspection at  
9 any time during ordinary business hours by the Tax Commissioner or  
10 his or her representatives.

11           Sec. 9. Section 77-2607, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           77-2607 Each wholesale dealer may set aside such portion  
14 of his or her stock of cigarettes as is not intended to be sold  
15 or given away in this state and it will not be necessary to affix  
16 the above-mentioned stamps or tax impressions thereon, except ~~+~~  
17 ~~PROVIDED,~~ that if said the stock is not disposed of and out of  
18 the possession of the said wholesale dealer within thirty days  
19 of the date of receipt thereof, the said cigarettes, packages or  
20 pieces, must immediately be stamped as required by the provisions  
21 of ~~sections 77-2601 to 77-2615.~~ the Cigarette Tax Act. Each  
22 wholesale dealer shall immediately mark in ink on each unopened  
23 box, carton, or other container of such cigarettes, received and  
24 the date of receipt and shall affix his or her signature thereto.  
25 Within forty-eight hours after such box, carton, or other container

1 is opened he or she must immediately affix such stamps or tax  
2 impressions to each package therein and cancel the stamps affixed  
3 thereto in the manner herein designated.

4 Sec. 10. Section 77-2608, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 77-2608 The Tax Commissioner shall prepare and have  
7 suitable stamps for use on each kind of piece or package  
8 of cigarettes, except when cigarette tax meter impressions are  
9 affixed. Requisition for the preparation of such stamps shall  
10 be made through the materiel division of the Department of  
11 Administrative Services as other state supplies are requisitioned,  
12 and the Tax Commissioner and his or her bondsperson shall be liable  
13 for the value of all such stamps delivered to him or her. The  
14 Auditor of Public Accounts shall audit annually or as often as  
15 the auditor deems advisable the records of the Tax Commissioner  
16 with respect to the money received from the sale of stamps and as  
17 revenue from tax meter impressions for the purpose of determining  
18 the accuracy and correctness of the same. The Tax Commissioner  
19 shall sell the stamps only to licensed wholesale dealers, ~~as~~  
20 ~~defined in section 77-2601,~~ and direct sellers and he or she shall  
21 keep an accurate record of all stamps coming into and leaving  
22 his or her hands. Such stamps shall be sold and accounted for at  
23 the face value thereof, except that the Tax Commissioner may, by  
24 rule and regulation certified to the State Treasurer, authorize  
25 the sale thereof to wholesale dealers and direct sellers in this

1 state or outside of this state at a discount of one and eighty-five  
2 hundredths percent of such face value of the tax as a commission  
3 for affixing and canceling such stamps, except that for stamps  
4 sold beginning October 1, 2002, through September 30, 2004, the  
5 authorized commission for affixing and canceling such stamps shall  
6 be one and seven-tenths percent of the face value of the tax.  
7 Any wholesale dealer and direct seller using a tax meter machine  
8 shall be entitled to the same discount as allowed a wholesale  
9 dealer or direct seller for affixing and canceling the stamps.  
10 The money received by the Tax Commissioner from the sale of the  
11 stamps and as revenue from such tax meter impressions shall be  
12 deposited by him or her daily with the State Treasurer who shall  
13 credit such money as provided in section 77-2602. Upon proof by  
14 the Tax Commissioner that he or she can affix such stamps or meter  
15 impressions, warehouse and distribute such cigarettes, and collect  
16 such revenue at a cost less than any discount allowed to wholesale  
17 dealers and direct sellers pursuant to this section, he or she may  
18 then proceed to affix the stamps himself or herself after giving  
19 the wholesale dealers and direct sellers sixty days' notice and  
20 purchasing all equipment used by them for the purpose of affixing  
21 such stamps or meter impressions at a fair market value.

22 Sec. 11. Section 77-2610, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 77-2610 Upon the written request of the original  
25 purchaser thereof and upon the return of any unused stamps, the Tax

1 Commissioner shall redeem such stamps. The Tax Commissioner shall  
2 prepare a voucher showing the amount of such returned unused stamps  
3 and shall cause to be drawn a warrant upon the State Treasurer  
4 for such amount in favor of the person returning such unused  
5 stamps. The refunds shall be paid from the various funds named in  
6 section 77-2602 in the same proportions as the proceeds of the tax  
7 are allocated. By the terms of ~~sections 77-2601 to 77-2615,~~ the  
8 Cigarette Tax Act, the Tax Commissioner and the State Treasurer  
9 are specifically authorized to adjust all errors in payments for  
10 unused stamps.

11           Sec. 12. Section 77-2612, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           77-2612 (1) The Tax Commissioner may employ, with  
14 the advice and consent of the Governor, a sufficient number  
15 of inspectors, clerks, assistants, and agents to enforce the  
16 provisions of ~~sections 77-2601 to 77-2622,~~ the Cigarette Tax Act,  
17 including the collection of all stamp taxes and all revenue from  
18 cigarette tax meters. In such enforcement, the Tax Commissioner may  
19 call to his or her aid the Attorney General, any county attorney,  
20 any sheriff, any deputy sheriff, or any other peace officer. The  
21 compensation of all persons employed shall be fixed by the Governor  
22 and shall be paid from the revenue derived under ~~sections 77-2601~~  
23 ~~to 77-2622.~~ the act. The expenses of administering ~~sections 77-2601~~  
24 ~~to 77-2622,~~ the act, including necessary assistants, clerical help,  
25 cost of enforcement, cost of stamps, and incidental expenses, when

1 approved by the Tax Commissioner, shall be paid by warrants, issued  
2 against the General Fund, but such warrants shall not exceed four  
3 percent of the funds collected under ~~sections 77-2601 to 77-2622,~~  
4 the act, such expenses in each instance to be approved by the Tax  
5 Commissioner.

6 (2) The Tax Commissioner may adopt and promulgate rules  
7 and regulations which are consistent with the provisions of  
8 ~~sections 77-2601 to 77-2622~~ the act and their proper enforcement.

9 (3) Each wholesale dealer and direct seller shall  
10 annually apply to the Tax Commissioner, upon forms to be furnished  
11 by the Tax Commissioner for a permit to use the tax meter machines,  
12 as set forth in section 77-2603, or to purchase such stamps as  
13 provided in section 77-2608, or both. The permit shall expire on  
14 December 31 each year. Each wholesale dealer and direct seller  
15 shall furnish with such application evidence satisfactory to the  
16 Tax Commissioner showing that ~~he or she~~ the wholesale dealer has  
17 obtained a license as a wholesale dealer in accordance with section  
18 28-1423 or the direct seller has obtained a cigarette retailers  
19 license in accordance with this section. He or she shall accompany  
20 the application with a fee of five hundred dollars to be placed  
21 in the General Fund if the permit is granted and otherwise to be  
22 returned to the applicant. If the applicant is an individual, the  
23 application shall include the applicant's social security number.  
24 If the application is approved and the bond referred to in section  
25 77-2603 is given and approved, if such bond is required under

1 section 77-2603, the Tax Commissioner shall issue such license  
2 which shall be conspicuously posted in the place of business of  
3 such wholesale dealer or direct seller.

4 (4) Before any direct seller receives orders for  
5 cigarettes to be delivered to a customer in this state or  
6 causes cigarettes to be shipped to a consumer in this state, the  
7 direct seller shall obtain a cigarette retailer's license. Such  
8 direct seller shall annually apply for the license with the Tax  
9 Commissioner upon forms provided by the Tax Commissioner stating  
10 the name of the person for whom such license is desired and the  
11 location of the place of business. Such application shall be  
12 accompanied by a twenty-five dollar license fee to be deposited  
13 in the General Fund if the applicant is approved and otherwise  
14 returned to the applicant. The license shall expire at the close of  
15 business on December 31 each year.

16 Sec. 13. Section 77-2613, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 77-2613 The State Treasurer shall place all sums of money  
19 received under ~~sections 77-2601 to 77-2615~~ the Cigarette Tax Act as  
20 provided in section 77-2602, and from time to time, upon voucher  
21 approved by the Tax Commissioner, disburse such sum or sums as may  
22 be necessary to administer and carry out the provisions of ~~sections~~  
23 ~~77-2601 to 77-2615~~ the act relating to the collection of ~~said the~~  
24 tax, subject to the limitations therein provided.

25 Sec. 14. Section 77-2614, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-2614 Any person who, with intent to defraud the state,  
3 shall make, alter, forge, or counterfeit any license, permit, stamp  
4 or cigarette tax meter impression provided for in ~~sections 77-2601~~  
5 ~~to 77-2615,~~ the Cigarette Tax Act, or who shall have in his or her  
6 possession any forged, counterfeited, spurious or altered license,  
7 permit, stamp or cigarette tax meter impression, with intent to use  
8 the same, knowing or having reasonable grounds to believe the same  
9 to be such, or shall have in his or her possession one or more  
10 cigarette stamps or cigarette tax meter impressions which he or she  
11 knows have been removed from the pieces or packages of cigarettes  
12 to which they were affixed, or who affixes to any piece or package  
13 of cigarettes a stamp or cigarette tax meter impression which he  
14 or she knows has been removed from any other piece or package of  
15 cigarettes shall be deemed guilty of a Class IV felony.

16           Sec. 15. Section 77-2615, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           77-2615 Any person who shall violate any of the  
19 provisions of ~~sections 77-2601 to 77-2615,~~ the Cigarette Tax Act,  
20 or any rule or regulation lawfully made in accordance therewith,  
21 for which a specific penalty is not otherwise provided or who  
22 shall, except as permitted by ~~sections 77-2601 to 77-2615,~~ the act,  
23 sell, deliver, or accept, with intent to evade the provisions of  
24 ~~sections 77-2601 to 77-2615,~~ the act, any cigarettes upon which  
25 the tax provided by section 77-2602 has not been paid shall be

1 deemed guilty of a Class IV felony. Where any person is found to  
2 have in his or her possession more than ten unstamped packages of  
3 cigarettes, except as permitted under section 77-2607, it shall be  
4 prima facie evidence of attempt to evade the provisions of ~~sections~~  
5 ~~77-2601 to 77-2615.~~ the act.

6 Sec. 16. Section 77-2615.01, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 77-2615.01 (1) In addition to the provisions of sections  
9 77-2615 and 77-2622, for any violation of ~~sections 77-2601 to~~  
10 ~~77-2622~~ the Cigarette Tax Act or the rules and regulations adopted  
11 and promulgated under ~~such sections,~~ the act, the Tax Commissioner  
12 may:

13 (a) After notice and hearing, suspend or revoke the  
14 licenses of any person licensed under sections 28-1420 to 28-1429  
15 or ~~77-2601 to 77-2622.~~ the act. Notice of hearing shall be given as  
16 provided in the Administrative Procedure Act; and

17 (b) Impose an administrative penalty not to exceed one  
18 thousand dollars for any violation.

19 (2) Any person whose license has been so revoked may  
20 apply at the expiration of sixty days for a reinstatement of his  
21 or her license. The license may be reinstated if it appears to  
22 the satisfaction of the Tax Commissioner that the licensee will  
23 comply with ~~sections 77-2601 to 77-2622~~ the act and the rules and  
24 regulations adopted and promulgated under such sections.

25 (3) No person whose license has been suspended or revoked



1 shall sell cigarettes or permit cigarettes to be sold during the  
2 period of suspension or revocation on the premises occupied by  
3 him or her. No disciplinary proceeding or action shall be barred  
4 or abated by the expiration, transfer, surrender, continuance,  
5 renewal, or extension of any license issued under sections 28-1420  
6 to 28-1429 or ~~77-2601 to 77-2622~~, the act.

7 (4) Any person aggrieved by any decision, order, or  
8 finding of the Tax Commissioner may appeal the decision, order,  
9 or finding, and the appeal shall be in accordance with the  
10 Administrative Procedure Act.

11 Sec. 17. Section 77-2620, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 77-2620 All cigarettes subject to the tax as imposed by  
14 section 77-2602, to which stamps have not been affixed or tax  
15 impressions made, as required by ~~sections 77-2601 to 77-2615~~, the  
16 Cigarette Tax Act, except as permitted by the provisions of section  
17 77-2607, when found in any place in this state are declared to be  
18 contraband goods and may be seized by the Tax Commissioner, by the  
19 Tax Commissioner's agents or employees, or by any peace officer of  
20 this state, when directed by the Tax Commissioner to do so, without  
21 a warrant. The Tax Commissioner may, upon satisfactory proof,  
22 direct the return of any confiscated cigarettes when he or she  
23 has reason to believe that the owner thereof has not willfully or  
24 intentionally evaded any tax imposed under section 77-2602. The Tax  
25 Commissioner may, in the absence of proof of good faith, confiscate

1 any unstamped cigarettes or cigarettes without tax impressions  
2 found in the possession of any person, except as permitted by  
3 section 77-2607, and may within a reasonable time thereafter, by a  
4 public notice of at least fifteen days before the day of sale, sell  
5 such confiscated cigarettes at public sale and pay the proceeds  
6 into the state treasury. The State Treasurer shall credit the  
7 proceeds as provided in section 77-2602. Any purchaser of such  
8 cigarettes shall be required to purchase and affix the stamps  
9 or make the tax impressions, as required by ~~sections 77-2601 to~~  
10 ~~77-2615.~~ the act. The seizure and sale of any cigarettes under this  
11 section shall not relieve any person from a fine, imprisonment, or  
12 other penalty for violation of ~~sections 77-2601 to 77-2615.~~ the  
13 act. The Tax Commissioner, his or her agents and employees, and  
14 any peace officer of this state, when directed so to do, shall  
15 not in any way be responsible in any court for the seizure or the  
16 confiscation of any unstamped packages of cigarettes or cigarettes  
17 without tax impressions.

18           Sec. 18. Section 77-2621, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           77-2621 (1) Any common carrier of merchandise owning  
21 or operating any railroad, express company, bus, truck, or other  
22 transportation line or routes for the transportation of merchandise  
23 in the State of Nebraska, upon application and filing of a bond  
24 in form and penalty and with such sureties as may be approved by  
25 the Tax Commissioner, may be designated as a carrier of unstamped

1 cigarettes from any bonded warehouse to a licensed wholesale  
2 tobacco dealer in the State of Nebraska, and a carrier's permit  
3 shall be issued by the Tax Commissioner upon receipt of a fee  
4 of ten dollars. One of the conditions of such bond shall be that  
5 the bonded carrier shall be liable to the State of Nebraska in an  
6 amount equal to the tax due on the quantity of cigarettes consigned  
7 to the licensed tobacco dealer.

8 (2) Unstamped cigarettes shall not be delivered to any  
9 person that is not a licensed wholesale dealer in the state.

10 Sec. 19. (1) No direct seller shall accept orders from  
11 a customer in this state, or deliver, contract for delivery, or  
12 otherwise cause cigarettes to be shipped to a customer in this  
13 state unless the direct seller receives certification that the  
14 purchaser is at least nineteen years of age and the cigarettes are  
15 not for persons too young to purchase cigarettes in this state.  
16 The customer shall certify that he or she knows that the sale of  
17 cigarettes to persons under nineteen years of age is illegal.

18 (2) All cigarettes to be shipped or delivered to a  
19 customer in this state shall be stamped and the tax imposed by  
20 section 77-2602 paid by the direct seller.

21 (3) All packages containing cigarettes to be shipped or  
22 delivered to a customer in this state shall be marked with the  
23 clearly-printed word CIGARETTES on all sides of the package.

24 Sec. 20. (1) No common carrier shall deliver cigarettes  
25 to a customer in this state unless the shipper is a direct

1 seller licensed by the Department of Revenue to sell cigarettes in  
2 this state under section 77-2612 and licensed to stamp cigarettes  
3 for sale in this state under section 77-2603. The Department of  
4 Revenue shall provide the United States Postal Service, common  
5 carriers, and other delivery services, including any person that  
6 makes deliveries into or within this state as part of a commercial  
7 transaction, a list of persons authorized to make direct sales  
8 of cigarettes in this state. The department shall update and  
9 redistribute this list monthly and may distribute this list through  
10 any means, including posting the list and subsequent updates on an  
11 access-restricted web site. Ten days prior to removing a direct  
12 seller from the list, the department shall send notice to that  
13 person, by mail. At the discretion of the Tax Commissioner the  
14 list may be provided to other persons for purposes of enforcing the  
15 Cigarette Tax Act.

16 (2) A common carrier who delivers a package that contains  
17 cigarettes for a person that is not on the list of authorized  
18 direct sellers is not in violation of this section, if such common  
19 carrier does not know that the package contains cigarettes or if  
20 the delivery is made to a wholesale dealer. The common carrier has  
21 no obligation to inspect any package to determine whether or not it  
22 contains tobacco products or determine if the list provided by the  
23 department under this section is complete and accurate.

24 (3) No common carrier or other delivery service or any  
25 officer or employee of any common carrier or other delivery service

1 shall be subject to criminal or civil penalties for (a) not making  
2 deliveries of cigarettes on behalf of any person not on the list  
3 provided by the Department of Revenue, (b) not making deliveries  
4 of cigarettes in the state, or (c) collecting an additional fee  
5 from customers that order cigarettes to cover any additional costs  
6 incurred in complying with this section.

7           Sec. 21. If any section in this act or any part of any  
8 section is declared invalid or unconstitutional, the declaration  
9 shall not affect the validity or constitutionality of the remaining  
10 portions.

11           Sec. 22. Original sections 59-1520, 59-1523, 77-2601,  
12 77-2602.01, 77-2602.03, 77-2603, 77-2604, 77-2605, 77-2607,  
13 77-2608, 77-2610, 77-2612, 77-2613, 77-2614, 77-2615, 77-2615.01,  
14 77-2620, and 77-2621, Reissue Revised Statutes of Nebraska, are  
15 repealed.