

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 580

Introduced by Preister, 5

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to tobacco; to amend sections 69-2706,
2 69-2707, and 69-2709, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to tobacco
4 product manufacturers; to harmonize provisions; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 69-2706, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 69-2706 (1)(a) Every tobacco product manufacturer whose
4 cigarettes are sold in this state, whether directly or through a
5 distributor, retailer, or similar intermediary or intermediaries,
6 shall execute and deliver on a form prescribed by the Tax
7 Commissioner a certification to the Tax Commissioner and the
8 Attorney General no later than the thirtieth day of April
9 each year, certifying under penalty of perjury that, as of the
10 date of such certification, such tobacco product manufacturer
11 either is a participating manufacturer or is in full compliance
12 with subdivision (2) of section 69-2703, including all quarterly
13 installment payments required by such rules and regulations as may
14 be adopted and promulgated by the Tax Commissioner.

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

21 (c) A nonparticipating manufacturer shall include in its
22 certification (i) a list of all of its brand families and the
23 number of units sold for each brand family that were sold in the
24 state during the preceding calendar year and (ii) a list of all of
25 its brand families that have been sold in the state at any time

1 during the current calendar year (A) indicating by an asterisk any
2 brand family sold in the state during the preceding or current
3 calendar year that is no longer being sold in the state as of the
4 date of such certification and (B) identifying by name and address
5 any other manufacturer of such brand families in the preceding
6 calendar year. The nonparticipating manufacturer shall update such
7 list thirty calendar days prior to any addition to or modification
8 of its brand families by executing and delivering a supplemental
9 certification to the Tax Commissioner and the Attorney General.

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

12 (i) That such nonparticipating manufacturer is registered
13 to do business in the state or has appointed an agent for service
14 of process and provided notice thereof as required by section
15 69-2707;

16 (ii) That such nonparticipating manufacturer has
17 established and continues to maintain a qualified escrow fund
18 pursuant to a qualified escrow agreement that has been reviewed and
19 approved by the Attorney General or has been submitted for review
20 by the Attorney General;

21 (iii) That such nonparticipating manufacturer is in full
22 compliance with subdivision (2) of section 69-2703 and this section
23 and any rules and regulations adopted and promulgated pursuant
24 thereto; and

25 (iv) (A) The name, address, and telephone number of

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

16 (e) A tobacco product manufacturer shall not include a
17 brand family in its certification unless (i) in the case of a
18 participating manufacturer, the participating manufacturer affirms
19 that the brand family is to be deemed to be its cigarettes for
20 purposes of calculating its payments under the Master Settlement
21 Agreement for the relevant year in the volume and shares determined
22 pursuant to the Master Settlement Agreement and (ii) in the case of
23 a nonparticipating manufacturer, the nonparticipating manufacturer
24 affirms that the brand family is to be deemed to be its cigarettes
25 for purposes of subdivision (2) of section 69-2703. Nothing in

1 this section shall be construed as limiting or otherwise affecting
2 the state's right to maintain that a brand family constitutes
3 cigarettes of a different tobacco product manufacturer for purposes
4 of calculating payments under the Master Settlement Agreement or
5 for purposes of section 69-2703.

6 (f) Tobacco product manufacturers shall maintain all
7 invoices and documentation of sales and other such information
8 relied upon for such certification for a period of five years
9 unless otherwise required by law to maintain them for a greater
10 period of time.

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

17 (a) The Tax Commissioner shall not include or retain in
18 such directory the name or brand families of any tobacco product
19 manufacturer that has failed to provide the required certification
20 or whose certification the commissioner determines is not in
21 compliance with subdivisions (1)(c) and (d) of this section unless
22 the Tax Commissioner has determined that such violation has been
23 cured to his or her satisfaction;

24 (b) Neither a tobacco product manufacturer nor brand
25 family shall be included or retained in the directory if the

1 Attorney General recommends and notifies the Tax Commissioner who
2 concludes, in the case of a nonparticipating manufacturer, that
3 (i) any escrow payment required pursuant to subdivision (2) of
4 section 69-2703 for any period for any brand family, whether or not
5 listed by such nonparticipating manufacturer, has not been fully
6 paid into a qualified escrow fund governed by a qualified escrow
7 agreement that has been approved by the Attorney General or (ii)
8 any outstanding final judgment, including interest thereon, for
9 violations of section 69-2703 has not been fully satisfied for such
10 brand family and such manufacturer;

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

18 (d) The Tax Commissioner shall transmit by email or other
19 practicable means to each stamping agent notice of any removal
20 from the directory of any tobacco product manufacturer or brand
21 family. Unless otherwise provided by agreement between the stamping
22 agent and a tobacco product manufacturer, the stamping agent shall
23 be entitled to a refund from a tobacco product manufacturer for
24 any money paid by the stamping agent to the tobacco product
25 manufacturer for any cigarettes of the tobacco product manufacturer

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

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

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

18 ~~(3)~~ (4) It shall be unlawful for any person (a) to affix
19 a Nebraska stamp to a package or other container of cigarettes
20 of a tobacco product manufacturer or brand family not included in
21 the directory or (b) to sell, offer, or possess for sale in this
22 state cigarettes of a tobacco product manufacturer or brand family
23 intended for sale in this state not included in the directory.

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

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

16 (2) The nonparticipating manufacturer shall provide
17 notice to the Tax Commissioner and Attorney General thirty calendar
18 days prior to termination of the authority of an agent and shall
19 further provide proof to the satisfaction of the Attorney General
20 of the appointment of a new agent no less than five calendar
21 days prior to the termination of an existing agent appointment.
22 In the event an agent terminates an agency appointment, the
23 nonparticipating manufacturer shall notify the Tax Commissioner and
24 Attorney General of the termination within five calendar days and
25 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. 3. Section 69-2709, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 69-2709 (1) In addition to or in lieu of any other civil
13 or criminal remedy provided by law, upon a determination that a
14 stamping agent has violated subsection ~~(3)~~ (4) of section 69-2706
15 or any rule or regulation adopted and promulgated pursuant thereto,
16 the Tax Commissioner may revoke or suspend the license of any
17 stamping agent in the manner provided by section 77-2615.01. For
18 each violation hereof, the Tax Commissioner may also impose a civil
19 penalty in an amount not to exceed the greater of five hundred
20 percent of the retail value of the cigarettes or five thousand
21 dollars upon a determination of violation of subsection ~~(3)~~ (4) of
22 section 69-2706 or any rules or regulations adopted and promulgated
23 pursuant thereto. Such penalty shall be imposed in the manner
24 provided by section 77-2615.01.

25 (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

1 portion of sections 69-2704 to 69-2710, the court shall order the
2 payment of any profits, gains, gross receipts, or other benefits
3 from the violation to the General Fund. Unless otherwise expressly
4 provided, the remedies or penalties provided by sections 69-2704
5 to 69-2710 are cumulative with each other and to the remedies or
6 penalties available under all other laws of this state.

7 Sec. 4. Original sections 69-2706, 69-2707, and 69-2709,
8 Reissue Revised Statutes of Nebraska, are repealed.