

AMENDMENTS TO LB 590

Introduced by Revenue

1 1. Strike the original sections and insert the following
2 sections:

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

5 59-1520 It is unlawful for any person to:

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

12 (a) The filing of ingredients lists pursuant to ~~section~~
13 ~~7 of~~ the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.
14 1335a, as such section existed on ~~May 1, 2001~~, January 1, 2011;

15 (b) The permanent imprinting on the primary packaging of
16 the precise package warning labels in the precise format specified
17 in ~~section 4 of~~ the Federal Cigarette Labeling and Advertising Act,
18 15 U.S.C. 1333, as such section existed on ~~May 1, 2001~~, January 1,
19 2011;

20 (c) The rotation of label statements pursuant to ~~section~~
21 ~~4(e) of~~ the Federal Cigarette Labeling and Advertising Act, 15
22 U.S.C. 1333(c), as such section existed on ~~May 1, 2001~~, January 1,
23 2011;

1 (d) The restrictions on the importation, transfer, and
2 sale of previously exported tobacco products pursuant to ~~section~~
3 ~~9302 of Public Law 105-33, the Balanced Budget Act of 1997,~~ as such
4 ~~section existed on May 1, 2001,~~ 19 U.S.C. 1681 et seq. and Chapter
5 52 of the Internal Revenue Code, 26 U.S.C. 5701 et seq., as such
6 sections existed on January 1, 2011; and

7 ~~(e) The requirements of Title IV of Public Law 106-476,~~
8 ~~the Imported Cigarette Compliance Act of 2000,~~ as the act existed
9 ~~on May 1, 2001; and~~

10 ~~(f)~~ (e) The federal trademark and copyright laws;

11 (2) Alter a package of cigarettes, prior to sale or
12 distribution to the ultimate consumer, so as to remove, conceal, or
13 obscure:

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

19 (b) Any health warning that is not the precise package
20 warning statement in the precise format specified in ~~section 4 of~~
21 ~~the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333,~~
22 ~~as such section existed on May 1, 2001;~~ January 1, 2011;

23 (3) Affix any ~~tax~~ stamps or meter impression required
24 pursuant to sections 77-2601 to 77-2615 and sections 21, 22, 24,
25 and 26 of this act to the package of any cigarettes that does not
26 comply with the requirements of subdivision (1) of this section or
27 that is altered in violation of subdivision (2) of this section;

1 and

2 (4) Import or reimport into the United States for sale or
3 distribution under any trade name, trade dress, or trademark that
4 is the same as, or is confusingly similar to, any trade name, trade
5 dress, or trademark used for cigarettes manufactured in the United
6 States for sale or distribution in the United States.

7 Sec. 2. Section 59-1523, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 59-1523 (1) The cigarette tax division of the Tax
10 Commissioner may, after notice and hearing, revoke or suspend
11 for any violation of section 59-1520 the license or licenses of any
12 person licensed under the provisions of sections 28-1418 to 28-1429
13 or sections 77-2601 to 77-2622 and sections 21, 22, 24, and 26 of
14 this act.

15 (2) Cigarettes that are acquired, held, owned, possessed,
16 transported, sold, or distributed in or imported into this state in
17 violation of section 59-1520 are declared to be contraband goods
18 and are subject to seizure and forfeiture. Any cigarettes so seized
19 and forfeited shall be destroyed. Such cigarettes shall be declared
20 to be contraband goods whether the violation of section 59-1520 is
21 knowing or otherwise.

22 Sec. 3. Section 69-502, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 69-502 For purposes of the Reduced Cigarette Ignition
25 Propensity Act:

26 (1) Agent means any person authorized by the Tax
27 Commissioner to purchase and affix stamps or cigarette tax meter

1 impressions on packages of cigarettes under sections 77-2601 to
2 77-2615 and sections 21, 22, 24, and 26 of this act;

3 (2) Cigarette has the same meaning as in section 77-2601;

4 (3) Consumer testing means an assessment of cigarettes
5 that is conducted by a manufacturer, or under the control or
6 direction of a manufacturer, for the purpose of evaluating consumer
7 acceptance of the cigarettes;

8 (4) Manufacturer means:

9 (a) Any entity which manufactures or otherwise produces
10 cigarettes or causes cigarettes to be manufactured or produced
11 anywhere that such manufacturer intends to sell in this state,
12 including cigarettes intended to be sold in the United States
13 through an importer;

14 (b) The first purchaser anywhere that intends to resell
15 in the United States cigarettes manufactured anywhere that the
16 original manufacturer or maker does not intend to be sold in the
17 United States; or

18 (c) Any entity that becomes a successor of an entity
19 described in subdivision (4)(a) or (b) of this section;

20 (5) Quality control and quality assurance program means
21 the laboratory procedures implemented to ensure that operator
22 bias, systematic and nonsystematic methodological errors, and
23 equipment-related problems do not affect the results of the
24 testing. Such a program ensures that the testing repeatability
25 remains within the required repeatability values stated in section
26 69-503 for all test trials used to certify cigarettes in accordance
27 with the act;

1 (6) Repeatability means the range of values within
2 which the repeat results of cigarette test trials from a single
3 laboratory will fall ninety-five percent of the time;

4 (7) Retail dealer means any person, other than a
5 manufacturer or wholesale dealer, engaged in selling cigarettes
6 or tobacco products;

7 (8) Sale means any transfer for consideration, exchange,
8 barter, gift, offer for sale, or distribution in any manner or by
9 any means whatsoever;

10 (9) Sell means to sell or to offer or agree to do the
11 same; and

12 (10) Wholesale dealer means any person, other than a
13 manufacturer, who sells cigarettes or tobacco products to retail
14 dealers or other persons for purposes of resale and any person
15 who owns, operates, or maintains one or more cigarette or tobacco
16 product vending machines in, at, or upon premises owned or occupied
17 by any other person.

18 Sec. 4. Section 69-2702, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 69-2702 For purposes of this section and section 69-2703:

21 (1) Adjusted for inflation means increased in accordance
22 with the formula for inflation adjustment set forth in Exhibit C to
23 the Master Settlement Agreement;

24 (2) Affiliate means a person that directly or indirectly
25 owns or controls, is owned or controlled by, or is under common
26 ownership or control with, another person. Solely for purposes of
27 this subdivision, the terms owns, is owned, and ownership means

1 ownership of an equity interest, or the equivalent thereof, of
2 ten percent or more, and the term person means an individual,
3 partnership, committee, association, corporation, or any other
4 organization or group of persons;

5 (3) Allocable share means allocable share as that term is
6 defined in the Master Settlement Agreement;

7 (4) Cigarette means any product that contains nicotine,
8 is intended to be burned or heated under ordinary conditions of
9 use, and consists of or contains (a) any roll of tobacco wrapped
10 in paper or in any substance not containing tobacco; (b) tobacco,
11 in any form, that is functional in the product, which, because of
12 its appearance, the type of tobacco used in the filler, or its
13 packaging and labeling, is likely to be offered to, or purchased
14 by, consumers as a cigarette; or (c) any roll of tobacco wrapped in
15 any substance containing tobacco which, because of its appearance,
16 the type of tobacco used in the filler, or its packaging and
17 labeling, is likely to be offered to, or purchased by, consumers as
18 a cigarette described in subdivision (a) of this subdivision. The
19 term cigarette includes roll-your-own tobacco (i.e., any tobacco
20 which, because of its appearance, type, packaging, or labeling is
21 suitable for use and likely to be offered to, or purchased by,
22 consumers as tobacco for making cigarettes). For purposes of this
23 definition, nine-hundredths of an ounce of roll-your-own tobacco
24 shall constitute one individual cigarette;

25 (5) Days means calendar days unless specified otherwise;

26 (6) Importer means any person in the United States
27 to whom non-federal-excise-tax-paid cigarettes manufactured in a

1 foreign country are shipped or consigned, any person who removes
2 cigarettes for sale or consumption in the United States from a
3 customs bonded manufacturing warehouse, or any person who smuggles
4 or otherwise unlawfully brings cigarettes into the United States;

5 (7) Indian country means (a) all land in this state
6 within the limits of any Indian reservation under the jurisdiction
7 of the United States, notwithstanding the issuance of any patent,
8 including rights-of-way running through the reservation, (b) all
9 dependent Indian communities within the borders of this state, and
10 (c) all Indian allotments in this state, the Indian titles to which
11 have not been extinguished, including rights-of-way running through
12 such allotments;

13 (8) Indian tribe means any Indian tribe, band, nation, or
14 other organized group or community that is recognized as eligible
15 for the special programs and services provided by the United States
16 to Indians because of their status as Indians under the laws of the
17 United States;

18 ~~(5)~~ (9) Master Settlement Agreement means the settlement
19 agreement entered into on November 23, 1998, between the state and
20 specific United States tobacco product manufacturers and related
21 documents to such agreement;

22 ~~(6)~~ (10) Qualified escrow fund means an escrow
23 arrangement with a federally or state-chartered financial
24 institution having no affiliation with any tobacco product
25 manufacturer and having assets of at least one billion dollars
26 where such arrangement requires that such financial institution
27 hold the escrowed funds' principal for the benefit of releasing

1 parties and prohibits the tobacco product manufacturer that places
2 such funds into escrow from using, accessing, or directing the
3 use of the funds' principal except as consistent with subdivision
4 (2) (b) of section 69-2703;

5 ~~(7)~~ (11) Released claims means released claims as that
6 term is defined in the Master Settlement Agreement;

7 ~~(8)~~ (12) Releasing parties means releasing parties as
8 that term is defined in the Master Settlement Agreement;

9 ~~(9)~~ (13) Tobacco product manufacturer means an entity
10 that after April 29, 1999, directly and not exclusively through any
11 affiliate:

12 (a) Manufactures cigarettes anywhere that such
13 manufacturer intends to be sold in the United States, including
14 cigarettes intended to be sold in the United States through an
15 importer (except when such importer is an original participating
16 manufacturer (as that term is defined in the Master Settlement
17 Agreement) that will be responsible for the payments under the
18 Master Settlement Agreement with respect to such cigarettes
19 as a result of the provisions of subsection II(mm) of the
20 Master Settlement Agreement and that pays the taxes specified in
21 subsection II(z) of the Master Settlement Agreement, and provided
22 that the manufacturer of such cigarettes does not market or
23 advertise such cigarettes in the United States);

24 (b) Is the first purchaser anywhere for resale in
25 the United States of cigarettes manufactured anywhere that the
26 manufacturer does not intend to be sold in the United States; or

27 (c) Becomes a successor of an entity described in

1 subdivision ~~(9)(a)~~ (13)(a) or ~~(9)(b)~~ (13)(b) of this section.

2 The term tobacco product manufacturer does not include an
3 affiliate of a tobacco product manufacturer unless such affiliate
4 itself falls within any of subdivisions ~~(9)(a)~~ (13)(a) through
5 ~~(9)(e)~~ (13)(c) of this section; and

6 ~~(10)~~ (14) Units sold means the number of individual
7 cigarettes sold in the state by the applicable tobacco product
8 manufacturer, whether directly or through a distributor, retailer,
9 or similar intermediary or intermediaries, during the year in
10 question, as measured by excise taxes collected by the state on
11 packs or roll-your-own tobacco containers. The Tax Commissioner
12 shall adopt and promulgate such rules and regulations as are
13 necessary to ascertain the amount of state excise tax paid on the
14 cigarettes of such tobacco product manufacturer for each year. in
15 packs required to bear a stamp pursuant to section 77-2603 or
16 section 24 of this act or, in the case of roll-your-own tobacco, on
17 which a tax is due pursuant to section 77-4008.

18 Sec. 5. Section 69-2703, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 69-2703 Any tobacco product manufacturer selling
21 cigarettes to consumers within the state, whether directly or
22 through a distributor, retailer, or similar intermediary or
23 intermediaries, after April 29, 1999, shall do one of the
24 following:

25 (1) Become a participating manufacturer, as that term
26 is defined in section II(jj) of the Master Settlement Agreement,
27 and generally perform its financial obligations under the Master

1 Settlement Agreement; or

2 (2) (a) Place into a qualified escrow fund ~~by April 15 of~~
3 ~~the year following the year in question~~ on a quarterly basis, no
4 later than thirty days after the end of each calendar quarter in
5 which sales are made, the following amounts, as such amounts are
6 adjusted for inflation:

7 (i) 1999: \$.0094241 per unit sold after April 29, 1999;

8 (ii) 2000: \$.0104712 per unit sold;

9 (iii) For each of the years 2001 and 2002: \$.0136125 per
10 unit sold;

11 (iv) For each of the years 2003, 2004, 2005, and 2006:
12 \$.0167539 per unit sold; and

13 (v) For the year 2007 and each year thereafter: \$.0188482
14 per unit sold.

15 (b) A tobacco product manufacturer that places funds
16 into escrow pursuant to subdivision (2) (a) of this section shall
17 receive the interest or other appreciation on such funds as earned.
18 Such funds shall be released from escrow only under the following
19 circumstances:

20 (i) To pay a judgment or settlement on any released claim
21 brought against such tobacco product manufacturer by the state or
22 any releasing party located or residing in the state. Funds shall
23 be released from escrow under this subdivision (2) (b) (i) in the
24 order in which they were placed into escrow and only to the extent
25 and at the time necessary to make payments required under such
26 judgment or settlement;

27 (ii) To the extent that a tobacco product manufacturer

1 establishes that the amount it was required to place into escrow on
2 account of units sold in the state in a particular year was greater
3 than the Master Settlement Agreement payments, as determined
4 pursuant to section IX(i) of that Agreement including after final
5 determination of all adjustments, that such manufacturer would have
6 been required to make on account of such units sold had it been
7 a participating manufacturer, the excess shall be released from
8 escrow and revert back to such tobacco product manufacturer; ~~or~~

9 (iii) To the extent not released from escrow under
10 subdivision (2)(b)(i) or (2)(b)(ii) of this section, funds shall
11 be released from escrow and revert back to such tobacco product
12 manufacturer twenty-five years after the date on which they were
13 placed into escrow; or-

14 (iv) An Indian tribe may seek release of escrow deposited
15 pursuant to this section on cigarettes sold on an Indian tribe's
16 Indian country to its tribal members pursuant to an agreement
17 entered into between the state and the Indian tribe pursuant to
18 section 22 of this act. Amounts the state collects on a bond under
19 section 9 of this act shall not be subject to release under this
20 section.

21 (c) Each tobacco product manufacturer that elects to
22 place funds into escrow pursuant to subdivision (2) of this section
23 shall annually certify to the Attorney General that it is in
24 compliance with subdivision (2) of this section. The Attorney
25 General may bring a civil action on behalf of the state against any
26 tobacco product manufacturer that fails to place into escrow the
27 funds required under this section. Any tobacco product manufacturer

1 that fails in any ~~year~~ calendar quarter to place into escrow the
2 funds required under this section shall:

3 (i) Be required within fifteen days to place such funds
4 into escrow as shall bring the manufacturer into compliance with
5 this section. The court, upon a finding of a violation of
6 subdivision (2) of this section, may impose a civil penalty in
7 an amount not to exceed five percent of the amount improperly
8 withheld from escrow per day of the violation and in a total amount
9 not to exceed one hundred percent of the original amount improperly
10 withheld from escrow;

11 (ii) In the case of a knowing violation, be required
12 within fifteen days to place such funds into escrow as shall bring
13 the manufacturer into compliance with this section. The court,
14 upon a finding of a knowing violation of subdivision (2) of this
15 section, may impose a civil penalty in an amount not to exceed
16 fifteen percent of the amount improperly withheld from escrow per
17 day of the violation and in a total amount not to exceed three
18 hundred percent of the original amount improperly withheld from
19 escrow. Such civil penalty shall be ~~disposed of~~ remitted to the
20 State Treasurer for distribution in accordance with Article VII,
21 section 5, of the Constitution of Nebraska; and

22 (iii) In the case of a second knowing violation, be
23 prohibited from selling cigarettes to consumers within the state,
24 whether directly or through a distributor, retailer, or similar
25 intermediary, for a period not to exceed two years.

26 (d) An importer shall be jointly and severally liable
27 for escrow deposits due from a nonparticipating manufacturer

1 with respect to nonparticipating manufacturer cigarettes that it
2 imported and which were then sold in this state, except as provided
3 for by an agreement entered into pursuant to section 22 of this
4 act.

5 (e) Each failure to make an ~~annual~~ quarterly deposit
6 required under this section constitutes a separate violation.

7 Sec. 6. Section 69-2705, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 69-2705 For purposes of sections 69-2704 to ~~69-2710~~
10 69-2711 and sections 9, 11, 14, 15, and 16 of this act:

11 (1) Brand family means all styles of cigarettes sold
12 under the same trademark and differentiated from one another by
13 means of additional modifiers or descriptors, including, but not
14 limited to, menthol, lights, kings, and 100s, and includes any
15 brand name, alone or in conjunction with any other word, trademark,
16 logo, symbol, motto, selling message, or recognizable pattern of
17 colors, or any other indicia of product identification identical
18 or similar to, or identifiable with, a previously known brand of
19 cigarettes;

20 (2) Cigarette has the same meaning as in section 69-2702;

21 (3) Cigarette inputs means any machinery or other
22 component parts typically used in the manufacture of cigarettes,
23 including, without limitation, tobacco whether processed or
24 unprocessed, cigarette papers and tubes, cigarette filters or
25 any component parts intended for use in the making of cigarette
26 filters, and any machinery typically used in the making of
27 cigarettes;

1 (4) Days has the same meaning as in section 69-2702;

2 (5) Directory means the directory compiled by the Tax
3 Commissioner under section 69-2706 or, in the case of references to
4 another state's directory, the directory compiled under the similar
5 law in that other state;

6 (6) Importer has the same meaning as in section 69-2702;

7 (7) Indian country has the same meaning as in section
8 69-2702;

9 (8) Indian tribe has the same meaning as in section
10 69-2702;

11 ~~(3)~~ (9) Master Settlement Agreement has the same meaning
12 as in section 69-2702;

13 ~~(4)~~ (10) Nonparticipating manufacturer means any tobacco
14 product manufacturer that is not a participating manufacturer;

15 (11) Nonparticipating manufacturer cigarettes means
16 cigarettes (a) of a brand family that is not included in the
17 certification of a participating manufacturer under subsection (1)
18 of section 69-2706, (b) that are subject to the escrow requirement
19 under subdivision (2) of section 69-2703 because the participating
20 manufacturer in whose certification the brand family is included is
21 not generally performing its financial obligations under the Master
22 Settlement Agreement, or (c) of a brand family of a participating
23 manufacturer that is not otherwise listed on the directory under
24 subsection (2) of section 69-2706;

25 (12) Package means any pack or other container on which
26 a state stamp or tribal stamp could be applied consistent with and
27 as required by sections 69-2701 to 69-2711 and sections 9, 11, 14,

1 15, and 16 of this act and sections 77-2601 to 77-2622 and sections
2 21, 22, 24, and 26 of this act that contains one or more individual
3 cigarettes for sale. Nothing in such sections shall alter any
4 other applicable requirement with respect to the minimum number of
5 cigarettes that may be contained in a pack or other container of
6 cigarettes. References to package do not include a container of
7 multiple packages;

8 ~~(5) (13) Participating manufacturer has the same meaning~~
9 ~~as in section II(jj) of the Master Settlement Agreement; defined in~~
10 ~~section 69-2702 as such agreement existed on May 30, 2003;~~

11 (14) Person means any natural person, trustee, company,
12 partnership, corporation, or other legal entity, including any
13 Indian tribe or instrumentality thereof;

14 (15) Purchase means any acquisition in any manner or by
15 any means for any consideration. The term includes transporting or
16 receiving product in connection with a purchase;

17 ~~(6) (16) Qualified escrow fund has the same meaning as in~~
18 ~~section 69-2702;~~

19 (17) Retailer includes retail dealers as defined in
20 section 77-2601 or anyone who is licensed under sections 28-1420 to
21 28-1422;

22 (18) Sale or sell means any transfer, exchange, or barter
23 in any manner or by any means for any consideration. Sale or sell
24 includes distributing or shipping product in connection with a
25 sale;

26 (19) Shortfall amount means the difference between (a)
27 the full amount of the deposit required to be made by a

1 nonparticipating manufacturer for a calendar quarter under section
2 69-2703 and (b) the sum of (i) any amounts precollected by
3 a stamping agent and deposited into escrow for that calendar
4 quarter on behalf of the nonparticipating manufacturer under
5 section 11 of this act, (ii) the amount deposited into escrow
6 by the nonparticipating manufacturer for that calendar quarter
7 under section 69-2703, (iii) any amounts deposited into escrow for
8 that calendar quarter under subdivision (2)(d) of section 69-2703
9 by an importer on such nonparticipating manufacturer's cigarettes,
10 and (iv) any amounts collected by the state for that calendar
11 quarter under the bond posted by the nonparticipating manufacturer
12 under section 9 of this act. The shortfall amount, if any, for
13 a nonparticipating manufacturer for a calendar quarter shall be
14 calculated by the Attorney General within fifteen days following
15 the date on which the state determines the amount it will collect
16 on the bond posted by the nonparticipating manufacturer as provided
17 in section 9 of this act;

18 ~~(7)~~ (20) Stamping agent means a person that is authorized
19 to affix ~~tax~~ stamps to packages or other containers of cigarettes
20 under section 77-2603 or section 24 of this act or any person that
21 is required to pay the tobacco tax imposed pursuant to section
22 77-4008 on roll-your-own cigarettes;

23 ~~(8)~~ (21) Tax Commissioner means the Tax Commissioner of
24 the State of Nebraska;

25 ~~(9)~~ (22) Tobacco product manufacturer has the same
26 meaning as in section 69-2702; and

27 ~~(10)~~ (23) Units sold has the same meaning as in section

1 69-2702; ~~and-~~

2 (24) Unstamped cigarettes means any cigarettes that are
3 not contained in a package bearing a stamp required under section
4 77-2603 or section 24 of this act.

5 Sec. 7. Section 69-2706, Reissue Revised Statutes of
6 Nebraska, is amended to read:

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

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

26 (c) A nonparticipating manufacturer shall include in its
27 certification (i) a list of all of its brand families and the

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

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

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

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

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

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

17 (v) That such nonparticipating manufacturer consents to
18 be sued in the district courts of the State of Nebraska for
19 purposes of the state (A) enforcing any provision of sections
20 69-2703 to ~~69-2710~~ 69-2711 and sections 9, 11, 14, 15, and 16
21 of this act and any rules and regulations adopted and promulgated
22 thereunder or (B) bringing a released claim as defined in section
23 69-2702.

24 (e) A tobacco product manufacturer shall not include a
25 brand family in its certification unless (i) in the case of a
26 participating manufacturer, the participating manufacturer affirms
27 that the brand family is to be deemed to be its cigarettes for

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

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

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

23 (a) The Tax Commissioner shall not include or retain in
24 such directory the name or brand families of any tobacco product
25 manufacturer that has failed to provide the required certification
26 or whose certification the commissioner determines is not in
27 compliance with ~~subdivisions (1)-(e) and (d)~~ subsection (1) of

1 this section unless the Tax Commissioner has determined that such
2 violation has been cured to his or her satisfaction;

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

16 (c) As a condition to being listed and having its brand
17 families listed in the directory, a tobacco product manufacturer
18 shall also (i) certify annually that such manufacturer or its
19 importer holds a valid permit under 26 U.S.C. 5713 and provide
20 a copy of such permit to the Tax Commissioner and the Attorney
21 General, (ii) upon request of the Tax Commissioner or Attorney
22 General, provide documentary proof that it is not in violation of
23 subdivision (1) of section 59-1520, and (iii) certify that it is in
24 compliance with all reporting and registration requirements of 15
25 U.S.C. 376;

26 ~~(e)~~ (d) The Tax Commissioner shall update the directory
27 no later than May 15 of each year to reflect certifications made on

1 or before April 30 as required in subsection (1) of this section.
2 The Tax Commissioner shall continuously update the directory as
3 necessary in order to correct mistakes and to add or remove a
4 tobacco product manufacturer or brand family to keep the directory
5 in conformity with the requirements of sections 69-2704 to ~~69-2710~~,
6 69-2711 and sections 9, 11, 14, 15, and 16 of this act;

7 ~~(d)~~ (e) The Tax Commissioner shall transmit by email
8 or other practicable means to each stamping agent notice of any
9 removal from the directory of any tobacco product manufacturer or
10 brand family. Unless otherwise provided by agreement between the
11 stamping agent and a tobacco product manufacturer, the stamping
12 agent shall be entitled to a refund from a tobacco product
13 manufacturer for any money paid by the stamping agent to the
14 tobacco product manufacturer for any cigarettes of the tobacco
15 product manufacturer still held by the stamping agent on the date
16 of notice by the Tax Commissioner of the removal from the directory
17 of that tobacco product manufacturer or the brand family or for any
18 cigarettes returned to the stamping agent by its customers under
19 subsection ~~(2)~~ (8) of section 69-2709. The Tax Commissioner shall
20 not restore to the directory the tobacco product manufacturer or
21 the brand family until the tobacco product manufacturer has paid
22 the stamping agent any refund due; and

23 ~~(e)~~ (f) Every stamping agent shall provide and update as
24 necessary an electronic mail address to the Tax Commissioner for
25 the purpose of receiving any notifications as may be required by
26 sections 69-2704 to ~~69-2710~~, 69-2711 and sections 9, 11, 14, 15,
27 and 16 of this act.

1 (3) The failure of the Tax Commissioner to provide
2 notice of any intended removal from the directory as required
3 under subdivision ~~(2)(d)~~ (2)(e) of this section or the failure
4 of a stamping agent to receive such notice shall not relieve
5 the stamping agent of its obligations under sections 69-2704 to
6 ~~69-2710, 69-2711 and sections 9, 11, 14, 15, and 16 of this act.~~

7 (4) It shall be unlawful for any person (a) to affix a
8 Nebraska stamp pursuant to section 77-2603 to a package or other
9 container of cigarettes of a tobacco product manufacturer or brand
10 family not included in the directory, ~~or~~ (b) to affix a tribal
11 stamp to a package or other container of cigarettes of a tobacco
12 product manufacturer or brand family not included in the directory
13 except as authorized by an agreement pursuant to section 22 of
14 this act, or (c) to sell, offer, or possess for sale in this state
15 cigarettes of a tobacco product manufacturer or brand family in
16 this state not included in the directory.

17 Sec. 8. Section 69-2707, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 69-2707 (1) Any nonresident or foreign nonparticipating
20 manufacturer that has not registered to do business in the state
21 as a foreign corporation or business entity shall, as a condition
22 precedent to having its brand families included or retained in the
23 directory created in subsection (2) of section 69-2706, appoint and
24 continually engage without interruption the services of an agent
25 in ~~the United States~~ Nebraska to act as agent for the service
26 of process on whom all process, and any action or proceeding
27 against it concerning or arising out of the enforcement of sections

1 69-2703 to ~~69-2710~~, 69-2711 and sections 9, 11, 14, 15, and 16
2 of this act, may be served in any manner authorized by law. Such
3 service shall constitute legal and valid service of process on the
4 nonparticipating manufacturer. The nonparticipating manufacturer
5 shall provide the name, address, telephone number, and proof of the
6 appointment and availability of such agent to the Tax Commissioner
7 and Attorney General.

8 (2) The nonparticipating manufacturer shall provide
9 notice to the Tax Commissioner and Attorney General thirty calendar
10 days prior to termination of the authority of an agent and shall
11 further provide proof to the satisfaction of the Attorney General
12 of the appointment of a new agent no less than five calendar
13 days prior to the termination of an existing agent appointment.
14 In the event an agent terminates an agency appointment, the
15 nonparticipating manufacturer shall notify the Tax Commissioner and
16 Attorney General of the termination within five calendar days and
17 shall include proof to the satisfaction of the Attorney General of
18 the appointment of a new agent.

19 (3) Any nonparticipating manufacturer whose products are
20 sold in this state who has not appointed and engaged the services
21 of an agent as required by this section shall be deemed to have
22 appointed the Secretary of State as its agent for service of
23 process. The appointment of the Secretary of State as agent shall
24 not satisfy the condition precedent required in subsection (1)
25 of this section to have the nonparticipating manufacturer's brand
26 families included or retained in the directory.

27 Sec. 9. (1) A nonparticipating manufacturer shall post

1 a bond or its cash equivalent for the benefit of the state as
2 provided in subsection (2) of this section if (a) its cigarettes
3 were not sold in the state, (b) it or any person affiliated with it
4 failed to make a full and timely escrow deposit due under section
5 69-2703, unless the failure was not knowing or reckless and was
6 promptly cured upon notice, or (c) it or any person affiliated
7 with it, or any of its brands or brands of a person affiliated
8 with it, were involuntarily removed from the directory of any
9 state, unless the removal was determined to have been erroneous or
10 illegal. Entities are affiliated with each other if at any time
11 past or present one directly, or indirectly through one or more
12 intermediaries, controls or is controlled by or is under common
13 control with the other.

14 (2) To meet the requirements of subsection (1) of this
15 section, the bond shall be posted by corporate surety located
16 within the United States or the cash equivalent of the bond
17 shall be posted by the nonparticipating manufacturer in an account
18 approved by the state. The bond or its cash equivalent shall be
19 posted at least ten days in advance of each calendar quarter as
20 a condition to the nonparticipating manufacturer and its brand
21 families being included in the directory for that quarter. The
22 amount of the bond shall be the greater of (a) the greatest
23 required escrow amount due from the nonparticipating manufacturer
24 or its predecessor in any calendar year in Nebraska or its
25 adjoining states within the preceding five calendar years or (b)
26 twenty-five thousand dollars.

27 (3) If a nonparticipating manufacturer that posted a bond

1 has failed to make, or have made on its behalf by an entity with
2 joint and several liability, escrow deposits equal to the full
3 amount owed for a quarter within fifteen days following the due
4 date for the quarter under section 69-2703, the state may execute
5 upon the bond, first to recover delinquent escrow, which amount
6 shall be deposited into a qualified escrow account under section
7 69-2703, and then to recover civil penalties and costs authorized
8 under such section. Escrow obligations above the amount collected
9 on the bond remain due from that nonparticipating manufacturer and,
10 as provided in subdivision (2)(d) of section 69-2703 and section 11
11 of this act, from the importers and stamping agents that sold its
12 cigarettes during that calendar quarter.

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

15 69-2708 (1) Not later than ~~twenty~~ calendar days after the
16 end of each calendar quarter, and more frequently if so directed
17 by the ~~Tax Commissioner~~, fifteen days following the end of each
18 month, each stamping agent shall submit, in the manner directed
19 by the Tax Commissioner, such information as the Tax Commissioner
20 requires to facilitate compliance with sections 69-2704 to ~~69-2710~~,
21 69-2711 and sections 9, 11, 14, 15, and 16 of this act, including,
22 but not limited to, (a) a list by brand family of the total number
23 of cigarettes or, in the case of roll-your-own, the equivalent
24 stick count for which the stamping agent affixed stamps during
25 the previous calendar quarter month or otherwise paid the ~~tax~~
26 total due for such cigarettes, the total number of cigarettes
27 contained in the packages to which it affixed each respective

1 type of stamp, and by name and number of cigarettes, the tobacco
2 product manufacturers and brand families of the packages to which
3 it affixed each respective type of stamp or similar information
4 for roll-your-own on which tax was paid and (b) the total number
5 of cigarettes acquired by the stamping agent during that month
6 for sale in or into the state or for sale from this state into
7 another state, sold in or into the state by the stamping agent
8 during that month and held in inventory in the state or for sale
9 into the state by the stamping agent as of the last business
10 day of that month, in each case identifying by name and number
11 of cigarettes, (i) the manufacturers of those cigarettes and (ii)
12 the brand families of those cigarettes. In the case of a stamping
13 agent that is a retailer, reports under subdivision (1)(a) of this
14 section do not have to include cigarettes contained in packages
15 that bore a stamp required under section 77-2603 or section 24 of
16 this act at the time the stamping agent received them and that
17 the stamping agent then sold at retail. The stamping agent shall
18 also submit a certification stating that the information provided
19 to the Tax Commissioner is complete and accurate. The stamping
20 agent shall maintain, and make available to the Tax Commissioner,
21 all invoices and documentation of sales of all nonparticipating
22 manufacturer cigarettes and any other information relied upon in
23 reporting to the Tax Commissioner for a period of five years.
24 The Tax Commissioner may share the information reported under this
25 section with the taxing or law enforcement authorities of this
26 state or other states.

27 (2) The Attorney General may require at any time from the

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

7 (3) In addition to the information required to be
8 submitted pursuant to subsection (1) of this section, the Tax
9 Commissioner or Attorney General may require a stamping agent,
10 distributor, or tobacco product manufacturer to submit any
11 additional information, including, but not limited to, samples of
12 the packaging or labeling of each brand family, as is necessary
13 to enable the Tax Commissioner or Attorney General to determine
14 whether a tobacco product manufacturer is in compliance with
15 sections 69-2704 to ~~69-2710~~, 69-2711 and sections 9, 11, 14, 15,
16 and 16 of this act.

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

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

18 Sec. 11. (1) A stamping agent shall be responsible for
19 escrow deposits required under subdivision (2) of section 69-2703
20 in the event it receives notice from the Attorney General that
21 there is a shortfall amount with respect to nonparticipating
22 manufacturer cigarettes stamped by it.

23 (2) The liability of a stamping agent for escrow deposits
24 shall be calculated as follows: If there is a shortfall amount
25 for a nonparticipating manufacturer for a calendar quarter, each
26 stamping agent that sold cigarettes of that nonparticipating
27 manufacturer during the calendar quarter shall deposit into such

1 escrow account as shall be designated by the state an amount
2 equal to the applicable shortfall amount multiplied by a fraction,
3 the numerator of which is the number of cigarettes of that
4 nonparticipating manufacturer sold in or into the state by the
5 stamping agent during that calendar quarter and the denominator of
6 which is the total number of cigarettes of that nonparticipating
7 manufacturer sold by all stamping agents in or into the state
8 during that calendar quarter, except that any nonparticipating
9 manufacturer cigarettes sold in or into the state by a stamping
10 agent during the calendar quarter in which the stamping agent
11 collected and deposited the required escrow deposit amount on or
12 before the due date for deposits for that quarter under subdivision
13 (2) of section 69-2703 shall be excluded from both the numerator
14 and the denominator of the fraction. To the extent a stamping
15 agent makes payments with respect to a shortfall amount under this
16 subsection, such stamping agent shall have a claim against the
17 nonparticipating manufacturer for such amount.

18 (3) A stamping agent is authorized to require a
19 nonparticipating manufacturer to prepay the escrow deposit amount
20 to the stamping agent, for deposit by the stamping agent on
21 behalf of the nonparticipating manufacturer into an escrow
22 account designated by the state, as a condition of the stamping
23 agent's agreement to purchase cigarettes of that nonparticipating
24 manufacturer.

25 (4) A stamping agent may request from the Tax
26 Commissioner quarterly a certification that the nonparticipating
27 manufacturer is on the state directory and in compliance with such

1 manufacturer's escrow obligations under subdivision (2) of section
2 69-2703. Possession of such certification shall exempt the stamping
3 agent from responsibility for escrow deposits under subsections (1)
4 and (2) of this section.

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

7 69-2709 (1) In addition to or in lieu of any other civil
8 or criminal remedy provided by law, upon a determination that a
9 stamping agent has violated subsection (4) of section 69-2706 or
10 any rule or regulation adopted and promulgated pursuant thereto,
11 the Tax Commissioner may revoke or suspend the license of any
12 stamping agent in the manner provided by section 77-2615.01. For
13 each violation ~~hereof~~, of such subsection, the Tax Commissioner may
14 also impose a civil penalty in an amount not to exceed the greater
15 of five hundred percent of the retail value of the cigarettes
16 or five thousand dollars upon a determination of violation of
17 subsection (4) of section 69-2706 or any rules or regulations
18 adopted and promulgated pursuant thereto. Such penalty shall be
19 imposed in the manner provided by section 77-2615.01.

20 (2) The license of a stamping agent shall be subject to
21 termination if the stamping agent:

22 (a) Fails to provide a report required under section
23 69-2708 or section 14 or 26 of this act;

24 (b) Files an incomplete or inaccurate report or files an
25 inaccurate certification;

26 (c) Fails to pay taxes as provided in section 77-2602 or
27 deposit escrow as provided in section 11 of this act;

1 (d) Sells cigarettes in or into the state in a package
2 that bears a stamp required under section 77-2603 or section 24 of
3 this act that is not the correct stamp and provides for a lower
4 level of tax than the correct stamp;

5 (e) Sells unstamped cigarettes in, into, or from the
6 state or possesses unstamped cigarettes in the state except as
7 provided in section 77-2607;

8 (f) Purchases, sells in or into the state, or affixes
9 a stamp to a package containing cigarettes of a manufacturer or
10 brand family that is not at the time listed in the directory,
11 or possesses such cigarettes more than ten days after receiving
12 notice that the manufacturer or brand family is not in the
13 directory, unless such stamping agent possesses a directory license
14 under section 77-2603 or unless expressly permitted under sections
15 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act
16 or sections 77-2601 to 77-2622 and sections 21, 22, 24, and 26 of
17 this act; or

18 (g) Purchases or sells cigarettes in violation of
19 subsection (5) of this section or section 15 of this act.

20 (3) In the case of a failure under subdivision (2)(a),
21 (b), (c), or (d) of this section that was not knowing or
22 intentional, the stamping agent shall be entitled to cure the
23 failure during the period set forth in subsection (5) of this
24 section. The license of a stamping agent that fully cures the
25 failure during that period shall not be terminated on account of
26 that failure.

27 (4) In the case of a knowing or intentional failure under

1 subdivision (2)(a), (b), (c), or (d) of this section, or of any
2 violation described in subdivision (2)(e) or (f) of this section,
3 the stamping agent shall for a first violation be subject to a
4 civil penalty of up to one thousand dollars and be guilty of a
5 Class IV misdemeanor and for a second or subsequent violation be
6 subject to a civil penalty of up to five thousand dollars per
7 violation and be guilty of a Class II misdemeanor. In the case of
8 violations described in subdivision (2)(d), (e), or (f) of this
9 section, each sale constitutes a separate offense.

10 (5) The Tax Commissioner shall promptly remove any
11 stamping agent whose license is terminated from the list required
12 by subsection (4) of section 77-2603 and shall publish a notice of
13 the termination on the Tax Commissioner's web site and send notice
14 of the termination to all stamping agents and to all persons listed
15 in the directory. Beginning ten days following the publication
16 and sending of such notice, no person may sell cigarettes to, or
17 purchase cigarettes from, the stamping agent whose license has been
18 terminated.

19 (6) If a stamping agent whose license has been terminated
20 is a manufacturer of cigarettes, the tobacco product manufacturer
21 and its brand families shall be removed from the directory.

22 (7) A stamping agent whose license is terminated shall be
23 eligible for reinstatement:

24 (a) Ninety days following the termination, in the case of
25 a first failure under subdivision (2)(a), (b), (c), or (d) of this
26 section that was not knowing or intentional;

27 (b) One hundred eighty days following the termination, in

1 the case of a second failure under subdivision (2) (a), (b), (c), or
2 (d) of this section that was not knowing or intentional;

3 (c) One year following the termination, in the case of a
4 third or subsequent failure under subdivision (2) (a), (b), (c), or
5 (d) of this section that was not knowing or intentional;

6 (d) One year following the termination, in the case of
7 a first knowing or intentional failure under subdivision (2) (a),
8 (b), (c), or (d) of this section or a first violation described in
9 subdivision (2) (e), (f), or (g) of this section; and

10 (e) Three years following the termination, in the case
11 of a second or subsequent knowing or intentional failure under
12 subdivision (2) (a), (b), (c), or (d) of this section or a second or
13 subsequent violation described in subdivision (2) (e), (f), or (g)
14 of this section.

15 ~~(2)~~ (8) Any cigarettes that have been sold, offered
16 for sale, or possessed for sale in this state in violation of
17 subsection (4) of section 69-2706 shall be deemed contraband under
18 section 77-2620 and such cigarettes shall be subject to seizure
19 and forfeiture as provided in section 77-2620, except that all
20 such cigarettes so seized and forfeited shall be destroyed and not
21 resold. The stamping agent shall notify its customers for a brand
22 family with regard to any notice of removal of a tobacco product
23 manufacturer or a brand family from the directory and give its
24 customers a seven-day period for the return of cigarettes that
25 become contraband.

26 ~~(3)~~ (9) The Attorney General, on behalf of the Tax
27 Commissioner, may seek an injunction to restrain a threatened or

1 actual violation of subsection (4) of section 69-2706 or ~~subsection~~
2 ~~(1) or (4) of~~ section 69-2708 by a stamping agent and to compel the
3 stamping agent to comply with ~~any of such subsections.~~ subsection
4 (4) of section 69-2706 or section 69-2708. In any action brought
5 pursuant to this section, the state shall be entitled to recover
6 the costs of investigation, costs of the action, and reasonable
7 attorney's fees.

8 ~~(4)~~ (10) It is unlawful for a person to (a) sell or
9 distribute cigarettes for sale in this state or (b) acquire, hold,
10 own, possess, transport, import, or cause to be imported cigarettes
11 that the person knows or should know are intended for distribution
12 or sale in the state in violation of subsection (4) of section
13 69-2706. A violation of this ~~section~~ subsection is a Class III
14 misdemeanor.

15 ~~(5)~~ (11) If a court determines that a person has violated
16 any portion of sections 69-2704 to ~~69-2710,~~ 69-2711 and sections 9,
17 11, 14, 15, and 16 of this act, the court shall order the payment
18 of any profits, gains, gross receipts, or other benefits from the
19 violation to be remitted to the State Treasurer for distribution
20 in accordance with Article VII, section 5, of the Constitution
21 of Nebraska. Unless otherwise expressly provided, the remedies
22 or penalties provided by sections 69-2704 to ~~69-2710~~ 69-2711 and
23 sections 9, 11, 14, 15, and 16 of this act are cumulative to
24 each other and to the remedies or penalties available under all
25 applicable laws of this state.

26 (12) It is unlawful for any manufacturer, importer, or
27 stamping agent to knowingly submit any false information required

1 pursuant to sections 69-2703 to 69-2711 and sections 9, 11, 14,
2 15, and 16 of this act. A violation of this subsection is a Class
3 IV felony. Knowing submission of false information shall also be
4 grounds for removal of a tobacco product manufacturer from the
5 directory.

6 (13) A tobacco product manufacturer that knowingly or
7 intentionally sells cigarettes in violation of subsection (5) of
8 this section or section 14 of this act and its brand families shall
9 be removed from the directory.

10 (14) A nonparticipating manufacturer whose total
11 nationwide reported sales on which federal excise tax is paid
12 exceed the sum of its nationwide reports under 15 U.S.C. 375
13 et seq. and any intrastate sales reports under 15 U.S.C. 375
14 et seq. by more than five percent of its total sales or one
15 million cigarettes, whichever is less, shall be subject to removal
16 from the directory unless it cures or satisfactorily explains
17 the discrepancy within ten days after receipt of notice of the
18 discrepancy from the Attorney General pursuant to section 11 of
19 this act.

20 (15) Any person that is not a stamping agent or tobacco
21 product manufacturer that fails to file a complete and accurate
22 report required under section 77-2604 or section 26 of this act
23 shall be entitled to cure the failure within ten days after receipt
24 of notice of the discrepancy from the Attorney General pursuant
25 to section 11 of this act. If the person fails to fully cure the
26 failure within such period, it shall be subject to a civil penalty
27 of up to one thousand dollars per violation and shall be ineligible

1 to hold any license of the state regarding cigarette sales until
2 the date specified by subsection (7) of this section for violations
3 of subdivision (2)(a) of this section.

4 (16) A directory license shall be subject to termination
5 if the licensee acts inconsistently with its certification under
6 subsection (2) of section 77-2603 or violates sections 69-2701 to
7 69-2711 and sections 9, 11, 14, 15, and 16 of this act.

8 (17) Any person that knowingly or intentionally purchases
9 or sells cigarettes in violation of subsection (5) of this section
10 or section 14 of this act or that knowingly or intentionally sells
11 cigarettes in or into the state in a package that bears a stamp
12 required under section 77-2603 or section 24 of this act that
13 is not the correct stamp and provides for a lower level of tax
14 than the correct stamp, shall for a first violation be subject to
15 a civil penalty of up to one thousand dollars and be guilty of
16 a Class IV misdemeanor and for a second or subsequent violation
17 be subject to a civil penalty of up to five thousand dollars
18 per violation and be guilty of a Class II misdemeanor. Each sale
19 constitutes a separate violation.

20 Sec. 13. Section 69-2710, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 69-2710 (1) Before any tobacco product manufacturer
23 may be removed from the directory, the Tax Commissioner shall
24 provide the tobacco product manufacturer thirty days' notice of the
25 intended action and shall post the notice in the directory. The
26 tobacco product manufacturer shall have thirty days to come into
27 compliance with sections 69-2703 to ~~69-2710~~ 69-2711 and sections

1 9, 11, 14, 15, and 16 of this act or, in the alternative,
2 secure a temporary injunction against removal in the district
3 court of Lancaster County. For purposes of the temporary injunction
4 sought pursuant to this subsection, loss of the ability to sell
5 tobacco products as a result of removal from the directory shall
6 constitute irreparable harm. If after thirty days the tobacco
7 product manufacturer remains in noncompliance and has not obtained
8 a temporary injunction pursuant to this subsection, the tobacco
9 product manufacturer shall be removed from the directory.

10 (2) If the Tax Commissioner determines that a tobacco
11 product manufacturer shall not be included in the directory,
12 such manufacturer may request a contested case before the Tax
13 Commissioner under the Administrative Procedure Act. The Tax
14 Commissioner shall notify the tobacco product manufacturer in
15 writing of the determination not to include it in the directory.
16 A request for hearing shall be made within thirty calendar days
17 after the date of the determination that the manufacturer shall
18 not be included in the directory and shall contain the evidence
19 supporting the manufacturer's compliance with sections 69-2703 to
20 ~~69-2710.~~ 69-2711 and sections 9, 11, 14, 15, and 16 of this act.
21 The hearing shall be held within sixty days after the request.
22 At the hearing, the Tax Commissioner shall determine whether the
23 tobacco product manufacturer is in compliance with sections 69-2703
24 to ~~69-2710~~ 69-2711 and sections 9, 11, 14, 15, and 16 of this act
25 and whether the manufacturer should be listed in the directory.
26 A final decision shall be rendered within thirty days after the
27 hearing. Any decision of the Tax Commissioner may be appealed. The

1 appeal shall be in accordance with the Administrative Procedure
2 Act.

3 ~~(3) The first report of stamping agents required by~~
4 ~~subsection (1) of section 69-2708 shall be due thirty calendar~~
5 ~~days after May 30, 2003, the certifications by a tobacco product~~
6 ~~manufacturer described in subsection (1) of section 69-2706 shall~~
7 ~~be due forty-five calendar days after May 30, 2003, and the~~
8 ~~directory described in subsection (2) of section 69-2706 shall be~~
9 ~~published or made available within ninety calendar days after May~~
10 ~~30, 2003.~~

11 ~~(4) The Tax Commissioner may adopt and promulgate rules~~
12 ~~and regulations necessary to effect the purposes of sections~~
13 ~~69-2704 to 69-2710.~~

14 Sec. 14. (1) Any person that during a month acquired,
15 purchased, sold, possessed, transferred, transported, or caused
16 to be transported in or into this state cigarettes of a tobacco
17 product manufacturer or brand family that was not in the directory
18 at the time shall, within fifteen days following the end of that
19 month, file a report on a form and in the manner prescribed by
20 the Tax Commissioner and certify to the state that the report is
21 complete and accurate. The report shall contain, in addition to
22 any further information that the Tax Commissioner may reasonably
23 require to assist the Tax Commissioner in enforcing sections
24 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this
25 act and sections 77-2601 to 77-2622 and sections 21, 22, 24, and
26 26 of this act and the Tobacco Products Tax Act, the following
27 information:

1 (a) The total number of those cigarettes, in each case
2 identifying by name and number of cigarettes (i) the manufacturers
3 of those cigarettes, (ii) the brand families of those cigarettes,
4 (iii) in the case of a sale or transfer, the name and address
5 of the recipient of those cigarettes, (iv) in the case of an
6 acquisition or purchase, the name and address of the seller or
7 sender of those cigarettes, and (v) the other states in whose
8 directory the manufacturer and brand family of those cigarettes
9 were listed at the time and whose stamps the person is authorized
10 to affix; and

11 (b) In the case of acquisition, purchase, or possession,
12 the details of the person's subsequent sale or transfer of those
13 cigarettes, identifying by name and number of cigarettes (i) the
14 brand families of those cigarettes, (ii) the date of the sale or
15 transfer, (iii) the name and address of the recipient, (iv) the
16 number of stamps of each other state that the person affixed to
17 the packages containing those cigarettes during that month, (v) the
18 total number of cigarettes contained in the packages to which it
19 affixed each respective other state's stamp, (vi) the manufacturers
20 and brand families of the packages to which it affixed each
21 respective other state's stamp, and (vii) a certification that it
22 reported each sale or transfer to the taxing authority of the other
23 state by fifteen days following the end of the month in which
24 the sale or transfer was made and attaching a copy of all such
25 reports. If the subsequent sale or transfer were from this state
26 into another state in packages not bearing a stamp of the other
27 state, the report shall also contain the information described in

1 subdivision (2)(c) of section 26 of this act.

2 (2) Reports under this section shall be in addition to
3 reports under sections 69-2708 and 77-2604 and section 26 of this
4 act.

5 Sec. 15. (1) The license of a stamping agent may be
6 subject to termination if its similar license is terminated in
7 any other state based on acts or omissions that would, if done
8 in this state, be grounds for license termination, unless the
9 stamping agent demonstrates that its termination in the other
10 state was effected without due process. A stamping agent whose
11 license is terminated under this subsection shall be eligible for
12 reinstatement upon the earlier of the date specified by subsection
13 (7) of section 69-2709 for the act or omission in question or
14 reinstatement of its license by the other state.

15 (2) A tobacco product manufacturer and its brand families
16 may be removed from the directory if it is removed from the
17 directory of another state based on acts or omissions that would,
18 if done in this state, be grounds for removal from the directory
19 under section 69-2706, 69-2707, or 69-2710 or subsection (6) of
20 section 69-2709 or section 9 of this act, unless the tobacco
21 product manufacturer demonstrates that its removal from the other
22 state's directory was effected without due process. A manufacturer
23 that is removed from the directory under this subsection shall be
24 eligible for reinstatement upon the earlier of the date on which it
25 cures the violation or is reinstated to the directory in the other
26 state.

27 (3) The applicable procedures under section 77-2615.01

1 shall apply to terminations and removals under this section.

2 Sec. 16. The Tax Commissioner may adopt and promulgate
3 rules and regulations necessary to effect the purposes of sections
4 69-2703 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act.

5 Sec. 17. Section 69-2711, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 69-2711 If a court of competent jurisdiction finds that
8 the provisions of sections 69-2704 to ~~69-2710~~ 69-2711 and sections
9 9, 11, 14, 15, and 16 of this act and of sections 69-2702 and
10 69-2703 conflict and cannot be harmonized, then the provisions of
11 sections 69-2702 and 69-2703 shall control. If sections 69-2704 to
12 ~~69-2710~~ 69-2711 and sections 9, 11, 14, 15, and 16 of this act or
13 any part of any such sections causes sections 69-2702 and 69-2703
14 to no longer constitute a Qualifying or Model Statute, as those
15 terms are defined in the Master Settlement Agreement, then that
16 portion of sections 69-2704 to ~~69-2710~~ 69-2711 and sections 9, 11,
17 14, 15, and 16 of this act shall not be valid.

18 Sec. 18. Section 77-2601, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-2601 For purposes of sections 77-2601 to 77-2615 and
21 sections 21, 22, 24, and 26 of this act:

22 (1) Person means and includes every individual, firm,
23 association, joint-stock company, partnership, limited liability
24 company, syndicate, and corporation, trustee, or other legal
25 entity, including any Indian tribe or instrumentality thereof;

26 (2) Wholesale dealer means a person who sells cigarettes
27 to licensed retail dealers other than branch stores operated by or

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

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

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

9 (5) Cigarette means any roll for smoking made wholly or
10 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) 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 (7) Sales entity affiliate means an entity that (a)
18 sells cigarettes that it acquires directly from a manufacturer
19 or importer and (b) is affiliated with that manufacturer or
20 importer. Entities are affiliated with each other if one directly,
21 or indirectly through one or more intermediaries, controls or is
22 controlled by or is under common control with the other. Unless
23 provided otherwise, manufacturer or importer includes any sales
24 entity affiliate of that manufacturer or importer;

25 (8) Stamping agent has the same meaning as in section
26 69-2705; and

27 (9) Indian country means (a) all land in this state

1 within the limits of any Indian reservation under the jurisdiction
2 of the United States, notwithstanding the issuance of any patent,
3 including rights-of-way running through the reservation, (b) all
4 dependent Indian communities within the borders of this state, and
5 (c) all Indian allotments in this state, the Indian titles to which
6 have not been extinguished, including rights-of-way running through
7 such allotments.

8 Sec. 19. Section 77-2602, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 77-2602 (1) Every ~~person~~ stamping agent engaged in
11 distributing or selling cigarettes at wholesale in this state
12 shall pay to the Tax Commissioner of this state a special privilege
13 tax. This shall be in addition to all other taxes. It shall be
14 paid prior to or at the time of the sale, gift, or delivery to the
15 retail dealer in the several amounts as follows: On each package of
16 cigarettes containing not more than twenty cigarettes, sixty-four
17 cents per package; and on packages containing more than twenty
18 cigarettes, the same tax as provided on packages containing not
19 more than twenty cigarettes for the first twenty cigarettes in each
20 package and a tax of one-twentieth of the tax on the first twenty
21 cigarettes on each cigarette in excess of twenty cigarettes in each
22 package.

23 (2) Beginning October 1, 2004, the State Treasurer shall
24 place the equivalent of forty-nine cents of such tax in the General
25 Fund. The State Treasurer shall reduce the amount placed in the
26 General Fund under this subsection by the amount prescribed in
27 subdivision (3)(d) of this section. For purposes of this section,

1 the equivalent of a specified number of cents of the tax shall mean
2 that portion of the proceeds of the tax equal to the specified
3 number divided by the tax rate per package of cigarettes containing
4 not more than twenty cigarettes.

5 (3) The State Treasurer shall distribute the remaining
6 proceeds of such tax in the following order:

7 (a) First, beginning July 1, 1980, the State Treasurer
8 shall place the equivalent of one cent of such tax in the
9 Nebraska Outdoor Recreation Development Cash Fund. For fiscal year
10 distributions occurring after FY1998-99, the distribution under
11 this subdivision shall not be less than the amount distributed
12 under this subdivision for FY1997-98. Any money needed to increase
13 the amount distributed under this subdivision to the FY1997-98
14 amount shall reduce the distribution to the General Fund;

15 (b) Second, beginning July 1, 1993, the State Treasurer
16 shall place the equivalent of three cents of such tax in the
17 Health and Human Services Cash Fund to carry out sections 81-637
18 to 81-640. For fiscal year distributions occurring after FY1998-99,
19 the distribution under this subdivision shall not be less than the
20 amount distributed under this subdivision for FY1997-98. Any money
21 needed to increase the amount distributed under this subdivision to
22 the FY1997-98 amount shall reduce the distribution to the General
23 Fund;

24 (c) Third, beginning October 1, 2002, and continuing
25 until all the purposes of the Deferred Building Renewal Act have
26 been fulfilled, the State Treasurer shall place the equivalent of
27 seven cents of such tax in the Building Renewal Allocation Fund.

1 The distribution under this subdivision shall not be less than the
2 amount distributed under this subdivision for FY1997-98. Any money
3 needed to increase the amount distributed under this subdivision to
4 the FY1997-98 amount shall reduce the distribution to the General
5 Fund;

6 (d) Fourth, until July 1, 2009, the State Treasurer
7 shall place in the Municipal Infrastructure Redevelopment Fund
8 the sum of five hundred twenty thousand dollars each fiscal year
9 to carry out the Municipal Infrastructure Redevelopment Fund Act.
10 The Legislature shall appropriate the sum of five hundred twenty
11 thousand dollars each year for fiscal year 2003-04 through fiscal
12 year 2008-09;

13 (e) Fifth, beginning July 1, 2001, and continuing until
14 June 30, 2008, the State Treasurer shall place the equivalent of
15 two cents of such tax in the Information Technology Infrastructure
16 Fund. The distribution under this subdivision shall not be less
17 than two million fifty thousand dollars. Any money needed to
18 increase the amount distributed under this subdivision to two
19 million fifty thousand dollars shall reduce the distribution to the
20 General Fund;

21 (f) Sixth, beginning July 1, 2001, and continuing until
22 June 30, 2016, the State Treasurer shall place one million dollars
23 each fiscal year in the City of the Primary Class Development Fund.
24 If necessary, the State Treasurer shall reduce the distribution of
25 tax proceeds to the General Fund pursuant to subsection (2) of this
26 section by such amount required to fulfill the one million dollars
27 to be distributed pursuant to this subdivision;

1 (g) Seventh, beginning July 1, 2001, and continuing
2 until June 30, 2016, the State Treasurer shall place one million
3 five hundred thousand dollars each fiscal year in the City of
4 the Metropolitan Class Development Fund. If necessary, the State
5 Treasurer shall reduce the distribution of tax proceeds to the
6 General Fund pursuant to subsection (2) of this section by such
7 amount required to fulfill the one million five hundred thousand
8 dollars to be distributed pursuant to this subdivision; and

9 (h) Eighth, beginning July 1, 2008, and continuing until
10 June 30, 2009, the State Treasurer shall place the equivalent of
11 two million fifty thousand dollars of such tax in the Nebraska
12 Public Safety Communication System Cash Fund. Beginning July 1,
13 2009, and continuing until June 30, 2016, the State Treasurer shall
14 place the equivalent of two million five hundred seventy thousand
15 dollars of such tax in the Nebraska Public Safety Communication
16 System Cash Fund. Beginning July 1, 2016, and every fiscal year
17 thereafter, the State Treasurer shall place the equivalent of
18 five million seventy thousand dollars of such tax in the Nebraska
19 Public Safety Communication System Cash Fund. If necessary, the
20 State Treasurer shall reduce the distribution of tax proceeds to
21 the General Fund pursuant to subsection (2) of this section by
22 such amount required to fulfill the distribution pursuant to this
23 subdivision.

24 (4) If, after distributing the proceeds of such tax
25 pursuant to subsections (2) and (3) of this section, any proceeds
26 of such tax remain, the State Treasurer shall place such remainder
27 in the Nebraska Capital Construction Fund.

1 (5) The Legislature hereby finds and determines that the
2 projects funded from the Municipal Infrastructure Redevelopment
3 Fund and the Building Renewal Allocation Fund are of critical
4 importance to the State of Nebraska. It is the intent of the
5 Legislature that the allocations and appropriations made by the
6 Legislature to such funds or, in the case of allocations for
7 the Municipal Infrastructure Redevelopment Fund, to the particular
8 municipality's account not be reduced until all contracts and
9 securities relating to the construction and financing of the
10 projects or portions of the projects funded from such funds or
11 accounts of such funds are completed or paid or, in the case
12 of the Municipal Infrastructure Redevelopment Fund, the earlier
13 of such date or July 1, 2009, and that until such time any
14 reductions in the cigarette tax rate made by the Legislature
15 shall be simultaneously accompanied by equivalent reductions in the
16 amount dedicated to the General Fund from cigarette tax revenue.
17 Any provision made by the Legislature for distribution of the
18 proceeds of the cigarette tax for projects or programs other than
19 those to (a) the General Fund, (b) the Nebraska Outdoor Recreation
20 Development Cash Fund, (c) the Health and Human Services Cash
21 Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the
22 Building Renewal Allocation Fund, (f) the Information Technology
23 Infrastructure Fund, (g) the City of the Primary Class Development
24 Fund, (h) the City of the Metropolitan Class Development Fund, and
25 (i) the Nebraska Public Safety Communication System Cash Fund shall
26 not be made a higher priority than or an equal priority to any of
27 the programs or projects specified in subdivisions (a) through (i)

1 of this subsection.

2 Sec. 20. Section 77-2602.03, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-2602.03 The increase in the tax shall apply to
5 all unused stamps, meter impressions, and packages of stamped
6 cigarettes owned by ~~cigarette wholesalers~~ stamping agents at 12:01
7 a.m. on the day the increase becomes operative. On the date
8 any change in the tax takes effect, each ~~cigarette wholesaler~~
9 stamping agent shall take an inventory of all unused stamps,
10 meter impressions, and packages of stamped cigarettes owned by the
11 cigarette wholesaler at 12:01 a.m. The additional tax shall be
12 remitted with the return for the last month preceding the date any
13 change in the tax takes effect. The Tax Commissioner shall credit
14 to each ~~wholesaler~~ stamping agent an amount equal to the additional
15 tax on two weeks of such ~~wholesaler's~~ stamping agent's average
16 purchases of tax stamps.

17 Sec. 21. (1) A person that paid taxes applicable under
18 section 77-2602 on cigarettes sold in an exempt transaction shall
19 be eligible for a refund of the taxes paid on those cigarettes.

20 (2) Exempt transactions, for purposes of this section and
21 section 69-2703, are defined as:

22 (a) Cigarette sales on a federal installation in a
23 transaction that is exempt from state taxation under federal law;
24 and

25 (b) Cigarette sales on an Indian tribe's Indian country
26 to its tribal members where state taxation is precluded by federal
27 law.

1 (3) Except as provided in subsection (5) of this section,
2 the person seeking a refund of taxes shall submit an application
3 to the Tax Commissioner providing documentation sufficient to
4 demonstrate (a) that the cigarettes were sold in a package bearing
5 the correct stamp required under section 77-2603 or section 24
6 of this act and that the stamp was one that required payment of
7 tax, (b) that the person paid the applicable taxes in question,
8 (c) that the cigarettes were sold in an exempt transaction, and
9 (d) that the person has not previously obtained the refund on
10 the cigarettes. The documentation shall include, in addition to
11 information necessary to meet the requirements of subdivisions
12 (3)(a) through (d) of this section and any other information that
13 the Tax Commissioner may reasonably require, documents showing the
14 identity of the seller and purchaser and the places of shipment
15 and delivery of the cigarettes. The Tax Commissioner shall verify
16 the accuracy and completeness of the required documentation and
17 information before granting the requested refund.

18 (4) If a meritorious refund claim under subsection (3) of
19 this section is not paid within sixty days after submission of the
20 required documentation, the refund shall include interest on the
21 amount of such refund at the rate specified in section 45-104.02
22 as such rate existed at the date of submission of the required
23 documentation.

24 (5) The Tax Commissioner and an Indian tribe may agree
25 upon a tax refund formula to operate in lieu of application for
26 refunds under subsection (3) of this section. The aggregate refund
27 provided to an Indian tribe under a formula for a year shall

1 not exceed the aggregate tax paid by entities owned and operated
2 by that tribe or member of that tribe on cigarettes sold in
3 exempt transactions on that tribe's Indian country during that
4 year. Refunds of taxes under subsection (3) of this section shall
5 not be available for cigarettes sold in exempt transactions on an
6 Indian tribe's Indian country by an Indian tribe that agrees upon
7 a refund formula under this subsection. Nothing in this subsection
8 shall limit the state's authority to enter into an agreement
9 pursuant to section 22 of this act pertaining to the collection
10 and dissemination of any cigarette taxes, which may otherwise be
11 inconsistent with this subsection.

12 Sec. 22. (1) The Governor or his or her designated
13 representative may negotiate and execute an agreement with the
14 governing body of any federally recognized Indian tribe within the
15 State of Nebraska concerning the collection and dissemination of
16 any cigarette tax or other tobacco product tax under this section
17 and sections 21 and 24 of this act or escrow collected pursuant
18 to section 69-2703, on sales of cigarettes, roll-your-own, or
19 smokeless tobacco made or sold on a federally recognized Indian
20 tribe's Indian country. The agreement shall specify:

21 (a) Its duration;

22 (b) Its purpose;

23 (c) Provisions for administering, collecting, and
24 enforcing the agreement and for the mutual waiver of sovereign
25 immunity objections with respect to such provisions;

26 (d) Remittance of taxes and escrow collected;

27 (e) The division of the proceeds of the tax and escrow

1 between the parties;

2 (f) The method to be employed in accomplishing the
3 partial or complete termination of the agreement;

4 (g) A dispute resolution procedure;

5 (h) Adequate reporting and auditing provisions; and

6 (i) Any other necessary and proper matters.

7 (2) The agreement shall require tribal taxes to be
8 imposed equally on all cigarettes and other tobacco products
9 regardless of manufacturer or brand.

10 (3) The agreement shall require that all packages of
11 cigarettes bear either a stamp under section 77-2603 or a tribal
12 stamp under section 24 of this act.

13 (4) The agreement may provide for the sale of cigarettes
14 not included in the directory under section 69-2706, but only if
15 the agreement requires that such cigarettes bear the tribal stamp
16 under section 24 of this act and only if the agreement requires
17 the tribe to make escrow deposits on such cigarettes in amounts
18 equal to and in a manner consistent with the deposits required of
19 manufacturers under section 69-2703 or otherwise requires payment
20 of escrow by the manufacturers in accordance with section 69-2703.

21 (5) An Indian tribe entering into an agreement under
22 this section shall agree not to license or otherwise authorize
23 an individual tribal member or other person or entity to sell
24 cigarettes, roll-your-own, or smokeless tobacco in violation of the
25 terms of the agreement.

26 (6) The state may, in the best interests of the state,
27 enter into any future agreement, compact, or treaty with any Indian

1 tribe that is consistent with sections 21, 22, and 24 of this act.

2 Sec. 23. Section 77-2603, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-2603 (1) The tax, as levied in section 77-2602, shall
5 be paid and the stamps or cigarette tax meter impressions shall
6 be affixed or printed with a cigarette tax meter by the person
7 having possession and ownership of such cigarettes after the same
8 shall have come to rest in this state and intended to be sold or
9 given away in this state. Nothing in sections 77-2601 to 77-2615
10 and sections 21, 22, 24, and 26 of this act shall be construed
11 to require a wholesale dealer stamping agent to fix the retail
12 price or to require any retailer to sell at any particular price.
13 Subject to such rules and regulations as the Tax Commissioner shall
14 prescribe, tax meter machines may be used when approved by the
15 Tax Commissioner to affix a suitable stamp or impression on each
16 package of cigarettes and cigarettes with a tax meter impression
17 shall be treated as stamped cigarettes for purposes of sections
18 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this
19 act and sections 77-2601 to 77-2615 and sections 21, 22, 24, and
20 26 of this act. Before any wholesale dealer person is issued a
21 permit to affix stamps or cigarette tax meter impressions, the
22 wholesale dealer person shall make application to become licensed
23 as a stamping agent to the Tax Commissioner on a form provided by
24 the Tax Commissioner to engage in such activity.

25 (2) Any manufacturer, importer, sales entity affiliate,
26 wholesale dealer, or retailer that engages in the business of
27 selling cigarettes may apply to be licensed as a stamping agent in

1 accordance with this section. A license shall be issued by the Tax
2 Commissioner to an applicant upon the applicant's:

3 (a) Meeting all requirements in sections 69-2701 to
4 69-2711 and sections 9, 11, 14, 15, and 16 of this act and sections
5 77-2601 to 77-2615 and sections 21, 22, 24, and 26 of this act and
6 corresponding rules and regulations;

7 (b) Certifying on a form prescribed by the Tax
8 Commissioner that it will comply with the requirements in section
9 69-2708; and

10 (c) In the case of an applicant located outside of the
11 state, designating an agent for service of process in Nebraska,
12 and providing notice thereof as required by section 69-2707, in
13 connection with enforcement of sections 69-2701 to 69-2711 and
14 sections 9, 11, 14, 15, and 16 of this act and sections 77-2601
15 to 77-2615 and sections 21, 22, 24, and 26 of this act, and,
16 if approval is given by the Tax Commissioner, the manufacturer,
17 importer, sales entity affiliate, wholesale dealer, or retailer
18 and, if approval is given by the Tax Commissioner, the dealer
19 shall furnish a corporate surety bond, conditioned to faithfully
20 comply with all the requirements of sections 77-2601 to 77-2615
21 and sections 21, 22, 24, and 26 of this act, in a sum not less
22 than ~~one~~ ten thousand dollars. Such bond shall be subject to
23 forfeiture under subsection (1) of section 11 of this act, unless
24 the stamping agent has a certification from the Tax Commissioner
25 under subsection (4) of section 11 of this act.

26 (3) Nothing in sections 77-2601 to 77-2615 and sections
27 21, 22, 24, and 26 of this act shall prevent the Tax Commissioner

1 from affixing the stamps or meter impressions in lieu of the
2 provisions for affixing stamps and meter impressions by ~~wholesalers~~
3 stamping agents as determined by such rules and regulations adopted
4 by the Tax Commissioner.

5 (4) The Tax Commissioner shall list on its web site
6 the names of all persons licensed as stamping agents under this
7 section. Manufacturers, importers, and sales entity affiliates
8 shall be entitled to rely upon the list in selling cigarettes as
9 provided in section 69-2706.

10 (5) A manufacturer, importer, sales entity affiliate,
11 wholesale dealer, or retailer that engages in the business of
12 selling cigarettes and that holds a valid stamping agent license
13 under subsection (1) of this section may apply for a directory
14 license allowing it to purchase or possess in the state cigarettes
15 of a manufacturer or brand family not at the time of purchase
16 listed in the directory for sale into another state if permitted
17 under section 69-2706. A directory license shall be issued by
18 the Tax Commissioner to an applicant upon the applicant's (a)
19 demonstrating that it holds a valid license under subsection (1)
20 of this section and (b) providing a certification by an officer
21 thereof on a form prescribed by the Tax Commissioner that any
22 cigarettes of a manufacturer or brand family not listed in the
23 directory will be purchased or possessed solely for sale or
24 transfer into another state as permitted by section 69-2706. The
25 directory license shall remain in effect for a period of one year.

26 (6) No directory license may be issued to a person that
27 acted inconsistently with a certification it previously made under

1 subsection (2) of this section.

2 (7) The Tax Commissioner shall list on its web site the
3 names of all persons holding a directory license. Manufacturers,
4 importers, sales entity affiliates, and stamping agents shall be
5 entitled to rely upon the list in selling cigarettes as provided in
6 section 69-2706.

7 Sec. 24. The state may enter into an agreement with
8 a tribe pursuant to section 22 of this act which contemplates
9 the use of a tribal stamp for sales of cigarettes on an Indian
10 tribe's Indian country in lieu of the cigarette stamp required
11 under section 77-2603.

12 Sec. 25. Section 77-2604, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-2604 (1) Every stamping agent, wholesale dealer, and
15 retail dealer who is subject to sections 77-2601 to 77-2622 and
16 sections 21, 22, 24, and 26 of this act shall make and file with
17 the Tax Commissioner, on or before the ~~tenth~~ fifteenth day of
18 each calendar month on blanks furnished by the Tax Commissioner,
19 true, correct, and sworn reports covering, for the last preceding
20 calendar month, the number of cigarettes purchased, from whom
21 purchased, the specific kinds and brands thereof, the manufacturer,
22 if known, and such other matters and in such detail as the Tax
23 Commissioner may require.

24 (2) (a) Each manufacturer and importer that sells
25 cigarettes in or into the state shall, within fifteen days
26 following the end of each month, file a report on a form and in the
27 manner prescribed by the Tax Commissioner and certify to the state

1 that the report is complete and accurate.

2 (b) The report shall contain the following information:

3 The total number of cigarettes sold by that manufacturer or
4 importer in or into the state during that month and identifying
5 by name and number of cigarettes, (i) the manufacturers of those
6 cigarettes, (ii) the brand families of those cigarettes, and (iii)
7 the purchasers of those cigarettes. A manufacturer's or importer's
8 report shall include cigarettes sold in or into the state through
9 its sales entity affiliate.

10 (c) The requirements of this subsection shall be
11 satisfied and no further report shall be required under this
12 section with respect to cigarettes if the manufacturer or importer
13 timely submits to the Tax Commissioner the report or reports
14 required to be submitted by it with respect to those cigarettes
15 under 15 U.S.C. 376 to the Tax Commissioner and certifies to the
16 state that the reports are complete and accurate.

17 (d) Upon request by the Tax Commissioner, a manufacturer
18 or importer shall provide copies of all sales reports referenced in
19 subdivisions (2)(a) and (b) of this section that it filed in other
20 states.

21 (e) Each manufacturer and importer that sells cigarettes
22 in or into the state shall either (i) submit its federal excise tax
23 returns and all monthly operational reports on Alcohol and Tobacco
24 Tax and Trade Bureau Form 5210.5 and all adjustments, changes, and
25 amendments to such reports to the Tax Commissioner no later than
26 sixty days after the close of the quarter in which the returns were
27 filed or (ii) submit to the United States Treasury a request or

1 consent under section 6103(c) of the Internal Revenue Code of 1986
2 as defined in section 49-801.01 authorizing the federal Alcohol
3 and Tobacco Tax and Trade Bureau and, in the case of a foreign
4 manufacturer or importer, the United States Customs Service to
5 disclose the manufacturer's or importer's federal returns to the
6 Tax Commissioner as of sixty days after the close of the quarter in
7 which the returns were filed.

8 (3) The Tax Commissioner may share the information
9 reported under this section with the taxing or law enforcement
10 authorities of this state and other states.

11 Sec. 26. (1) Any person that sells cigarettes from this
12 state into another state shall, within fifteen days following the
13 end of each month, file a report on a form and in the manner
14 prescribed by the Tax Commissioner and certify to the state that
15 the report is complete and accurate.

16 (2) The report shall contain the following information:

17 (a) The total number of cigarettes sold from this state
18 into another state by the person during that month, identifying
19 by name and number of cigarettes (i) the manufacturers of those
20 cigarettes, (ii) the brand families of those cigarettes, and (iii)
21 the name and address of each recipient of those cigarettes;

22 (b) The number of stamps of each other state the person
23 affixed to the packages containing those cigarettes during that
24 month, the total number of cigarettes contained in the packages to
25 which it affixed each respective other state's stamp and by name
26 and number of cigarettes, and the manufacturers and brand families
27 of the packages to which it affixed each respective other state's

1 stamp; and

2 (c) If the person sold cigarettes during that month from
3 this state into another state in packages not bearing a stamp
4 of the other state, (i) the total number of cigarettes contained
5 in such packages, identifying by name and number of cigarettes,
6 the manufacturers of those cigarettes, the brand families of those
7 cigarettes, and the name and address of each recipient of those
8 cigarettes, and (ii) the person's basis for belief that such state
9 permits the sale of the cigarettes to consumers in a package
10 not bearing a stamp, and the amount of excise, use, or similar
11 tax imposed on the cigarettes paid by the person to such state
12 on the cigarettes. Manufacturers and importers need include the
13 information described in subdivision (2)(c)(i) of this section only
14 as to cigarettes not sold to a person authorized by the law of the
15 other state to affix the stamp required by the other state.

16 (3) In the case of a manufacturer or importer, the
17 report shall include cigarettes sold from this state into another
18 state through its sales entity affiliate. A sales entity affiliate
19 shall file a separate report under this section only to the
20 extent that it sold cigarettes from this state into another state
21 not separately reported under this section by its affiliated
22 manufacturer or importer.

23 (4) The Tax Commissioner may share the information
24 reported under this section with the taxing or law enforcement
25 authorities of this state or other states.

26 Sec. 27. Section 77-2605, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 77-2605 The books, records, papers, receipts, invoices,
2 and supply of cigarettes of any person, including wholesale
3 and retail dealers, stamping agents, and persons transporting
4 cigarettes, subject to ~~the provisions of~~ sections 77-2601 to
5 77-2615 and sections 21, 22, 24, and 26 of this act which
6 pertain to the purchase or sale of cigarettes shall be subject to
7 inspection at any time during ordinary business hours by the Tax
8 Commissioner or his or her representatives.

9 Sec. 28. Section 77-2607, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 77-2607 Each ~~wholesale dealer~~ stamping agent may set
12 aside such portion of ~~his~~ the stamping agent's stock of cigarettes
13 as is not intended to be sold or given away in this state and
14 it will not be necessary to affix the ~~above-mentioned~~ stamps or
15 tax meter impressions thereon; ~~Provided,~~ required under section
16 77-2606, except that if ~~said~~ such stock is not disposed of and
17 out of the possession of the ~~said wholesale dealer~~ stamping agent
18 within ~~thirty~~ fifteen days of the date of receipt thereof, the ~~said~~
19 cigarettes, packages, or pieces, ~~must~~ shall immediately be stamped
20 as required by ~~the provisions of~~ sections 77-2601 to 77-2615 and
21 sections 21, 22, 24, and 26 of this act. Each ~~wholesale dealer~~
22 stamping agent shall immediately mark in ink on each unopened box,
23 carton, or other container of such cigarettes, received and the
24 date of receipt and shall affix ~~his~~ the stamping agent's signature
25 thereto. Within forty-eight hours after such box, carton, or other
26 container is opened, ~~he must~~ the stamping agent shall immediately
27 affix such stamps or tax impressions to each package ~~therein~~ and

1 cancel the stamps affixed thereto, ~~in the manner herein designated.~~

2 Sec. 29. Section 77-2608, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-2608 The Tax Commissioner shall prepare and have
5 suitable stamps for use on each kind of piece or package
6 of cigarettes, except when cigarette tax meter impressions are
7 affixed. Requisition for the preparation of such stamps shall
8 be made through the materiel division of the Department of
9 Administrative Services as other state supplies are requisitioned,
10 and the Tax Commissioner and his or her bondsperson shall be
11 liable for the value of all such stamps delivered to him or
12 her. The Auditor of Public Accounts shall audit annually or as
13 often as the auditor deems advisable the records of the Tax
14 Commissioner with respect to the money received from the sale of
15 stamps and as revenue from tax meter impressions for the purpose
16 of determining the accuracy and correctness of the same. The Tax
17 Commissioner shall sell or distribute the stamps only to licensed
18 ~~wholesale dealers,~~ stamping agents, as defined provided in section
19 77-2601, section 77-2603 or section 24 of this act, and ~~he or she~~
20 the stamping agent shall keep an accurate record of all stamps
21 coming into and leaving ~~his or her hands.~~ the stamping agent's
22 possession. Such stamps shall be sold and accounted for at the
23 face value thereof, except that the Tax Commissioner may, by rule
24 and regulation certified to the State Treasurer, authorize the
25 sale thereof to ~~wholesale dealers~~ stamping agents in this state
26 or outside of this state at a discount of one and eighty-five
27 hundredths percent of such face value of the tax as a commission

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

20 Sec. 30. Section 77-2610, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-2610 Upon the written request of the original
23 purchaser thereof and upon the return of any unused stamps, the Tax
24 Commissioner shall redeem such stamps. The Tax Commissioner shall
25 prepare a voucher showing the amount of such returned unused stamps
26 and shall cause to be drawn a warrant upon the State Treasurer for
27 such amount in favor of the person returning such unused stamps.

1 The refunds shall be paid from the various funds named in section
2 77-2602 in the same proportions as the proceeds of the tax are
3 allocated. By the terms of sections 77-2601 to 77-2615 and sections
4 21, 22, 24, and 26 of this act, the Tax Commissioner and the
5 State Treasurer are specifically authorized to adjust all errors in
6 payments for unused stamps.

7 Sec. 31. Section 77-2612, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 77-2612 The Tax Commissioner may employ, with the advice
10 and consent of the Governor, a sufficient number of inspectors,
11 clerks, assistants, and agents to enforce the provisions of
12 sections 77-2601 to 77-2622 and sections 21, 22, 24, and 26
13 of this act, including the collection of all stamp taxes and all
14 revenue from cigarette tax meters. In such enforcement, the Tax
15 Commissioner may call to his or her aid the Attorney General, any
16 county attorney, any sheriff, any deputy sheriff, or any other
17 peace officer. The compensation of all persons employed shall
18 be fixed by the Governor and shall be paid from the revenue
19 derived under such sections, ~~77-2601 to 77-2622~~. The expenses
20 of administering such sections, ~~77-2601 to 77-2622~~, including
21 necessary assistants, clerical help, cost of enforcement, cost
22 of stamps, and incidental expenses, when approved by the Tax
23 Commissioner, shall be paid by warrants, issued against the General
24 Fund, but such warrants shall not exceed four percent of the funds
25 collected under such sections, ~~77-2601 to 77-2622~~, such expenses in
26 each instance to be approved by the Tax Commissioner.

27 The Tax Commissioner may adopt and promulgate rules and

1 regulations which are consistent with the provisions of sections
2 77-2601 to 77-2622 and sections 21, 22, 24, and 26 of this act and
3 their proper enforcement.

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

24 Sec. 32. Section 77-2613, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 77-2613 The State Treasurer shall place all sums of money
27 received under sections 77-2601 to 77-2615 and sections 21, 22, 24,

1 and 26 of this act as provided in section 77-2602, and from time
2 to time, upon voucher approved by the Tax Commissioner, disburse
3 such sum or sums as may be necessary to administer and carry out
4 ~~the provisions of~~ sections 77-2601 to 77-2615 and sections 21, 22,
5 24, and 26 of this act relating to the collection of ~~said~~ the tax,
6 subject to the limitations ~~therein~~ provided in such sections.

7 Sec. 33. Section 77-2614, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 77-2614 Any person who, with intent to defraud the state,
10 shall make, alter, forge, or counterfeit any license, permit,
11 stamp, or cigarette tax meter impression provided for in sections
12 77-2601 to 77-2615 and sections 21, 22, 24, and 26 of this act, or
13 who shall have in his or her possession any forged, counterfeited,
14 spurious, or altered license, permit, stamp, or cigarette tax
15 meter impression, with intent to use the same, knowing or having
16 reasonable grounds to believe the same to be such, or shall have in
17 his or her possession one or more cigarette stamps or cigarette tax
18 meter impressions which he or she knows have been removed from the
19 pieces or packages of cigarettes to which they were affixed, or who
20 affixes to any piece or package of cigarettes a stamp or cigarette
21 tax meter impression which he or she knows has been removed from
22 any other piece or package of cigarettes shall be deemed guilty of
23 a Class IV felony.

24 Sec. 34. Section 77-2615, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 77-2615 Any person who shall violate any of the
27 ~~provisions of~~ violates sections 77-2601 to 77-2615 and sections 21,

1 22, 24, and 26 of this act, or any rule or regulation ~~lawfully~~
2 ~~made~~ adopted and promulgated in accordance therewith, for which a
3 specific penalty is not otherwise provided or who shall, except
4 as permitted by sections 77-2601 to 77-2615 and sections 21, 22,
5 24, and 26 of this act, sell, deliver, or accept, with intent to
6 evade the provisions of such sections, ~~77-2601 to 77-2615,~~ any
7 cigarettes upon which the tax provided by section 77-2602 has not
8 been paid or who affixes a stamp permitted under section 77-2603
9 or section 24 of this act to a package of cigarettes of a tobacco
10 product manufacturer or brand family not included in the directory
11 pursuant to section 69-2706 or who sells, offers, or possesses for
12 sale in this state cigarettes of a tobacco product manufacturer or
13 brand family not included in the directory shall be deemed guilty
14 of a Class IV felony. ~~Where~~ If any person is found to have in his
15 or her possession more than ten unstamped packages of cigarettes,
16 except as permitted under section 77-2607, it shall be prima facie
17 evidence of attempt to evade ~~the provisions of~~ sections 77-2601 to
18 77-2615 and sections 21, 22, 24, and 26 of this act.

19 Sec. 35. Section 77-2615.01, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 77-2615.01 (1) In addition to ~~the provisions of~~ sections
22 77-2615 and 77-2622, for any violation of sections 77-2601 to
23 77-2622 and sections 21, 22, 24, and 26 of this act or the rules
24 and regulations adopted and promulgated under such sections, the
25 Tax Commissioner may:

26 (a) After notice and hearing, suspend or revoke the
27 licenses of any person licensed under sections 28-1420 to 28-1429

1 or 77-2601 to 77-2622 and sections 21, 22, 24, and 26 of this act.

2 Notice of hearing shall be given as provided in the Administrative
3 Procedure Act; and

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

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

12 ~~(3) (2) No person whose license has been suspended or~~
13 ~~revoked shall sell cigarettes or permit cigarettes to be sold~~
14 ~~during the period of suspension or revocation on the premises~~
15 ~~occupied by him or her. No disciplinary proceeding or action~~
16 ~~shall be barred or abated by the expiration, transfer, surrender,~~
17 ~~continuance, renewal, or extension of any license issued under~~
18 ~~sections 28-1420 to 28-1429 or 77-2601 to 77-2622 and sections 21,~~
19 ~~22, 24, and 26 of this act.~~

20 ~~(4) (3) Any person aggrieved by any decision, order,~~
21 ~~or finding of the Tax Commissioner may appeal the decision,~~
22 ~~order, or finding, and the appeal shall be in accordance with the~~
23 ~~Administrative Procedure Act.~~

24 (4) Any person that sells cigarettes to or purchases
25 cigarettes from a person whose license has been suspended or
26 revoked, ten days after the licensee's name has been removed from
27 the list of licensed entities published by the Tax Commissioner

1 under subsection (4) of section 77-2603, shall be jointly and
2 severally liable for any taxes applicable to such cigarettes under
3 section 77-2602 and for any escrow due on such cigarettes under
4 section 69-2703.

5 Sec. 36. Section 77-2620, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-2620 All cigarettes subject to the tax as imposed by
8 section 77-2602, to which stamps have not been affixed or tax
9 impressions made, as required by sections 77-2601 to 77-2615 and
10 sections 21, 22, 24, and 26 of this act, except as permitted
11 by the provisions of section 77-2607, when found in any place
12 in this state are declared to be contraband goods and may be
13 seized by the Tax Commissioner, by the Tax Commissioner's agents
14 or employees, or by any peace officer of this state, when directed
15 by the Tax Commissioner to do so, without a warrant. The Tax
16 Commissioner may, upon satisfactory proof, direct the return of
17 any confiscated cigarettes when he or she has reason to believe
18 that the owner thereof has not willfully or intentionally evaded
19 any tax imposed under section 77-2602. The Tax Commissioner may,
20 in the absence of proof of good faith, confiscate any unstamped
21 cigarettes or cigarettes without tax impressions found in the
22 possession of any person, except as permitted by section 77-2607.

23 Any cigarettes forfeited to the state under this section shall be
24 destroyed or used for law enforcement purposes and then destroyed.

25 ~~, and may within a reasonable time thereafter, by a public notice~~
26 ~~of at least fifteen days before the day of sale, sell such~~
27 ~~confiscated cigarettes at public sale and pay the proceeds into~~

1 ~~the state treasury. The State Treasurer shall credit the proceeds~~
2 ~~as provided in section 77-2602. Any purchaser of such cigarettes~~
3 ~~shall be required to purchase and affix the stamps or make the~~
4 ~~tax impressions, as required by sections 77-2601 to 77-2615. The~~
5 ~~seizure and sale of any cigarettes under this section shall not~~
6 ~~relieve any person from a fine, imprisonment, or other penalty for~~
7 ~~violation of sections 77-2601 to 77-2615. The Tax Commissioner, his~~
8 ~~or her agents and employees, and any peace officer of this state,~~
9 ~~when directed so to do, shall not in any way be responsible in any~~
10 ~~court for the seizure or the confiscation of any unstamped packages~~
11 ~~of cigarettes or cigarettes without tax impressions.~~

12 Sec. 37. Section 77-2622, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-2622 Failure to comply with ~~the provisions of section~~
15 77-2621 shall be cause for revocation of the permit issued under
16 the provisions of section 77-2621 and forfeiture of the bond posted
17 pursuant to section 77-2621.

18 Sec. 38. Sections 22 and 38 of this act become operative
19 three calendar months after the adjournment of this legislative
20 session. The other sections of this act become operative on January
21 1, 2013.

22 Sec. 39. Original sections 59-1520, 59-1523, 69-502,
23 69-2702, 69-2703, 69-2705, 69-2706, 69-2707, 69-2708, 69-2709,
24 69-2710, 69-2711, 77-2601, 77-2602, 77-2602.03, 77-2603, 77-2604,
25 77-2605, 77-2607, 77-2608, 77-2610, 77-2612, 77-2613, 77-2614,
26 77-2615, 77-2615.01, 77-2620, and 77-2622, Reissue Revised Statutes
27 of Nebraska, are repealed.