

E AND R AMENDMENTS TO LB 590

Introduced by Larson, 40, Chairperson Enrollment and Review

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new 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~~; Reduced Cigarette Ignition Propensity 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, a  
3 partnership, a committee, an association, a corporation, or any  
4 other 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) Any nonparticipating manufacturer may post



1 a bond or its cash equivalent for the benefit of the state which  
2 is subject to execution under subsection (3) of this section.

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

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

1 adjoining states within the preceding five calendar years or (b)  
2 twenty-five thousand dollars.

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

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

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

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

1 section with the taxing or law enforcement authorities of this  
2 state or other states.

3 (2) The Attorney General may require at any time from the  
4 nonparticipating manufacturer proof, from the financial institution  
5 in which such manufacturer has established a qualified escrow fund  
6 for the purpose of compliance with section 69-2703, of the amount  
7 of money in such fund, exclusive of interest, the amounts and dates  
8 of each deposit to such fund, and the amounts and dates of each  
9 withdrawal from such fund.

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

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

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

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

26           (2) The liability of a stamping agent for escrow deposits  
27 shall be calculated as follows: If there is a shortfall amount

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

21 (3) As a condition of the stamping agent's agreement  
22 to purchase cigarettes from a nonparticipating manufacturer, a  
23 stamping agent may require a nonparticipating manufacturer to  
24 prepay the escrow deposit amount owed pursuant to subdivision (2)  
25 of section 69-2703 by the nonparticipating manufacturer into the  
26 escrow account designated in its certification of compliance on  
27 file with the state. The stamping agent may require proof from the

1 escrow agent of the prepayment of escrow.

2 (4) A stamping agent shall not be liable for escrow  
3 deposits under subsection (1) or (2) of this section if the  
4 stamping agent, at the time of purchase of such nonparticipating  
5 manufacturers' cigarettes:

6 (a) Requires the nonparticipating manufacturer to prepay  
7 the escrow deposit under subsection (3) of this section;

8 (b) Obtains a proof of prepayment of the escrow owed from  
9 the escrow agent under subsection (3) of this section; and

10 (c) Determines that the nonparticipating manufacturer is  
11 on the state directory pursuant to section 69-2706.

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

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

27 (2) The license of a stamping agent shall be subject to

1 termination if the stamping agent:

2 (a) Fails to provide a report required under section  
3 69-2708 or section 14 or 26 of this act;

4 (b) Files an incomplete or inaccurate report required  
5 under section 69-2708 or section 14 or 26 of this act or files an  
6 inaccurate certification required under section 69-2708, subsection  
7 (2) of section 77-2603, or section 14 of this act;

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

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

14 (e) Sells unstamped cigarettes in, into, or from the  
15 state or possesses unstamped cigarettes in the state except as  
16 provided in section 77-2607;

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

27 (g) Purchases or sells cigarettes in violation of



1 subsection (5) of this section or section 15 of this act.

2 (3) In the case of a failure under subdivision (2) (a),  
3 (b), (c), or (d) of this section that was not knowing or  
4 intentional, the stamping agent shall be entitled to cure the  
5 failure within ten days after receipt of notice of such violation.  
6 The license of a stamping agent that fully cures the failure during  
7 that period shall not be terminated on account of that failure.

8 (4) In the case of a knowing or intentional failure under  
9 subdivision (2) (a), (b), (c), or (d) of this section, or of any  
10 violation described in subdivision (2) (e) or (f) of this section,  
11 the stamping agent shall for a first violation be subject to a  
12 civil penalty of up to one thousand dollars and be guilty of a  
13 Class IV misdemeanor and for a second or subsequent violation be  
14 subject to a civil penalty of up to five thousand dollars per  
15 violation and be guilty of a Class II misdemeanor. In the case of  
16 violations described in subdivision (2) (d), (e), or (f) of this  
17 section, each sale constitutes a separate offense.

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

27 (6) If a stamping agent whose license has been terminated

1 is a manufacturer of cigarettes, the tobacco product manufacturer  
2 and its brand families shall be removed from the directory.

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

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

8 (b) One hundred eighty days following the termination, in  
9 the case of a second failure under subdivision (2) (a), (b), (c), or  
10 (d) of this section that was not knowing or intentional;

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

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

18 (e) Three years following the termination, in the case  
19 of a second or subsequent knowing or intentional failure under  
20 subdivision (2) (a), (b), (c), or (d) of this section or a second or  
21 subsequent violation described in subdivision (2) (e), (f), or (g)  
22 of this section.

23 ~~(2)~~ (8) Any cigarettes that have been sold, offered  
24 for sale, or possessed for sale in this state in violation of  
25 subsection (4) of section 69-2706 shall be deemed contraband under  
26 section 77-2620 and such cigarettes shall be subject to seizure  
27 and forfeiture as provided in section 77-2620, except that all

1 such cigarettes so seized and forfeited shall be destroyed and not  
2 resold. The stamping agent shall notify its customers for a brand  
3 family with regard to any notice of removal of a tobacco product  
4 manufacturer or a brand family from the directory and give its  
5 customers a seven-day period for the return of cigarettes that  
6 become contraband.

7 ~~(3)~~ (9) The Attorney General, on behalf of the Tax  
8 Commissioner, may seek an injunction to restrain a threatened or  
9 actual violation of subsection (4) of section 69-2706 or ~~subsection~~  
10 ~~(1) or (4) of~~ section 69-2708 by a stamping agent and to compel the  
11 stamping agent to comply with any of such ~~subsections~~, subsection  
12 (4) of section 69-2706 or section 69-2708. In any action brought  
13 pursuant to this section, the state shall be entitled to recover  
14 the costs of investigation, costs of the action, and reasonable  
15 attorney's fees.

16 ~~(4)~~ (10) It is unlawful for a person to (a) sell or  
17 distribute cigarettes for sale in this state or (b) acquire, hold,  
18 own, possess, transport, import, or cause to be imported cigarettes  
19 that the person knows or should know are intended for distribution  
20 or sale in the state in violation of subsection (4) of section  
21 69-2706. A violation of this ~~section~~ subsection is a Class III  
22 misdemeanor.

23 ~~(5)~~ (11) If a court determines that a person has violated  
24 any portion of sections 69-2704 to ~~69-2710~~, 69-2711 and sections 9,  
25 11, 14, 15, and 16 of this act, the court shall order the payment  
26 of any profits, gains, gross receipts, or other benefits from the  
27 violation to be remitted to the State Treasurer for distribution

1 in accordance with Article VII, section 5, of the Constitution  
2 of Nebraska. Unless otherwise expressly provided, the remedies  
3 or penalties provided by sections 69-2704 to ~~69-2710~~ 69-2711 and  
4 sections 9, 11, 14, 15, and 16 of this act are cumulative to  
5 each other and to the remedies or penalties available under all  
6 applicable laws of this state.

7 (12) It is unlawful for any manufacturer, importer, or  
8 stamping agent to knowingly submit any false information required  
9 pursuant to sections 69-2703 to 69-2711 and sections 9, 11, 14,  
10 15, and 16 of this act. A violation of this subsection is a Class  
11 IV felony. Knowing submission of false information shall also be  
12 grounds for removal of a tobacco product manufacturer from the  
13 directory.

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

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

1           (15) Any person that is not a stamping agent or tobacco  
2 product manufacturer that fails to file a complete and accurate  
3 report required under section 77-2604 or section 26 of this act  
4 shall be entitled to cure the failure within ten days after receipt  
5 of notice of the discrepancy from the Attorney General pursuant  
6 to section 11 of this act. If the person fails to fully cure the  
7 failure within such period, it shall be subject to a civil penalty  
8 of up to one thousand dollars per violation and shall be ineligible  
9 to hold any license of the state regarding cigarette sales until  
10 the date specified by subsection (7) of this section for violations  
11 of subdivision (2)(a) of this section.

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

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

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

3           69-2710 (1) Before any tobacco product manufacturer  
4 may be removed from the directory, the Tax Commissioner shall  
5 provide the tobacco product manufacturer thirty days' notice of the  
6 intended action and shall post the notice in the directory. The  
7 tobacco product manufacturer shall have thirty days to come into  
8 compliance with sections 69-2703 to ~~69-2710~~ 69-2711 and sections  
9 9, 11, 14, 15, and 16 of this act or, in the alternative,  
10 secure a temporary injunction against removal in the district  
11 court of Lancaster County. For purposes of the temporary injunction  
12 sought pursuant to this subsection, loss of the ability to sell  
13 tobacco products as a result of removal from the directory shall  
14 constitute irreparable harm. If after thirty days the tobacco  
15 product manufacturer remains in noncompliance and has not obtained  
16 a temporary injunction pursuant to this subsection, the tobacco  
17 product manufacturer shall be removed from the directory.

18           (2) If the Tax Commissioner determines that a tobacco  
19 product manufacturer shall not be included in the directory,  
20 such manufacturer may request a contested case before the Tax  
21 Commissioner under the Administrative Procedure Act. The Tax  
22 Commissioner shall notify the tobacco product manufacturer in  
23 writing of the determination not to include it in the directory.  
24 A request for hearing shall be made within thirty calendar days  
25 after the date of the determination that the manufacturer shall  
26 not be included in the directory and shall contain the evidence  
27 supporting the manufacturer's compliance with sections 69-2703 to

1 ~~69-2710.~~ 69-2711 and sections 9, 11, 14, 15, and 16 of this act.

2 The hearing shall be held within sixty days after the request.

3 At the hearing, the Tax Commissioner shall determine whether the

4 tobacco product manufacturer is in compliance with sections 69-2703

5 to ~~69-2710~~ 69-2711 and sections 9, 11, 14, 15, and 16 of this act

6 and whether the manufacturer should be listed in the directory.

7 A final decision shall be rendered within thirty days after the

8 hearing. Any decision of the Tax Commissioner may be appealed. The

9 appeal shall be in accordance with the Administrative Procedure

10 Act.

11 ~~(3) The first report of stamping agents required by~~

12 ~~subsection (1) of section 69-2708 shall be due thirty calendar~~

13 ~~days after May 30, 2003, the certifications by a tobacco product~~

14 ~~manufacturer described in subsection (1) of section 69-2706 shall~~

15 ~~be due forty-five calendar days after May 30, 2003, and the~~

16 ~~directory described in subsection (2) of section 69-2706 shall be~~

17 ~~published or made available within ninety calendar days after May~~

18 ~~30, 2003.~~

19 ~~(4) The Tax Commissioner may adopt and promulgate rules~~

20 ~~and regulations necessary to effect the purposes of sections~~

21 ~~69-2704 to 69-2710.~~

22 Sec. 14. (1) Any person that during a month acquired,

23 purchased, sold, possessed, transferred, transported, or caused

24 to be transported in or into this state cigarettes of a tobacco

25 product manufacturer or brand family that was not in the directory

26 at the time shall, within fifteen days following the end of that

27 month, file a report on a form and in the manner prescribed by

1 the Tax Commissioner and certify to the state that the report is  
2 complete and accurate. The report shall contain, in addition to  
3 any further information that the Tax Commissioner may reasonably  
4 require to assist the Tax Commissioner in enforcing sections  
5 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this  
6 act and sections 77-2601 to 77-2622 and sections 21, 22, 24, and  
7 26 of this act and the Tobacco Products Tax Act, the following  
8 information:

9       (a) The total number of those cigarettes, in each case  
10 identifying by name and number of cigarettes (i) the manufacturers  
11 of those cigarettes, (ii) the brand families of those cigarettes,  
12 (iii) in the case of a sale or transfer, the name and address  
13 of the recipient of those cigarettes, (iv) in the case of an  
14 acquisition or purchase, the name and address of the seller or  
15 sender of those cigarettes, and (v) the other states in whose  
16 directory the manufacturer and brand family of those cigarettes  
17 were listed at the time and whose stamps the person is authorized  
18 to affix; and

19       (b) In the case of acquisition, purchase, or possession,  
20 the details of the person's subsequent sale or transfer of those  
21 cigarettes, identifying by name and number of cigarettes (i) the  
22 brand families of those cigarettes, (ii) the date of the sale or  
23 transfer, (iii) the name and address of the recipient, (iv) the  
24 number of stamps of each other state that the person affixed to  
25 the packages containing those cigarettes during that month, (v) the  
26 total number of cigarettes contained in the packages to which it  
27 affixed each respective other state's stamp, (vi) the manufacturers



1 and brand families of the packages to which it affixed each  
2 respective other state's stamp, and (vii) a certification that it  
3 reported each sale or transfer to the taxing authority of the other  
4 state by fifteen days following the end of the month in which the  
5 sale or transfer was made and attaching a copy of all such reports.  
6 If the subsequent sale or transfer is from this state into another  
7 state in packages not bearing a stamp of the other state, the  
8 report shall also contain the information described in subdivision  
9 (2) (c) of section 26 of this act.

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

13 Sec. 15. (1) The license of a stamping agent may be  
14 subject to termination if its similar license is terminated in  
15 any other state based on acts or omissions that would be grounds  
16 for license termination under subsection (2) of section 69-2709,  
17 unless the stamping agent demonstrates that its termination in the  
18 other state was effected without due process. If a stamping agent's  
19 license is terminated in another state for a violation similar to a  
20 violation listed in subdivision (2) (a), (b), (c), or (d) of section  
21 69-2709 that was not knowing or intentional, the stamping agent  
22 shall not be subject to license termination if the stamping agent  
23 fully cures such violation and provides notice of such cure to  
24 the Department of Revenue within ten days after receipt of notice  
25 of such violation. A stamping agent whose license is terminated  
26 under this subsection shall be eligible for reinstatement upon the  
27 earlier of the date specified by subsection (7) of section 69-2709

1 for the act or omission in question or reinstatement of its license  
2 by the other state.

3 (2) A tobacco product manufacturer and its brand families  
4 may be removed from the directory if it is removed from the  
5 directory of another state based on acts or omissions that would,  
6 if done in this state, be grounds for removal from the directory  
7 under section 69-2706, 69-2707, or 69-2710 or subsection (6) of  
8 section 69-2709 or section 9 of this act, unless the tobacco  
9 product manufacturer demonstrates that its removal from the other  
10 state's directory was effected without due process. A manufacturer  
11 that is removed from the directory under this subsection shall be  
12 eligible for reinstatement upon the earlier of the date on which it  
13 cures the violation or is reinstated to the directory in the other  
14 state.

15 (3) The applicable procedures under section 77-2615.01  
16 shall apply to terminations and removals under this section.

17 Sec. 16. The Tax Commissioner may adopt and promulgate  
18 rules and regulations necessary to effect the purposes of sections  
19 69-2703 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act.

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

22 69-2711 If a court of competent jurisdiction finds that  
23 the provisions of sections 69-2704 to ~~69-2710~~ 69-2711 and sections  
24 9, 11, 14, 15, and 16 of this act and of sections 69-2702 and  
25 69-2703 conflict and cannot be harmonized, then the provisions of  
26 sections 69-2702 and 69-2703 shall control. If sections 69-2704 to  
27 ~~69-2710~~ 69-2711 and sections 9, 11, 14, 15, and 16 of this act or

1 any part of any such sections causes sections 69-2702 and 69-2703  
2 to no longer constitute a Qualifying or Model Statute, as those  
3 terms are defined in the Master Settlement Agreement, then that  
4 portion of sections 69-2704 to ~~69-2710~~ 69-2711 and sections 9, 11,  
5 14, 15, and 16 of this act shall not be valid.

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

8 77-2601 For purposes of sections 77-2601 to 77-2615 and  
9 sections 21, 22, 24, and 26 of this act:

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

14 (2) Wholesale dealer means a person who sells cigarettes  
15 to licensed retail dealers other than branch stores operated by or  
16 connected with such wholesale dealer for purposes of resale and is  
17 licensed under section 28-1423;

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

22 (4) Tax Commissioner means the Tax Commissioner of the  
23 State of Nebraska;

24 (5) Cigarette means any roll for smoking made wholly or  
25 in part of tobacco irrespective of size or shape and whether or  
26 not such tobacco is flavored, adulterated, or mixed with any other  
27 ingredient, the wrapper or cover of which is made of paper or any

1 other material excepting tobacco; and

2 (6) Consumer means any person, firm, association,  
3 partnership, limited liability company, joint-stock company,  
4 syndicate, or corporation not having a license to sell cigarettes;—

5 (7) Sales entity affiliate means an entity that (a)  
6 sells cigarettes that it acquires directly from a manufacturer  
7 or importer and (b) is affiliated with that manufacturer or  
8 importer. Entities are affiliated with each other if one directly,  
9 or indirectly through one or more intermediaries, controls or is  
10 controlled by or is under common control with the other. Unless  
11 provided otherwise, manufacturer or importer includes any sales  
12 entity affiliate of that manufacturer or importer;

13 (8) Stamping agent has the same meaning as in section  
14 69-2705; and

15 (9) Indian country means (a) all land in this state  
16 within the limits of any Indian reservation under the jurisdiction  
17 of the United States, notwithstanding the issuance of any patent,  
18 including rights-of-way running through the reservation, (b) all  
19 dependent Indian communities within the borders of this state, and  
20 (c) all Indian allotments in this state, the Indian titles to which  
21 have not been extinguished, including rights-of-way running through  
22 such allotments.

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

25 77-2602 (1) Every ~~person~~ stamping agent engaged in  
26 distributing or selling cigarettes at wholesale in this state  
27 shall pay to the Tax Commissioner of this state a special privilege

1 tax. This shall be in addition to all other taxes. It shall be  
2 paid prior to or at the time of the sale, gift, or delivery to the  
3 retail dealer in the several amounts as follows: On each package of  
4 cigarettes containing not more than twenty cigarettes, sixty-four  
5 cents per package; and on packages containing more than twenty  
6 cigarettes, the same tax as provided on packages containing not  
7 more than twenty cigarettes for the first twenty cigarettes in each  
8 package and a tax of one-twentieth of the tax on the first twenty  
9 cigarettes on each cigarette in excess of twenty cigarettes in each  
10 package.

11 (2) Beginning October 1, 2004, the State Treasurer shall  
12 place the equivalent of forty-nine cents of such tax in the General  
13 Fund. The State Treasurer shall reduce the amount placed in the  
14 General Fund under this subsection by the amount prescribed in  
15 subdivision (3)(d) of this section. For purposes of this section,  
16 the equivalent of a specified number of cents of the tax shall mean  
17 that portion of the proceeds of the tax equal to the specified  
18 number divided by the tax rate per package of cigarettes containing  
19 not more than twenty cigarettes.

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

22 (a) First, beginning July 1, 1980, the State Treasurer  
23 shall place the equivalent of one cent of such tax in the  
24 Nebraska Outdoor Recreation Development Cash Fund. For fiscal year  
25 distributions occurring after FY1998-99, the distribution under  
26 this subdivision shall not be less than the amount distributed  
27 under this subdivision for FY1997-98. Any money needed to increase

1 the amount distributed under this subdivision to the FY1997-98  
2 amount shall reduce the distribution to the General Fund;

3 (b) Second, beginning July 1, 1993, the State Treasurer  
4 shall place the equivalent of three cents of such tax in the  
5 Health and Human Services Cash Fund to carry out sections 81-637  
6 to 81-640. For fiscal year distributions occurring after FY1998-99,  
7 the distribution under this subdivision shall not be less than the  
8 amount distributed under this subdivision for FY1997-98. Any money  
9 needed to increase the amount distributed under this subdivision to  
10 the FY1997-98 amount shall reduce the distribution to the General  
11 Fund;

12 (c) Third, beginning October 1, 2002, and continuing  
13 until all the purposes of the Deferred Building Renewal Act have  
14 been fulfilled, the State Treasurer shall place the equivalent of  
15 seven cents of such tax in the Building Renewal Allocation Fund.  
16 The distribution under this subdivision shall not be less than the  
17 amount distributed under this subdivision for FY1997-98. Any money  
18 needed to increase the amount distributed under this subdivision to  
19 the FY1997-98 amount shall reduce the distribution to the General  
20 Fund;

21 (d) Fourth, until July 1, 2009, the State Treasurer  
22 shall place in the Municipal Infrastructure Redevelopment Fund  
23 the sum of five hundred twenty thousand dollars each fiscal year  
24 to carry out the Municipal Infrastructure Redevelopment Fund Act.  
25 The Legislature shall appropriate the sum of five hundred twenty  
26 thousand dollars each year for fiscal year 2003-04 through fiscal  
27 year 2008-09;

1           (e) Fifth, beginning July 1, 2001, and continuing until  
2 June 30, 2008, the State Treasurer shall place the equivalent of  
3 two cents of such tax in the Information Technology Infrastructure  
4 Fund. The distribution under this subdivision shall not be less  
5 than two million fifty thousand dollars. Any money needed to  
6 increase the amount distributed under this subdivision to two  
7 million fifty thousand dollars shall reduce the distribution to the  
8 General Fund;

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

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

24           (h) Eighth, beginning July 1, 2008, and continuing until  
25 June 30, 2009, the State Treasurer shall place the equivalent of  
26 two million fifty thousand dollars of such tax in the Nebraska  
27 Public Safety Communication System Cash Fund. Beginning July 1,

1 2009, and continuing until June 30, 2016, the State Treasurer shall  
2 place the equivalent of two million five hundred seventy thousand  
3 dollars of such tax in the Nebraska Public Safety Communication  
4 System Cash Fund. Beginning July 1, 2016, and every fiscal year  
5 thereafter, the State Treasurer shall place the equivalent of  
6 five million seventy thousand dollars of such tax in the Nebraska  
7 Public Safety Communication System Cash Fund. If necessary, the  
8 State Treasurer shall reduce the distribution of tax proceeds to  
9 the General Fund pursuant to subsection (2) of this section by  
10 such amount required to fulfill the distribution pursuant to this  
11 subdivision.

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

16 (5) The Legislature hereby finds and determines that the  
17 projects funded from the Municipal Infrastructure Redevelopment  
18 Fund and the Building Renewal Allocation Fund are of critical  
19 importance to the State of Nebraska. It is the intent of the  
20 Legislature that the allocations and appropriations made by the  
21 Legislature to such funds or, in the case of allocations for  
22 the Municipal Infrastructure Redevelopment Fund, to the particular  
23 municipality's account not be reduced until all contracts and  
24 securities relating to the construction and financing of the  
25 projects or portions of the projects funded from such funds or  
26 accounts of such funds are completed or paid or, in the case  
27 of the Municipal Infrastructure Redevelopment Fund, the earlier



1 of such date or July 1, 2009, and that until such time any  
2 reductions in the cigarette tax rate made by the Legislature  
3 shall be simultaneously accompanied by equivalent reductions in the  
4 amount dedicated to the General Fund from cigarette tax revenue.  
5 Any provision made by the Legislature for distribution of the  
6 proceeds of the cigarette tax for projects or programs other than  
7 those to (a) the General Fund, (b) the Nebraska Outdoor Recreation  
8 Development Cash Fund, (c) the Health and Human Services Cash  
9 Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the  
10 Building Renewal Allocation Fund, (f) the Information Technology  
11 Infrastructure Fund, (g) the City of the Primary Class Development  
12 Fund, (h) the City of the Metropolitan Class Development Fund, and  
13 (i) the Nebraska Public Safety Communication System Cash Fund shall  
14 not be made a higher priority than or an equal priority to any of  
15 the programs or projects specified in subdivisions (a) through (i)  
16 of this subsection.

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

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

1 change in the tax takes effect. The Tax Commissioner shall credit  
2 to each ~~wholesaler~~ stamping agent an amount equal to the additional  
3 tax on two weeks of such ~~wholesaler's~~ stamping agent's average  
4 purchases of ~~tax~~ stamps.

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

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

10           (a) Cigarette sales on a federal installation in a  
11 transaction that is exempt from state taxation under federal law;  
12 and

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

16           (3) Except as provided in subsection (5) of this section,  
17 the person seeking a refund of taxes shall submit an application  
18 to the Tax Commissioner providing documentation sufficient to  
19 demonstrate (a) that the cigarettes were sold in a package bearing  
20 the correct stamp required under section 77-2603 or section 24  
21 of this act and that the stamp was one that required payment of  
22 tax, (b) that the person paid the applicable taxes in question,  
23 (c) that the cigarettes were sold in an exempt transaction, and  
24 (d) that the person has not previously obtained the refund on  
25 the cigarettes. The documentation shall include, in addition to  
26 information necessary to meet the requirements of subdivisions  
27 (3) (a) through (d) of this section and any other information that

1 the Tax Commissioner may reasonably require, documents showing the  
2 identity of the seller and purchaser and the places of shipment  
3 and delivery of the cigarettes. The Tax Commissioner shall verify  
4 the accuracy and completeness of the required documentation and  
5 information before granting the requested refund.

6 (4) If a meritorious refund claim under subsection (3) of  
7 this section is not paid within sixty days after submission of the  
8 required documentation, the refund shall include interest on the  
9 amount of such refund at the rate specified in section 45-104.02  
10 as such rate existed at the date of submission of the required  
11 documentation.

12 (5) The Tax Commissioner and an Indian tribe may agree  
13 upon a tax refund formula to operate in lieu of application for  
14 refunds under subsection (3) of this section. The aggregate refund  
15 provided to an Indian tribe under a formula for a year shall  
16 not exceed the aggregate tax paid by entities owned and operated  
17 by that tribe or member of that tribe on cigarettes sold in  
18 exempt transactions on that tribe's Indian country during that  
19 year. Refunds of taxes under subsection (3) of this section shall  
20 not be available for cigarettes sold in exempt transactions on an  
21 Indian tribe's Indian country by an Indian tribe that agrees upon  
22 a refund formula under this subsection. Nothing in this subsection  
23 shall limit the state's authority to enter into an agreement  
24 pursuant to section 22 of this act pertaining to the collection  
25 and dissemination of any cigarette taxes which may otherwise be  
26 inconsistent with this subsection.

27 Sec. 22. (1) The Governor or his or her designated

1 representative may negotiate and execute an agreement with the  
2 governing body of any federally recognized Indian tribe within the  
3 State of Nebraska concerning the collection and dissemination of  
4 any cigarette tax or other tobacco product tax under this section  
5 and sections 21 and 24 of this act or escrow collected pursuant  
6 to section 69-2703, on sales of cigarettes, roll-your-own, or  
7 smokeless tobacco made or sold on a federally recognized Indian  
8 tribe's Indian country. The agreement shall specify:

9 (a) Its duration;

10 (b) Its purpose;

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

14 (d) Remittance of taxes and escrow collected;

15 (e) The division of the proceeds of the tax and escrow  
16 between the parties;

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

19 (g) A dispute resolution procedure;

20 (h) Adequate reporting and auditing provisions; and

21 (i) Any other necessary and proper matters.

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

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

1           (4) The agreement may provide for the sale of cigarettes  
2 not included in the directory under section 69-2706, but only if  
3 the agreement requires that such cigarettes bear the tribal stamp  
4 under section 24 of this act and only if the agreement requires  
5 the tribe to make escrow deposits on such cigarettes in amounts  
6 equal to and in a manner consistent with the deposits required of  
7 manufacturers under section 69-2703 or otherwise requires payment  
8 of escrow by the manufacturers in accordance with section 69-2703.

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

14           (6) The state may, in the best interests of the state,  
15 enter into any future agreement, compact, or treaty with any Indian  
16 tribe that is consistent with sections 21, 22, and 24 of this act.

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

19           77-2603 (1) The tax, as levied in section 77-2602, shall  
20 be paid and the stamps or cigarette tax meter impressions shall  
21 be affixed or printed with a cigarette tax meter by the person  
22 having possession and ownership of such cigarettes after the same  
23 shall have come to rest in this state and intended to be sold or  
24 given away in this state. Nothing in sections 77-2601 to 77-2615  
25 and sections 21, 22, 24, and 26 of this act shall be construed  
26 to require a ~~wholesale dealer~~ stamping agent to fix the retail  
27 price or to require any ~~retailer~~ retail dealer to sell at any

1 particular price. Subject to such rules and regulations as the  
2 Tax Commissioner shall prescribe, tax meter machines may be used  
3 when approved by the Tax Commissioner to affix a suitable stamp  
4 or impression on each package of cigarettes and cigarettes with a  
5 tax meter impression shall be treated as stamped cigarettes for  
6 purposes of sections 69-2701 to 69-2711 and sections 9, 11, 14, 15,  
7 and 16 of this act and sections 77-2601 to 77-2615 and sections  
8 21, 22, 24, and 26 of this act. Before any ~~wholesale dealer~~ person  
9 is issued a ~~permit~~ license to affix stamps or cigarette tax meter  
10 impressions, the ~~wholesale dealer~~ person shall make application to  
11 become licensed as a stamping agent to the Tax Commissioner on a  
12 form provided by the Tax Commissioner to engage in such activity.

13 (2) Any manufacturer, importer, sales entity affiliate,  
14 wholesale dealer, or retail dealer that engages in the business of  
15 selling cigarettes may apply to be licensed as a stamping agent in  
16 accordance with this section. A license shall be issued by the Tax  
17 Commissioner to an applicant upon the applicant's:

18 (a) Meeting all requirements of sections 69-2701 to  
19 69-2711 and sections 9, 11, 14, 15, and 16 of this act and sections  
20 77-2601 to 77-2615 and sections 21, 22, 24, and 26 of this act and  
21 rules and regulations pursuant to such sections;

22 (b) Certifying on a form prescribed by the Tax  
23 Commissioner that it will comply with the requirements of section  
24 69-2708; and

25 (c) In the case of an applicant located outside of the  
26 state, designating an agent for service of process in Nebraska,  
27 and providing notice thereof as required by section 69-2707, in

1 connection with enforcement of sections 69-2701 to 69-2711 and  
2 sections 9, 11, 14, 15, and 16 of this act and sections 77-2601  
3 to 77-2615 and sections 21, 22, 24, and 26 of this act, and,  
4 if approval is given by the Tax Commissioner, the manufacturer,  
5 importer, sales entity affiliate, wholesale dealer, or retail  
6 dealer and, if approval is given by the Tax Commissioner, the  
7 dealer shall furnish a corporate surety bond, conditioned to  
8 faithfully comply with all the requirements of sections 77-2601 to  
9 77-2615 and sections 21, 22, 24, and 26 of this act, in a sum not  
10 less than ~~one~~ ten thousand dollars. Such bond shall be subject to  
11 forfeiture under subsection (1) of section 11 of this act unless  
12 the stamping agent is excused from liability under subsection (4)  
13 of section 11 of this act.

14           (3) Nothing in sections 77-2601 to 77-2615 and sections  
15 21, 22, 24, and 26 of this act shall prevent the Tax Commissioner  
16 from affixing the stamps or meter impressions in lieu of the  
17 provisions for affixing stamps and meter impressions by wholesalers  
18 stamping agents as determined by such rules and regulations adopted  
19 by the Tax Commissioner.

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

25           (5) A manufacturer, importer, sales entity affiliate,  
26 wholesale dealer, or retail dealer that engages in the business of  
27 selling cigarettes and that holds a valid stamping agent license

1 under subsection (1) of this section may apply for a directory  
2 license allowing it to purchase or possess in the state cigarettes  
3 of a manufacturer or brand family not at the time of purchase  
4 listed in the directory for sale into another state if permitted  
5 under section 69-2706. A directory license shall be issued by  
6 the Tax Commissioner to an applicant upon the applicant's (a)  
7 demonstrating that it holds a valid license under subsection (1)  
8 of this section and (b) providing a certification by an officer  
9 thereof on a form prescribed by the Tax Commissioner that any  
10 cigarettes of a manufacturer or brand family not listed in the  
11 directory will be purchased or possessed solely for sale or  
12 transfer into another state as permitted by section 69-2706. The  
13 directory license shall remain in effect for a period of one year.

14 (6) No directory license may be issued to a person that  
15 acted inconsistently with a certification it previously made under  
16 subsection (2) of this section.

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

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

27 Sec. 25. Section 77-2604, Reissue Revised Statutes of



1 Nebraska, is amended to read:

2           77-2604 (1) Every stamping agent, wholesale dealer, and  
3 retail dealer who is subject to sections 77-2601 to 77-2622 and  
4 sections 21, 22, 24, and 26 of this act shall make and file with  
5 the Tax Commissioner, on or before the ~~tenth~~ fifteenth day of  
6 each calendar month on blanks furnished by the Tax Commissioner,  
7 true, correct, and sworn reports covering, for the last preceding  
8 calendar month, the number of cigarettes purchased, from whom  
9 purchased, the specific kinds and brands thereof, the manufacturer,  
10 if known, and such other matters and in such detail as the Tax  
11 Commissioner may require.

12           (2) (a) Each manufacturer and importer that sells  
13 cigarettes in or into the state shall, within fifteen days  
14 following the end of each month, file a report on a form and in the  
15 manner prescribed by the Tax Commissioner and certify to the state  
16 that the report is complete and accurate.

17           (b) The report shall contain the following information:  
18 The total number of cigarettes sold by that manufacturer or  
19 importer in or into the state during that month and identifying  
20 by name and number of cigarettes, (i) the manufacturers of those  
21 cigarettes, (ii) the brand families of those cigarettes, and (iii)  
22 the purchasers of those cigarettes. A manufacturer's or importer's  
23 report shall include cigarettes sold in or into the state through  
24 its sales entity affiliate.

25           (c) The requirements of this subsection shall be  
26 satisfied and no further report shall be required under this  
27 section with respect to cigarettes if the manufacturer or importer

1 timely submits to the Tax Commissioner the report or reports  
2 required to be submitted by it with respect to those cigarettes  
3 under 15 U.S.C. 376 to the Tax Commissioner and certifies to the  
4 state that the reports are complete and accurate.

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

9 (e) Each manufacturer and importer that sells cigarettes  
10 in or into the state shall either (i) submit its federal excise tax  
11 returns and all monthly operational reports on Alcohol and Tobacco  
12 Tax and Trade Bureau Form 5210.5 and all adjustments, changes, and  
13 amendments to such reports to the Tax Commissioner no later than  
14 sixty days after the close of the quarter in which the returns were  
15 filed or (ii) submit to the United States Treasury a request or  
16 consent under section 6103(c) of the Internal Revenue Code of 1986  
17 as defined in section 49-801.01 authorizing the federal Alcohol  
18 and Tobacco Tax and Trade Bureau and, in the case of a foreign  
19 manufacturer or importer, the United States Customs Service to  
20 disclose the manufacturer's or importer's federal returns to the  
21 Tax Commissioner as of sixty days after the close of the quarter in  
22 which the returns were filed.

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

26 Sec. 26. (1) Any person that sells cigarettes from this  
27 state into another state shall, within fifteen days following the

1 end of each month, file a report on a form and in the manner  
2 prescribed by the Tax Commissioner and certify to the state that  
3 the report is complete and accurate.

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

5 (a) The total number of cigarettes sold from this state  
6 into another state by the person during that month, identifying  
7 by name and number of cigarettes (i) the manufacturers of those  
8 cigarettes, (ii) the brand families of those cigarettes, and (iii)  
9 the name and address of each recipient of those cigarettes;

10 (b) The number of stamps of each other state the person  
11 affixed to the packages containing those cigarettes during that  
12 month, the total number of cigarettes contained in the packages to  
13 which it affixed each respective other state's stamp and by name  
14 and number of cigarettes, and the manufacturers and brand families  
15 of the packages to which it affixed each respective other state's  
16 stamp; and

17 (c) If the person sold cigarettes during that month from  
18 this state into another state in packages not bearing a stamp  
19 of the other state, (i) the total number of cigarettes contained  
20 in such packages, identifying by name and number of cigarettes,  
21 the manufacturers of those cigarettes, the brand families of those  
22 cigarettes, and the name and address of each recipient of those  
23 cigarettes, and (ii) the person's basis for belief that such state  
24 permits the sale of the cigarettes to consumers in a package  
25 not bearing a stamp, and the amount of excise, use, or similar  
26 tax imposed on the cigarettes paid by the person to such state  
27 on the cigarettes. Manufacturers and importers need include the

1 information described in subdivision (2)(c)(i) of this section only  
2 as to cigarettes not sold to a person authorized by the law of the  
3 other state to affix the stamp required by the other state.

4 (3) In the case of a manufacturer or importer, the  
5 report shall include cigarettes sold from this state into another  
6 state through its sales entity affiliate. A sales entity affiliate  
7 shall file a separate report under this section only to the  
8 extent that it sold cigarettes from this state into another state  
9 not separately reported under this section by its affiliated  
10 manufacturer or importer.

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

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

16 77-2605 The books, records, papers, receipts, invoices,  
17 and supply of cigarettes of any person, including wholesale  
18 and retail dealers, stamping agents, and persons transporting  
19 cigarettes, subject to the provisions of sections 77-2601 to  
20 77-2615 and sections 21, 22, 24, and 26 of this act which  
21 pertain to the purchase or sale of cigarettes shall be subject to  
22 inspection at any time during ordinary business hours by the Tax  
23 Commissioner or his or her representatives.

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

26 77-2607 Each ~~wholesale dealer~~ stamping agent may set  
27 aside such portion of ~~his~~ the stamping agent's stock of cigarettes

1 as is not intended to be sold or given away in this state and  
2 it will not be necessary to affix the ~~above-mentioned~~ stamps or  
3 tax meter impressions thereon, ~~Provided~~, required under section  
4 77-2606, except that if said such stock is not disposed of and  
5 out of the possession of the said wholesale dealer stamping agent  
6 within thirty days of the date of receipt thereof, the said  
7 cigarettes, packages, or pieces, must shall immediately be stamped  
8 as required by the provisions of sections 77-2601 to 77-2615 and  
9 sections 21, 22, 24, and 26 of this act. Each wholesale dealer  
10 stamping agent shall immediately mark in ink on each unopened box,  
11 carton, or other container of such cigarettes, received and the  
12 date of receipt and shall affix his the stamping agent's signature  
13 thereto. Within forty-eight hours after such box, carton, or other  
14 container is opened, he must the stamping agent shall immediately  
15 affix such stamps or tax impressions to each package therein and  
16 cancel the stamps affixed thereto, in the manner herein designated.

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

19           77-2608 The Tax Commissioner shall prepare and have  
20 suitable stamps for use on each kind of piece or package  
21 of cigarettes, except when cigarette tax meter impressions are  
22 affixed. Requisition for the preparation of such stamps shall  
23 be made through the materiel division of the Department of  
24 Administrative Services as other state supplies are requisitioned,  
25 and the Tax Commissioner and his or her bondsperson shall be  
26 liable for the value of all such stamps delivered to him or  
27 her. The Auditor of Public Accounts shall audit annually or as

1 often as the auditor deems advisable the records of the Tax  
2 Commissioner with respect to the money received from the sale of  
3 stamps and as revenue from tax meter impressions for the purpose  
4 of determining the accuracy and correctness of the same. The Tax  
5 Commissioner shall sell or distribute the stamps only to licensed  
6 ~~wholesale dealers,~~ stamping agents, as defined provided in section  
7 ~~77-2601,~~ section 77-2603 or section 24 of this act, and he ~~or she~~  
8 the stamping agent shall keep an accurate record of all stamps  
9 coming into and leaving ~~his or her hands.~~ the stamping agent's  
10 possession. Such stamps shall be sold and accounted for at the  
11 face value thereof, except that the Tax Commissioner may, by rule  
12 and regulation certified to the State Treasurer, authorize the  
13 sale thereof to ~~wholesale dealers~~ stamping agents in this state  
14 or outside of this state at a discount of one and eighty-five  
15 hundredths percent of such face value of the tax as a commission  
16 for affixing and canceling such stamps. ~~except that for stamps~~  
17 ~~sold beginning October 1, 2002, through September 30, 2004, the~~  
18 ~~authorized commission for affixing and canceling such stamps shall~~  
19 ~~be one and seven-tenths percent of the face value of the tax.~~  
20 Any ~~wholesale dealer~~ stamping agent using a tax meter machine  
21 shall be entitled to the same discount as allowed a ~~wholesale~~  
22 ~~dealer~~ stamping agent for affixing and canceling the stamps. The  
23 money received by the Tax Commissioner from the sale of the  
24 stamps and as revenue from such tax meter impressions shall be  
25 deposited by him or her daily with the State Treasurer who shall  
26 credit such money as provided in section 77-2602. Upon proof by  
27 the Tax Commissioner that he or she can affix such stamps or

1 meter impressions, warehouse and distribute such cigarettes, and  
2 collect such revenue at a cost less than any discount allowed to  
3 ~~wholesale dealers~~ stamping agents pursuant to this section, he or  
4 she may then proceed to affix the stamps himself or herself after  
5 giving the ~~wholesale dealers~~ stamping agents sixty days' notice and  
6 purchasing all equipment used by them for the purpose of affixing  
7 such stamps or meter impressions at a fair market value.

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

10           77-2610 Upon the written request of the original  
11 purchaser thereof and upon the return of any unused stamps, the Tax  
12 Commissioner shall redeem such stamps. The Tax Commissioner shall  
13 prepare a voucher showing the amount of such returned unused stamps  
14 and shall cause to be drawn a warrant upon the State Treasurer for  
15 such amount in favor of the person returning such unused stamps.  
16 The refunds shall be paid from the various funds named in section  
17 77-2602 in the same proportions as the proceeds of the tax are  
18 allocated. By the terms of sections 77-2601 to 77-2615 and sections  
19 21, 22, 24, and 26 of this act, the Tax Commissioner and the  
20 State Treasurer are specifically authorized to adjust all errors in  
21 payments for unused stamps.

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

24           77-2612 The Tax Commissioner may employ, with the advice  
25 and consent of the Governor, a sufficient number of inspectors,  
26 clerks, assistants, and agents to enforce ~~the provisions of~~  
27 sections 77-2601 to 77-2622 and sections 21, 22, 24, and 26

1 of this act, including the collection of all stamp taxes and all  
2 revenue from cigarette tax meters. In such enforcement, the Tax  
3 Commissioner may call to his or her aid the Attorney General, any  
4 county attorney, any sheriff, any deputy sheriff, or any other  
5 peace officer. The compensation of all persons employed shall  
6 be fixed by the Governor and shall be paid from the revenue  
7 derived under such sections, ~~77-2601 to 77-2622~~. The expenses  
8 of administering such sections, ~~77-2601 to 77-2622~~, including  
9 necessary assistants, clerical help, cost of enforcement, cost  
10 of stamps, and incidental expenses, when approved by the Tax  
11 Commissioner, shall be paid by warrants, issued against the General  
12 Fund, but such warrants shall not exceed four percent of the funds  
13 collected under such sections, ~~77-2601 to 77-2622~~, such expenses in  
14 each instance to be approved by the Tax Commissioner.

15           The Tax Commissioner may adopt and promulgate rules and  
16 regulations which are consistent with ~~the provisions of~~ sections  
17 77-2601 to 77-2622 and sections 21, 22, 24, and 26 of this act and  
18 their proper enforcement.

19           Each ~~wholesale dealer~~ stamping agent shall annually apply  
20 to the Tax Commissioner, upon forms to be furnished by the Tax  
21 Commissioner, ~~for a permit~~ license to use the tax meter machines,  
22 as set forth in section 77-2603, or to purchase such stamps as  
23 provided in section 77-2608, or both. The ~~permit~~ license shall  
24 expire on December 31 each year. Each wholesale dealer applying  
25 for a stamping agent license shall furnish with such application  
26 evidence satisfactory to the Tax Commissioner showing that ~~he or~~  
27 ~~she~~ the wholesale dealer has obtained a license as a wholesale



1 dealer in accordance with section 28-1423. ~~He or she~~ The applicant  
2 shall accompany the application with a fee of five hundred dollars  
3 to be placed in the General Fund if the ~~permit~~ license is granted  
4 and otherwise to be returned to the applicant. If the applicant  
5 is an individual, the application shall include the applicant's  
6 social security number. If the application is approved and the bond  
7 referred to in section 77-2603 is given and approved, if such bond  
8 is required under section 77-2603, the Tax Commissioner shall issue  
9 such license which shall be conspicuously posted in the place of  
10 business of such ~~wholesale dealer~~ stamping agent.

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

13           77-2613 The State Treasurer shall place all sums of money  
14 received under sections 77-2601 to 77-2615 and sections 21, 22, 24,  
15 and 26 of this act as provided in section 77-2602, and from time  
16 to time, upon voucher approved by the Tax Commissioner, disburse  
17 such sum or sums as may be necessary to administer and carry out  
18 the provisions of sections 77-2601 to 77-2615 and sections 21, 22,  
19 24, and 26 of this act relating to the collection of ~~said the~~ tax,  
20 subject to the limitations ~~therein~~ provided in such sections.

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

23           77-2614 Any person who, with intent to defraud the state,  
24 shall make, alter, forge, or counterfeit any license, permit,  
25 stamp, or cigarette tax meter impression provided for in sections  
26 77-2601 to 77-2615 and sections 21, 22, 24, and 26 of this act, or  
27 who shall have in his or her possession any forged, counterfeited,

1 spurious, or altered license, permit, stamp, or cigarette tax  
2 meter impression, with intent to use the same, knowing or having  
3 reasonable grounds to believe the same to be such, or shall have in  
4 his or her possession one or more cigarette stamps or cigarette tax  
5 meter impressions which he or she knows have been removed from the  
6 pieces or packages of cigarettes to which they were affixed, or who  
7 affixes to any piece or package of cigarettes a stamp or cigarette  
8 tax meter impression which he or she knows has been removed from  
9 any other piece or package of cigarettes shall be deemed guilty of  
10 a Class IV felony.

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

13 77-2615 Any person who shall violate any of the  
14 provisions of violates sections 77-2601 to 77-2615 and sections 21,  
15 22, 24, and 26 of this act, or any rule or regulation lawfully  
16 made adopted and promulgated in accordance therewith, for which a  
17 specific penalty is not otherwise provided or who shall, except  
18 as permitted by sections 77-2601 to 77-2615 and sections 21, 22,  
19 24, and 26 of this act, sell, deliver, or accept, with intent to  
20 evade the provisions of such sections, 77-2601 to 77-2615, any  
21 cigarettes upon which the tax provided by section 77-2602 has not  
22 been paid or who affixes a stamp permitted under section 77-2603  
23 or section 24 of this act to a package of cigarettes of a tobacco  
24 product manufacturer or brand family not included in the directory  
25 pursuant to section 69-2706 or who sells, offers, or possesses for  
26 sale in this state cigarettes of a tobacco product manufacturer or  
27 brand family not included in the directory shall be deemed guilty

1 of a Class IV felony. ~~Where~~ If any person is found to have in his  
2 or her possession more than ten unstamped packages of cigarettes,  
3 except as permitted under section 77-2607, it shall be prima facie  
4 evidence of attempt to evade ~~the provisions of~~ sections 77-2601 to  
5 77-2615 and sections 21, 22, 24, and 26 of this act.

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

8 77-2615.01 (1) In addition to ~~the provisions of~~ sections  
9 77-2615 and 77-2622, for any violation of sections 77-2601 to  
10 77-2622 and sections 21, 22, 24, and 26 of this act or the rules  
11 and regulations adopted and promulgated under such sections, the  
12 Tax Commissioner may:

13 (a) After notice and hearing, suspend or revoke the  
14 licenses of any person licensed under sections 28-1420 to 28-1429  
15 or 77-2601 to 77-2622 and sections 21, 22, 24, and 26 of this act.  
16 Notice of hearing shall be given as provided in the Administrative  
17 Procedure Act; and

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

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

26 ~~(3)~~ (2) No person whose license has been suspended or  
27 revoked shall sell cigarettes or permit cigarettes to be sold

1 during the period of suspension or revocation on the premises  
2 occupied by him or her. No disciplinary proceeding or action  
3 shall be barred or abated by the expiration, transfer, surrender,  
4 continuance, renewal, or extension of any license issued under  
5 sections 28-1420 to 28-1429 or 77-2601 to 77-2622 and sections 21,  
6 22, 24, and 26 of this act.

7 ~~(4)~~ (3) Any person aggrieved by any decision, order,  
8 or finding of the Tax Commissioner may appeal the decision,  
9 order, or finding, and the appeal shall be in accordance with the  
10 Administrative Procedure Act.

11 (4) Any person that sells cigarettes to or purchases  
12 cigarettes from a person whose license has been suspended or  
13 revoked, ten days after the licensee's name has been removed from  
14 the list of licensed entities published by the Tax Commissioner  
15 under subsection (4) of section 77-2603, shall be jointly and  
16 severally liable for any taxes applicable to such cigarettes under  
17 section 77-2602 and for any escrow due on such cigarettes under  
18 section 69-2703.

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

21 77-2620 All cigarettes subject to the tax as imposed by  
22 section 77-2602, to which stamps have not been affixed or tax  
23 impressions made, as required by sections 77-2601 to 77-2615 and  
24 sections 21, 22, 24, and 26 of this act, except as permitted  
25 by the provisions of section 77-2607, when found in any place  
26 in this state are declared to be contraband goods and may be  
27 seized by the Tax Commissioner, by the Tax Commissioner's agents

1 or employees, or by any peace officer of this state, when directed  
2 by the Tax Commissioner to do so, without a warrant. The Tax  
3 Commissioner may, upon satisfactory proof, direct the return of  
4 any confiscated cigarettes when he or she has reason to believe  
5 that the owner thereof has not willfully or intentionally evaded  
6 any tax imposed under section 77-2602. The Tax Commissioner may,  
7 in the absence of proof of good faith, confiscate any unstamped  
8 cigarettes or cigarettes without tax impressions found in the  
9 possession of any person, except as permitted by section 77-2607.  
10 Any cigarettes forfeited to the state under this section shall be  
11 destroyed or used for law enforcement purposes and then destroyed.  
12  ~~and may within a reasonable time thereafter, by a public notice~~  
13  ~~of at least fifteen days before the day of sale, sell such~~  
14  ~~confiscated cigarettes at public sale and pay the proceeds into~~  
15  ~~the state treasury. The State Treasurer shall credit the proceeds~~  
16  ~~as provided in section 77-2602. Any purchaser of such cigarettes~~  
17  ~~shall be required to purchase and affix the stamps or make the~~  
18  ~~tax impressions, as required by sections 77-2601 to 77-2615. The~~  
19  ~~seizure and sale of any cigarettes under this section shall not~~  
20  ~~relieve any person from a fine, imprisonment, or other penalty for~~  
21  ~~violation of sections 77-2601 to 77-2615. The Tax Commissioner, his~~  
22  ~~or her agents and employees, and any peace officer of this state,~~  
23  ~~when directed so to do, shall not in any way be responsible in any~~  
24  ~~court for the seizure or the confiscation of any unstamped packages~~  
25  ~~of cigarettes or cigarettes without tax impressions.~~

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

1           77-2622 Failure to comply with ~~the provisions of section~~  
2 77-2621 shall be cause for revocation of the permit issued under  
3 ~~the provisions of section 77-2621~~ and forfeiture of the bond posted  
4 pursuant to section 77-2621.

5           Sec. 38. Sections 22 and 38 of this act become operative  
6 three calendar months after the adjournment of this legislative  
7 session. The other sections of this act become operative on January  
8 1, 2013.

9           Sec. 39. Original sections 59-1520, 59-1523, 69-502,  
10 69-2702, 69-2703, 69-2705, 69-2706, 69-2707, 69-2708, 69-2709,  
11 69-2710, 69-2711, 77-2601, 77-2602, 77-2602.03, 77-2603, 77-2604,  
12 77-2605, 77-2607, 77-2608, 77-2610, 77-2612, 77-2613, 77-2614,  
13 77-2615, 77-2615.01, 77-2620, and 77-2622, Reissue Revised Statutes  
14 of Nebraska, are repealed.

15           2. On page 1, strike lines 2 through 9 and insert  
16 "69-502, 69-2702, 69-2703, 69-2705, 69-2706, 69-2707, 69-2708,  
17 69-2709, 69-2710, 69-2711, 77-2601, 77-2602, 77-2602.03, 77-2603,  
18 77-2604, 77-2605, 77-2607, 77-2608, 77-2610, 77-2612, 77-2613,  
19 77-2614, 77-2615, 77-2615.01, 77-2620, and 77-2622, Reissue Revised  
20 Statutes of Nebraska; to provide, change, and eliminate provisions  
21 relating to licenses, disciplinary actions relating to licenses,  
22 the Master Settlement Agreement, manufacturer certifications,  
23 powers and duties, bonds, cigarette stamps, stamping agents,  
24 escrow deposits, reporting, a directory, and taxation; to define  
25 and redefine terms; to provide for an agreement with Indian  
26 tribes regarding cigarette sales, taxation, and distribution  
27 as prescribed; to provide and change penalties; to harmonize

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MHF-05/02/2011

ER111  
LB590  
MHF-05/02/2011

1 provisions; to provide operative dates; and to repeal the original  
2 sections.".