

**ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011**  
**COMMITTEE STATEMENT**  
**LB590**

---

**Hearing Date:** Wednesday March 02, 2011  
**Committee On:** Revenue  
**Introducer:** Gloor  
**One Liner:** Change provisions relating to cigarette taxation

---

**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

---

**Vote Results:**

<b>Aye:</b>	7	Senators Adams, Cornett, Fischer, Hadley, Loudon, Pankonin, Utter
<b>Nay:</b>		
<b>Absent:</b>	1	Senator Pirsch
<b>Present Not Voting:</b>		

---

**Proponents:**

Sen. Mike Gloor  
David Cookson  
David Holmquist  
Kathy Siefken

**Representing:**

Introducer  
NE Attorney General's Office  
American Cancer Society  
NE Grocery Industry Assoc.

**Opponents:**

Lance Morgan

**Representing:**

Winnebago Tribe of NE

**Neutral:**

Mick Mines

**Representing:**

NE Assoc. of Tobacco & Candy Distributors

---

**Summary of purpose and/or changes:**

The bill as drafted would modify several provisions of tobacco tax enforcement laws. These modification would allow the state to continue to participate in the Master Settlement Agreement made with tobacco companies. Participation in multi-state agreements with other states and tobacco wholesalers can be modified under the bill.

Among the powers found in the bill, compacts can be negotiated with tribal governments in order to facilitate compliance with the Master Settlement Agreement. Various new reporting provisions are added to state law.

---

**Explanation of amendments:**

AM 1072 rewrites much of LB 590 as introduced, but most of the amendment's changes are technical or clarifying changes. AM 1072 is the result of much work performed by Nebraska Attorneys General and various interested parties. Section 22 (pp. 51-53) is especially noteworthy because it authorizes compacts between the State of Nebraska and Indian tribes. A brief section-by-section summary of AM 1072 is shown below.

Sec. 1. Makes coordinating changes to various statutory citations and changes various dates from "May 1, 2001" to "January 1, 2011" in section 59-1520.

Sec. 2. No change from the bill as introduced (coordinating statutory citations).

Sec. 3. No change from the bill as introduced (redefines "agent" for purposes of the "Reduced Cigarette Ignition Propensity Act").

Sec. 4. For purposes of Nebraska's tobacco enforcement laws (section 69-2701, et seq.), section 4 defines the term

---

"Indian country" similar to the federal definition of that term under 18 U.S.C. sec. 1151 and redefines the term "Indian tribe". Section 4 also changes the definition of "units sold" and corrects a typographical error.

Sec. 5. For purposes of Nebraska's tobacco enforcement laws, section 5 requires quarterly escrow payments and provides an exception for a tribal compact. It also provides that an "importer" will be "jointly and severally liable for escrow payments" due from a "nonparticipating manufacturer" with respect to "nonparticipating manufacturer cigarettes that it imported and which were then sold in this state, except as provided for by an agreement entered into pursuant to section 22".

Sec. 6. Redefines "Indian country" and "Indian tribe" for purposes of Nebraska's tobacco enforcement laws so that both terms have the same definition set forth in section 69-2702 (see section 4 summary above); requires the Attorney General to determine the amount of escrow due; expands the definition of "nonparticipating manufacturer"; and makes technical and clarifying changes.

Sec. 7. Provisions governing the "directory" of licensees maintained by the Tax Commissioner. Changes include clarifying language concerning tribal tax stamps, nonparticipating manufacturer agents in Nebraska, and permits for a nonparticipating manufacturer's importer. Section 7 also provides for tribal tax stamps and requires certification reporting and registration to comply with federal law under 15 U.S.C. sec. 376.

Sec. 8. Technical and coordinating changes.

Sec. 9. Requires a nonparticipating manufacturer to post a bond or the cash equivalent of a bond. Section 9 also provides a 5-year "look-back" period to determine if bonding requirements have been met.

Sec. 10. Governs regulation and reporting requirements of stamping agents.

Sec. 11. Provisions governing stamping agents and their responsibility to make escrow payments.

Sec. 12. Provisions governing termination of a stamping agent's license by the Tax Commissioner for failure to timely and accurately file certain reports and pay cigarette taxes due.

Sec. 13. Technical changes.

Sec. 14. Requires any person that during a month bought, sold, transferred, or transported cigarettes in or into Nebraska without first being listed in the directory maintained by the Tax Commissioner 15 days to file certain required reports, the required contents of which are listed in section 14.

Sec. 15. Authorizes termination of the license of a stamping agent if the stamping agent's similar license in any other state has been terminated, and also authorizes removal of a tobacco product manufacturer and its brand families to be removed from the directory of licensees if it is removed from the directory of another state under certain circumstances. Those provisions were formerly in section 14 of LB 590 as introduced. (Section 15 of LB 590 as introduced has been eliminated—that section required the Tax Commissioner to list certain information about licensees on its web site.)

Sec. 16. Authorizes the Nebraska Department of Revenue to adopt rules and regulations to carry out LB 570.

Sec. 17. Makes coordinating changes to various statutory citations.

Sec. 18. For purposes of Nebraska's cigarette tax statutes (77-2601, et seq.), section 18 defines "stamping agent" and redefines "person".

Sec. 19. For purposes of Nebraska's "special privilege tax" with respect to sales of cigarettes, section 19 changes "wholesaler" to "stamping agent".

Sec. 20. For purposes of Nebraska's cigarette tax statute that governs the effect of a change in the cigarette tax rate, section 20 changes "wholesaler" to "stamping agent".

Sec. 21. For purposes of exemptions from Nebraska's cigarette tax, section 21: changes "wholesale dealer" to "stamping agent"; changes bond requirements for wholesaler; exempts from taxation sales of cigarettes that are exempt from state taxation by federal law; clarifies meaning of "refund interest rate"; provides authority for entering into agreements under section 22 that may otherwise be inconsistent with the provisions of section 21.

Sec. 22. Section 22 authorizes the Governor to negotiate and execute an agreement with the governing body of any federally recognized Indian tribe within Nebraska concerning the collection and dissemination of any cigarette tax or other tobacco product tax under sections 22, 21, and 24 of AM 1072 or escrow collected under section 69-2703 on the sale of "cigarettes, roll-your-own, or smokeless tobacco made or sold on a federally recognized Indian tribe's Indian country."

Section 22 requires such an agreement to specify certain things, including its duration, purpose, and a dispute resolution procedure. Section 22 also provides that such an agreement must: (a) "require tribal taxes to be imposed equally on all cigarettes and other tobacco products regardless of manufacturer or brand" and (b) "require that all packages of cigarettes bear either a stamp under section 77-2603 [Nebraska cigarette tax stamp] or a tribal stamp under section 24 of this act." Additionally, section 22 prohibits an Indian tribe that enters into such an agreement from

licensing, or otherwise authorizing "an individual tribal member or other person or entity to sell cigarettes, roll-your-own, or smokeless tobacco in violation of the terms of the agreement."

Section 22 permits such an agreement to "provide for the sale of cigarettes not included in the directory under section 69-2706, but only if the agreement requires that such cigarettes bear the tribal stamp under section 24 of this act and only if the agreement requires the tribe to make escrow deposits on such cigarettes in amounts equal to and in a manner consistent with the deposits required of manufacturers under section 69-2703 or otherwise requires payment of escrow by the manufacturers in accordance with section 69-2703." If it is in the State's "best interests," section 22 permits the State to enter into "any future agreement, compact, or treaty with any Indian tribe that is consistent with sections 21, 22, and 24 of this act."

Sec. 23. Removes stamping agent license requirement for consent to state jurisdiction and waiver of sovereign immunity.

Sec. 24. Authorizes the state to enter into an agreement with an Indian tribe under section 22 which contemplates the use of a tribal stamp for sales of cigarettes on an Indian tribe's Indian country in lieu of the Nebraska cigarette stamp required by section 77-2603.

Sec. 25. Requires each manufacturer and importer that sells cigarettes in or into Nebraska to, within 15 days after the end of each month, file a report certifying that the report is complete and accurate. It also specifies the information the report must include. It also contains other reporting requirements for such manufacturers and importers and authorizes the Tax Commissioner to share information in the report with tax and law enforcement authorities in Nebraska and other states.

Sec. 26. Requires any person that sells cigarettes from this state into another state to, within 15 days after the end of each month, file a report certifying that the report is complete and accurate. It also specifies the information the report must include. It also contains other reporting requirements for such manufacturers and importers and authorizes the Tax Commissioner to share information in the report with tax and law enforcement authorities in Nebraska and other states.

Sections 27 to 37 are largely technical and coordinating changes, except that: section 34 addresses with criminal penalties (Class IV felony) for violating Nebraska's cigarette tax laws; section 35 makes any person who sells cigarettes to or buys cigarettes from a person whose license has been suspended or revoked—10 days after the licensee's name has been revoked from the list of licensed entities published by the Tax Commissioner pursuant to section 77-2603(4) [section 23 of AM 1072]—jointly and severally liable for any taxes applicable to such cigarettes under section 77-2602 and for any escrow due on such cigarettes under section 69-2703.

Sec. 38. Operative dates: Sections 22 and 38 are operative three calendar months after adjournment of the 2011 legislative session. The other sections of the bill are operative January 1, 2013.

Sec. 39. Repeals the original version of the statutes amended by the bill.

---

Abbie Cornett, Chairperson