

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 590

Introduced by Gloor, 35.

Read first time January 19, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to tobacco; to amend sections 59-1520, 59-1523,
2 69-502, 69-2702, 69-2703, 69-2705, 69-2706, 69-2708,
3 69-2709, 69-2710, 69-2711, 77-2601, 77-2603, 77-2604,
4 77-2605, 77-2607, 77-2608, 77-2610, 77-2612, 77-2613,
5 77-2614, 77-2615, 77-2615.01, 77-2620, and 77-2622,
6 Reissue Revised Statutes of Nebraska; to change and
7 provide provisions relating to cigarette taxation; to
8 provide penalties; to harmonize provisions; and to repeal
9 the original sections.
10 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

1 May 1, 2001; and

2 (f) The federal trademark and copyright laws;

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

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

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

15 (3) Affix any tax stamps or meter impression required
16 pursuant to sections 77-2601 to 77-2615 and sections 19, 20, 22, and
17 24 of this act to the package of any cigarettes that does not comply
18 with the requirements of subdivision (1) of this section or that is
19 altered in violation of subdivision (2) of this section; and

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

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

1 Nebraska, is amended to read:

2 59-1523 (1) The cigarette tax division of the Tax
3 Commissioner may, after notice and hearing, revoke or suspend for any
4 violation of section 59-1520 the license or licenses of any person
5 licensed under the provisions of sections 28-1418 to 28-1429 or
6 sections 77-2601 to 77-2622 and sections 19, 20, 22, and 24 of this
7 act.

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

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

17 69-502 For purposes of the Reduced Cigarette Ignition
18 Propensity Act:

19 (1) Agent means any person authorized by the Tax
20 Commissioner to purchase and affix stamps or cigarette tax meter
21 impressions on packages of cigarettes under sections 77-2601 to
22 77-2615 and sections 19, 20, 22, and 24 of this act;

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

24 (3) Consumer testing means an assessment of cigarettes
25 that is conducted by a manufacturer, or under the control or

1 direction of a manufacturer, for the purpose of evaluating consumer
2 acceptance of the cigarettes;

3 (4) Manufacturer means:

4 (a) Any entity which manufactures or otherwise produces
5 cigarettes or causes cigarettes to be manufactured or produced
6 anywhere that such manufacturer intends to sell in this state,
7 including cigarettes intended to be sold in the United States through
8 an importer;

9 (b) The first purchaser anywhere that intends to resell
10 in the United States cigarettes manufactured anywhere that the
11 original manufacturer or maker does not intend to be sold in the
12 United States; or

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

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

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

25 (7) Retail dealer means any person, other than a

1 manufacturer or wholesale dealer, engaged in selling cigarettes or
2 tobacco products;

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

6 (9) Sell means to sell or to offer or agree to do the
7 same; and

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

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

16 69-2702 For purposes of this section and section 69-2703:

17 (1) Adjusted for inflation means increased in accordance
18 with the formula for inflation adjustment set forth in Exhibit C to
19 the Master Settlement Agreement;

20 (2) Affiliate means a person that directly or indirectly
21 owns or controls, is owned or controlled by, or is under common
22 ownership or control with, another person. Solely for purposes of
23 this subdivision, the terms owns, is owned, and ownership means
24 ownership of an equity interest, or the equivalent thereof, of ten
25 percent or more, and the term person means an individual,

1 partnership, committee, association, corporation, or any other
2 organization or group of persons;

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

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

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

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

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

5 ~~(5)~~(7) Master Settlement Agreement means the settlement
6 agreement entered into on November 23, 1998, between the state and
7 specific United States tobacco product manufacturers and related
8 documents to such agreement;

9 ~~(6)~~(8) Qualified escrow fund means an escrow arrangement
10 with a federally or state-chartered financial institution having no
11 affiliation with any tobacco product manufacturer and having assets
12 of at least one billion dollars where such arrangement requires that
13 such financial institution hold the escrowed funds' principal for the
14 benefit of releasing parties and prohibits the tobacco product
15 manufacturer that places such funds into escrow from using,
16 accessing, or directing the use of the funds' principal except as
17 consistent with subdivision (2)(b) of section 69-2703;

18 ~~(7)~~(9) Released claims means released claims as that
19 term is defined in the Master Settlement Agreement;

20 ~~(8)~~(10) Releasing parties means releasing parties as
21 that term is defined in the Master Settlement Agreement;

22 ~~(9)~~(11) Tobacco product manufacturer means an entity
23 that after April 29, 1999, directly and not exclusively through any
24 affiliate:

25 (a) Manufactures cigarettes anywhere that such

1 manufacturer intends to be sold in the United States, including
2 cigarettes intended to be sold in the United States through an
3 importer (except when such importer is an original participating
4 manufacturer (as that term is defined in the Master Settlement
5 Agreement) that will be responsible for the payments under the Master
6 Settlement Agreement with respect to such cigarettes as a result of
7 the provisions of subsection II(mm) of the Master Settlement
8 Agreement and that pays the taxes specified in subsection II(z) of
9 the Master Settlement Agreement, and provided that the manufacturer
10 of such cigarettes does not market or advertise such cigarettes in
11 the United States);

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

15 (c) Becomes a successor of an entity described in
16 subdivision ~~(9)(a)-(11)(a)~~ or ~~(9)(b)-(11)(b)~~ of this section.

17 The term tobacco product manufacturer does not include an
18 affiliate of a tobacco product manufacturer unless such affiliate
19 itself falls within any of subdivisions ~~(9)(a)-(11)(a)~~ through ~~(9)(e)-~~
20 ~~(11)(c)~~ of this section; and

21 ~~(10)-(12)~~ Units sold means the number of individual
22 cigarettes sold in the state by the applicable tobacco product
23 manufacturer, whether directly or through a distributor, retailer, or
24 similar intermediary or intermediaries, during the year in question,
25 ~~as measured by excise taxes collected by the state on packs or roll-~~

1 ~~your own tobacco containers. The Tax Commissioner shall adopt and~~
2 ~~promulgate such rules and regulations as are necessary to ascertain~~
3 ~~the amount of state excise tax paid on the cigarettes of such tobacco~~
4 ~~product manufacturer for each year. on all cigarettes or roll-your-~~
5 ~~own tobacco containers on which excise taxes are collected under~~
6 ~~section 77-2602, 77-4008, or section 22 of this act.~~

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

9 69-2703 Any tobacco product manufacturer selling
10 cigarettes to consumers within the state, whether directly or through
11 a distributor, retailer, or similar intermediary or intermediaries,
12 after April 29, 1999, shall do one of the following:

13 (1) Become a participating manufacturer, as that term is
14 defined in section II(jj) of the Master Settlement Agreement, and
15 generally perform its financial obligations under the Master
16 Settlement Agreement; or

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

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

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

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

1 (iv) For each of the years 2003, 2004, 2005, and 2006: \$.
2 0167539 per unit sold; and

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

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

10 (i) To pay a judgment or settlement on any released claim
11 brought against such tobacco product manufacturer by the state or any
12 releasing party located or residing in the state. Funds shall be
13 released from escrow under this subdivision (2)(b)(i) in the order in
14 which they were placed into escrow and only to the extent and at the
15 time necessary to make payments required under such judgment or
16 settlement;

17 (ii) To the extent that a tobacco product manufacturer
18 establishes that the amount it was required to place into escrow on
19 account of units sold in the state in a particular year was greater
20 than the Master Settlement Agreement payments, as determined pursuant
21 to section IX(i) of that Agreement including after final
22 determination of all adjustments, that such manufacturer would have
23 been required to make on account of such units sold had it been a
24 participating manufacturer, the excess shall be released from escrow
25 and revert back to such tobacco product manufacturer; ~~or~~

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

6 (iv) An Indian tribe may seek release of escrow deposited
7 pursuant to this section on cigarettes on an Indian tribe's Indian
8 country to tribal members pursuant to a compact entered into between
9 the state and the Indian tribe pursuant to section 20 of this act.
10 Amounts the state collects on a bond under section 8 of this act
11 shall not be subject to release under this section.

12 (c) Each tobacco product manufacturer that elects to
13 place funds into escrow pursuant to subdivision (2) of this section
14 shall annually certify to the Attorney General that it is in
15 compliance with subdivision (2) of this section. The Attorney General
16 may bring a civil action on behalf of the state against any tobacco
17 product manufacturer that fails to place into escrow the funds
18 required under this section. Any tobacco product manufacturer that
19 fails in any year to place into escrow the funds required under this
20 section shall:

21 (i) Be required within fifteen days to place such funds
22 into escrow as shall bring the manufacturer into compliance with this
23 section. The court, upon a finding of a violation of subdivision (2)
24 of this section, may impose a civil penalty in an amount not to
25 exceed five percent of the amount improperly withheld from escrow per

1 day of the violation and in a total amount not to exceed one hundred
2 percent of the original amount improperly withheld from escrow;

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

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

18 (d) An importer shall be jointly and severally liable for
19 escrow deposits due from a nonparticipating manufacturer with respect
20 to nonparticipating manufacturer cigarettes that it imports into this
21 state.

22 (e) Each failure to make an annual deposit required under
23 this section constitutes a separate violation.

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

1 69-2705 For purposes of sections 69-2704 to ~~69-2710;~~
2 69-2711 and sections 8, 10, 13, 14, 15, and 16 of this act:

3 (1) Brand family means all styles of cigarettes sold
4 under the same trademark and differentiated from one another by means
5 of additional modifiers or descriptors, including, but not limited
6 to, menthol, lights, kings, and 100s, and includes any brand name,
7 alone or in conjunction with any other word, trademark, logo, symbol,
8 motto, selling message, or recognizable pattern of colors, or any
9 other indicia of product identification identical or similar to, or
10 identifiable with, a previously known brand of cigarettes;

11 (2) ~~Cigarette has the same meaning as in section 69-2702;~~
12 means a cigarette as defined in section 69-2702 that is subject to
13 federal excise tax;

14 (3) Cigarette inputs means any machinery or other
15 component parts typically used in the manufacture of cigarettes,
16 including, without limitation, tobacco whether processed or
17 unprocessed, cigarette papers and tubes, cigarette filters or any
18 component parts intended for use in the making of cigarette filters,
19 and any machinery typically used in the making of cigarettes;

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

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

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

1 (7) Indian tribe means any Indian tribe, band, nation, or
2 other organized group or community that is recognized as eligible for
3 the special programs and services provided by the United States to
4 Indians because of their status as Indians under the laws of the
5 United States;

6 ~~(3)~~(8) Master Settlement Agreement has the same meaning
7 as in section 69-2702;

8 ~~(4)~~(9) Nonparticipating manufacturer means any tobacco
9 product manufacturer that is not a participating manufacturer;

10 (10) Nonparticipating manufacturer cigarettes means
11 cigarettes (a) of a brand family that is not included in the
12 certification of a participating manufacturer under subsection (1) of
13 section 69-2706 or (b) that are subject to the escrow requirement
14 under subdivision (2) of section 69-2703 because the participating
15 manufacturer in whose certification the brand family is included is
16 not generally performing its financial obligations under the Master
17 Settlement Agreement;

18 (11) Package means any pack or other container on which a
19 state excise tax stamp could be applied consistent with and as
20 required by sections 69-2701 to 69-2711 and sections 8, 10, 13, 14,
21 15, and 16 of this act and sections 77-2601 to 77-2622 and sections
22 19, 20, 22, and 24 of this act that contains one or more individual
23 cigarettes for sale. Nothing in such sections shall alter any other
24 applicable requirement with respect to the minimum number of
25 cigarettes that may be contained in a pack or other container of

1 cigarettes. References to package do not include a container of
2 multiple packages;

3 ~~(5)-(12)~~ Participating manufacturer has the same meaning
4 as in section II(jj) of the Master Settlement Agreement; defined in
5 section 69-2702 as such agreement existed on May 30, 2003;

6 (13) Person means any natural person, trustee, company,
7 partnership, corporation, or other legal entity, including any Indian
8 tribe or instrumentality thereof or any member of an Indian tribe;

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

12 ~~(6)-(15)~~ Qualified escrow fund has the same meaning as in
13 section 69-2702;

14 (16) Retailer includes retail dealers as defined in
15 section 77-2601 or anyone who is licensed under sections 28-1420 to
16 28-1422;

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

20 (18) Shortfall amount means the difference between (a)
21 the full amount of the deposit required to be made by a
22 nonparticipating manufacturer for a calendar quarter under section
23 69-2703 and (b) the sum of (i) any amounts precollected by a stamping
24 agent and deposited into escrow for that calendar quarter on behalf
25 of the nonparticipating manufacturer under section 10 of this act,

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

13 (7)-(19) Stamping agent means a person that is authorized
14 to affix tax stamps to packages or other containers of cigarettes
15 under section 77-2603 or section 22 of this act or any person that is
16 required to pay the tobacco tax imposed pursuant to section 77-4008
17 on roll-your-own cigarettes;

18 (8)-(20) Tax Commissioner means the Tax Commissioner of
19 the State of Nebraska;

20 (9)-(21) Tobacco product manufacturer has the same
21 meaning as in section 69-2702; and

22 (10)-(22) Units sold has the same meaning as in section
23 69-2702; and -

24 (23) Unstamped cigarettes means any cigarettes that are
25 not contained in a package bearing a stamp required under section

1 77-2603 or section 22 of this act or upon which state excise tax is
2 not paid.

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

5 69-2706 (1)(a) Every tobacco product manufacturer whose
6 cigarettes are sold in this state, whether directly or through a
7 distributor, retailer, or similar intermediary or intermediaries,
8 shall execute and deliver on a form prescribed by the Tax
9 Commissioner a certification to the Tax Commissioner and the Attorney
10 General no later than the thirtieth day of April each year,
11 certifying under penalty of perjury that, as of the date of such
12 certification, such tobacco product manufacturer either is a
13 participating manufacturer in compliance with subdivision (1) of
14 section 69-2703 or is a nonparticipating manufacturer in full
15 compliance with subdivision (2) of section 69-2703, ~~including all~~
16 ~~quarterly installment payments required by subsection (4) of section~~
17 ~~69-2708.~~

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

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

1 of units sold for each brand family that were sold in the state
2 during the preceding calendar year and (ii) a list of all of its
3 brand families that have been sold in the state at any time during
4 the current calendar year (A) indicating by an asterisk any brand
5 family sold in the state during the preceding or current calendar
6 year that is no longer being sold in the state as of the date of such
7 certification and (B) identifying by name and address any other
8 manufacturer of such brand families in the preceding calendar year.
9 The nonparticipating manufacturer shall update such list thirty
10 calendar days prior to any addition to or modification of its brand
11 families by executing and delivering a supplemental certification to
12 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 of
17 process and provided notice thereof as required by section 69-2707;

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

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

1 thereto;

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

18 (v) That such nonparticipating manufacturer consents to
19 be sued in the district courts of the State of Nebraska for purposes
20 of the state (A) enforcing any provision of sections 69-2703 to
21 ~~69-2710-69-2711~~ 69-2711 and sections 8, 10, 13, 14, 15, and 16 of this act
22 and any rules and regulations adopted and promulgated thereunder or
23 (B) bringing a released claim as defined in section 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

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

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

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

25 (a) The Tax Commissioner shall not include or retain in

1 such directory the name or brand families of any tobacco product
2 manufacturer that has failed to provide the required certification or
3 whose certification the commissioner determines is not in compliance
4 with ~~subdivisions (1)(c) and (d)~~ subsection (1) of this section
5 unless the Tax Commissioner has determined that such violation has
6 been cured to his or her satisfaction;

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

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

1 ~~(e)~~(d) The Tax Commissioner shall update the directory
2 no later than May 15 of each year to reflect certifications made on
3 or before April 30 as required in subsection (1) of this section. The
4 Tax Commissioner shall continuously update the directory as necessary
5 in order to correct mistakes and to add or remove a tobacco product
6 manufacturer or brand family to keep the directory in conformity with
7 the requirements of sections 69-2704 to ~~69-2710~~; 69-2711 and sections
8 8, 10, 13, 14, 15, and 16 of this act;

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

24 ~~(e)~~(f) Every stamping agent shall provide and update as
25 necessary an electronic mail address to the Tax Commissioner for the

1 purpose of receiving any notifications as may be required by sections
2 69-2704 to ~~69-2710~~. 69-2711 and sections 8, 10, 13, 14, 15, and 16 of
3 this act.

4 (3) The failure of the Tax Commissioner to provide notice
5 of any intended removal from the directory as required under
6 subdivision ~~(2)(d)~~—(2)(e) of this section or the failure of a
7 stamping agent to receive such notice shall not relieve the stamping
8 agent of its obligations under sections 69-2704 to ~~69-2710~~. 69-2711
9 and sections 8, 10, 13, 14, 15, and 16 of this act.

10 (4) It shall be unlawful for any person (a) to affix a
11 Nebraska stamp to a package or other container of cigarettes of a
12 tobacco product manufacturer or brand family not included in the
13 directory or (b) to sell, offer, or possess for sale in this state
14 cigarettes of a tobacco product manufacturer or brand family in this
15 state not included in the directory.

16 Sec. 8. (1) A nonparticipating manufacturer shall post a
17 bond for the benefit of the state if (a) its cigarettes were not sold
18 in the state during any one of the four preceding calendar quarters,
19 (b) it or any person affiliated with it failed to make a full and
20 timely escrow deposit due under section 69-2703 during any of the
21 five preceding calendar years, unless the failure was not knowing or
22 reckless and was promptly cured upon notice, or (c) it or any person
23 affiliated with it, or any of its brands or brands of a person
24 affiliated with it, were involuntarily removed from the directory of
25 any state during any of the five preceding calendar years, unless the

1 removal was determined to have been erroneous or illegal. Entities
2 are affiliated with each other if one directly, or indirectly through
3 one or more intermediaries, controls or is controlled by or is under
4 common control with the other.

5 (2) The bond shall be posted by corporate surety located
6 within the United States at least ten days in advance of each
7 calendar quarter as a condition to the nonparticipating manufacturer
8 and its brand families being included in the directory for that
9 quarter. The amount of the bond shall be the greater of (a) the
10 greatest required escrow amount due from the nonparticipating
11 manufacturer or its predecessor for any of the twelve preceding
12 calendar quarters or (b) twenty-five thousand dollars.

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

1 Sec. 9. Section 69-2708, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 69-2708 (1) Not later than ~~twenty calendar days after the~~
4 ~~end of each calendar quarter, and more frequently if so directed by~~
5 ~~the Tax Commissioner, fifteen days following the end of each month,~~
6 each stamping agent shall submit such information as the Tax
7 Commissioner requires to facilitate compliance with sections 69-2704
8 to ~~69-2710, 69-2711~~ and sections 8, 10, 13, 14, 15, and 16 of this
9 act, including, but not limited to, (a) a list by brand family of the
10 total number of cigarettes or, in the case of roll-your-own, the
11 equivalent stick count for which the stamping agent affixed stamps
12 during the previous ~~calendar quarter~~ month or otherwise paid the
13 total tax due for such cigarettes, the total number of cigarettes
14 contained in the packages to which it affixed each respective type of
15 tax stamp, and by name and number of cigarettes, the tobacco product
16 manufacturers and brand families of the packages to which it affixed
17 each respective type of tax stamp or similar information for roll-
18 your-own on which tax was paid, (b) the total number of cigarettes
19 acquired by the stamping agent during that month for sale in or into
20 the state or for sale from this state into another state, sold in or
21 into the state by the stamping agent during that month and held in
22 inventory in the state or for sale into the state by the stamping
23 agent as of the last business day of that month, in each case
24 identifying by name and number of cigarettes, (i) the manufacturers
25 of those cigarettes and (ii) the brand families of those cigarettes,

1 and (c) in the case of a stamping agent that is a manufacturer or
2 importer, reports under subdivision (1)(a) of this section shall not
3 include cigarettes it sold to a stamping agent as permitted under
4 subdivision (4) of section 15 of this act and that it separately
5 reports pursuant to subsection (2) of section 77-2604. In the case of
6 a stamping agent that is a retailer, reports under subdivision (1)(a)
7 of this section do not have to include cigarettes contained in
8 packages that bore a stamp required under section 77-2603 or section
9 22 of this act at the time the stamping agent received them and that
10 the stamping agent then sold at retail. The stamping agent shall
11 maintain, and make available to the Tax Commissioner, all invoices
12 and documentation of sales of all nonparticipating manufacturer
13 cigarettes and any other information relied upon in reporting to the
14 Tax Commissioner for a period of five years. The Tax Commissioner may
15 share the information reported under this section with the taxing or
16 law enforcement authorities of this state or other states.

17 (2) The Attorney General may require at any time from the
18 nonparticipating manufacturer proof, from the financial institution
19 in which such manufacturer has established a qualified escrow fund
20 for the purpose of compliance with section 69-2703, of the amount of
21 money in such fund, exclusive of interest, the amounts and dates of
22 each deposit to such fund, and the amounts and dates of each
23 withdrawal from such fund.

24 (3) In addition to the information required to be
25 submitted pursuant to subsection (1) of this section, the Tax

1 Commissioner or Attorney General may require a stamping agent,
2 distributor, or tobacco product manufacturer to submit any additional
3 information, including, but not limited to, samples of the packaging
4 or labeling of each brand family, as is necessary to enable the Tax
5 Commissioner or Attorney General to determine whether a tobacco
6 product manufacturer is in compliance with sections 69-2704 to
7 ~~69-2710. 69-2711 and sections 8, 10, 13, 14, 15, and 16 of this act.~~

8 (4) ~~To promote compliance with sections 69-2704 to~~
9 ~~69-2707, a tobacco product manufacturer subject to the requirements~~
10 ~~of subdivision (1)(c) of section 69-2706 shall make the escrow~~
11 ~~deposits required by section 69-2703 in quarterly installments during~~
12 ~~the year in which the sales covered by such deposits are made: (a)~~
13 ~~Through the end of the calendar year following the year the tobacco~~
14 ~~product manufacturer is listed in the directory established pursuant~~
15 ~~to section 69-2706; (b) if the tobacco product manufacturer is~~
16 ~~removed from, then subsequently relisted in, the directory, then for~~
17 ~~all periods following the relisting through the end of the calendar~~
18 ~~year following the year the tobacco product manufacturer is relisted~~
19 ~~in the directory; (c) if the tobacco product manufacturer has failed~~
20 ~~to make a complete and timely escrow deposit for any calendar year as~~
21 ~~required by section 69-2703 or for any quarter as required in this~~
22 ~~section; or (d) if the tobacco product manufacturer has failed to pay~~
23 ~~any judgment, including any civil penalty ordered under section~~
24 ~~69-2703 or 69-2709. The Tax Commissioner or the Attorney General may~~
25 ~~require production of information sufficient to enable the Tax~~

1 Commissioner or Attorney General to determine the adequacy of the
2 amount of the ~~installment deposit~~. The Tax Commissioner may adopt and
3 ~~promulgate rules and regulations implementing how tobacco product~~
4 ~~manufacturers subject to the requirements of subdivision (1)(c) of~~
5 ~~section 69-2706 make quarterly payments.~~ a quarterly escrow deposit
6 under subdivision (2) of section 69-2703. The Tax Commissioner may
7 adopt and promulgate rules and regulations implementing how tobacco
8 product manufacturers subject to subdivision (2) of section 69-2703
9 make quarterly payments.

10 Sec. 10. (1) A stamping agent shall be responsible for
11 escrow deposits required under subdivision (2) of section 69-2703 in
12 the event it receives notice from the Tax Commissioner that there is
13 a shortfall amount with respect to nonparticipating manufacturer
14 cigarettes stamped by it.

15 (2) The liability of a stamping agent for escrow deposits
16 shall be calculated as follows: If there is a shortfall amount for a
17 nonparticipating manufacturer for a calendar quarter, each stamping
18 agent that sold cigarettes of that nonparticipating manufacturer
19 during the calendar quarter shall deposit into such escrow account as
20 shall be designated by the state an amount equal to the applicable
21 shortfall amount multiplied by a fraction, the numerator of which is
22 the number of cigarettes of that nonparticipating manufacturer sold
23 in or into the state by the stamping agent during that calendar
24 quarter and the denominator of which is the total number of
25 cigarettes of that nonparticipating manufacturer sold by all stamping

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

11 (3) A stamping agent is authorized to require a
12 nonparticipating manufacturer to prepay the escrow deposit amount to
13 the stamping agent, for deposit by the stamping agent on behalf of
14 the nonparticipating manufacturer into an escrow account designated
15 by the state, as a condition of the stamping agent's agreement to
16 purchase cigarettes of that nonparticipating manufacturer.

17 Sec. 11. Section 69-2709, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 69-2709 (1) In addition to or in lieu of any other civil
20 or criminal remedy provided by law, upon a determination that a
21 stamping agent has violated subsection (4) of section 69-2706 or any
22 rule or regulation adopted and promulgated pursuant thereto, the Tax
23 Commissioner may revoke or suspend the license of any stamping agent
24 in the manner provided by section 77-2615.01. For each violation
25 hereof, of this subsection, the Tax Commissioner may also impose a

1 civil penalty in an amount not to exceed the greater of five hundred
2 percent of the retail value of the cigarettes or five thousand
3 dollars upon a determination of violation of subsection (4) of
4 section 69-2706 or any rules or regulations adopted and promulgated
5 pursuant thereto. Such penalty shall be imposed in the manner
6 provided by section 77-2615.01.

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

9 (a) Fails to provide a report required under section
10 69-2708 or section 13 or 24 of this act;

11 (b) Files an incomplete or inaccurate report or files an
12 inaccurate certification;

13 (c) Fails to pay taxes as provided in section 77-2602 or
14 deposit escrow as provided in section 10 of this act;

15 (d) Sells cigarettes in or into the state in a package
16 that bears a stamp required under section 77-2603 or section 22 of
17 this act that is not the correct stamp under section 77-2608 and
18 provides for a lower level of tax than the correct stamp;

19 (e) Sells unstamped cigarettes in, into, or from the
20 state or possesses unstamped cigarettes in the state except as
21 provided in section 77-2607;

22 (f) Purchases, sells in or into the state, or affixes a
23 tax stamp to a package containing cigarettes of a manufacturer or
24 brand family that is not at the time listed in the directory, or
25 possesses such cigarettes more than ten days after receiving notice

1 that the manufacturer or brand family is not in the directory, except
2 as expressly permitted under sections 69-2701 to 69-2711 and sections
3 8, 10, 13, 14, 15, and 16 of this act or sections 77-2601 to 77-2622
4 and sections 19, 20, 22, and 24 of this act; or

5 (g) Purchases or sells cigarettes in violation of
6 subsection (5) of this section or section 14 of this act.

7 (3) In the case of a failure under subdivision (2)(a),
8 (b), (c), or (d) of this section that was not knowing or intentional,
9 the stamping agent shall be entitled to cure the failure during the
10 period set forth in subsection (4) of section 77-2615.01. The license
11 of a stamping agent that fully cures the failure during that period
12 shall not be terminated on account of that failure.

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

23 (5) The Tax Commissioner shall promptly remove any
24 stamping agent whose license is terminated from the list required by
25 subsection (4) of section 77-2603 and shall publish a notice of the

1 termination on the Tax Commissioner's web site and send notice of the
2 termination to all stamping agents and to all persons listed in the
3 directory. Beginning ten days following the publication and sending
4 of such notice, no person may sell cigarettes to, or purchase
5 cigarettes from, the stamping agent whose license has been
6 terminated.

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

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

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

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

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

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

25 (e) Three years following the termination, in the case of

1 a second of subsequent knowing or intentional failure under
2 subdivision (2)(a), (b), (c), or (d) of this section or a violation
3 described in subdivision (2)(e), (f), or (g) of this section.

4 ~~(2)~~(8) Any cigarettes that have been sold, offered for
5 sale, or possessed for sale in this state in violation of subsection
6 (4) of section 69-2706 shall be deemed contraband under section
7 77-2620 and such cigarettes shall be subject to seizure and
8 forfeiture as provided in section 77-2620, except that all such
9 cigarettes so seized and forfeited shall be destroyed and not resold.
10 The stamping agent shall notify its customers for a brand family with
11 regard to any notice of removal of a tobacco product manufacturer or
12 a brand family from the directory and give its customers a seven-day
13 period for the return of cigarettes that become contraband.

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

22 ~~(4)~~(10) It is unlawful for a person to (a) sell or
23 distribute cigarettes for sale in this state or (b) acquire, hold,
24 own, possess, transport, import, or cause to be imported cigarettes
25 that the person knows or should know are intended for distribution or

1 sale in the state in violation of subsection (4) of section 69-2706.

2 A violation of this ~~section~~ subsection is a Class III misdemeanor.

3 ~~(5)-(11)~~ If a court determines that a person has violated
4 any portion of sections 69-2704 to 69-2710, 69-2711 and sections 8,
5 10, 13, 14, 15, and 16 of this act, the court shall order the payment
6 of any profits, gains, gross receipts, or other benefits from the
7 violation to be remitted to the State Treasurer for distribution in
8 accordance with Article VII, section 5, of the Constitution of
9 Nebraska. Unless otherwise expressly provided, the remedies or
10 penalties provided by sections 69-2704 to 69-2710 69-2711 and
11 sections 8, 10, 13, 14, 15, and 16 of this act are cumulative to each
12 other and to the remedies or penalties available under all applicable
13 laws of this state.

14 (12) It is unlawful for any manufacturer, importer, or
15 stamping agent to knowingly submit any false information in a report
16 required pursuant to sections 69-2703 to 69-2711 and sections 8, 10,
17 13, 14, 15, and 16 of this act. A violation of this subsection is a
18 Class IV felony. Knowing submission of a false report shall also be
19 grounds for removal of a tobacco product manufacturer from the
20 directory.

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

25 (14) A nonparticipating manufacturer whose total

1 nationwide reported sales on which federal excise tax is paid exceed
2 the sum of its nationwide reports under 15 U.S.C. 375 et seq. and any
3 intrastate sales reports under 15 U.S.C. 375 et seq. by more than
4 five percent of its total sales or one million cigarettes, whichever
5 is less, shall be subject to removal from the directory unless it
6 cures or satisfactorily explains the discrepancy within the time
7 period set forth in subsection (7) of section 15 of this act.

8 (15) Any person that is not a stamping agent or tobacco
9 product manufacturer that fails to file a complete and accurate
10 report required under section 77-2604 or section 24 of this act shall
11 be entitled to cure the failure during the period set forth in
12 subsection (10) of section 15 of this act. If the person fails to
13 fully cure the failure during that period, it shall be subject to a
14 civil penalty of up to one thousand dollars per violation and shall
15 be ineligible to hold any license of the state regarding cigarette
16 sales until the date specified by subsection (7) of this section for
17 violations of subdivision (2)(a) of this section.

18 (16) A directory license shall be subject to termination
19 if the licensee acts inconsistently with its certification under
20 subsection (2) of section 77-2603 or violates sections 69-2701 to
21 69-2711 and sections 8, 10, 13, 14, 15, and 16 of this act.

22 (17) Any person that knowingly or intentionally sells
23 cigarettes in violation of subsection (5) of this section or section
24 14 of this act or that knowingly or intentionally sells cigarettes in
25 or into the state in a package that bears a stamp required under

1 section 77-2603 or section 22 of this act that is not the correct
2 stamp under section 77-2608 and provides for a lower level of tax
3 than the correct stamp, shall for a first violation be subject to a
4 civil penalty of up to one thousand dollars and be guilty of a Class
5 IV misdemeanor and for a second or subsequent violation be subject to
6 a civil penalty of up to five thousand dollars per violation and be
7 guilty of a Class II misdemeanor. Each sale constitutes a separate
8 violation.

9 Sec. 12. Section 69-2710, Reissue Revised Statutes of
10 Nebraska, is amended to read:

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

1 (2) If the Tax Commissioner determines that a tobacco
2 product manufacturer shall not be included in the directory, such
3 manufacturer may request a contested case before the Tax Commissioner
4 under the Administrative Procedure Act. The Tax Commissioner shall
5 notify the tobacco product manufacturer in writing of the
6 determination not to include it in the directory. A request for
7 hearing shall be made within thirty calendar days after the date of
8 the determination that the manufacturer shall not be included in the
9 directory and shall contain the evidence supporting the
10 manufacturer's compliance with sections 69-2703 to ~~69-2710~~ 69-2711
11 and sections 8, 10, 13, 14, 15, and 16 of this act. The hearing shall
12 be held within sixty days after the request. At the hearing, the Tax
13 Commissioner shall determine whether the tobacco product manufacturer
14 is in compliance with sections 69-2703 to ~~69-2710~~ 69-2711 and
15 sections 8, 10, 13, 14, 15, and 16 of this act and whether the
16 manufacturer should be listed in the directory. A final decision
17 shall be rendered within thirty days after the hearing. Any decision
18 of the Tax Commissioner may be appealed. The appeal shall be in
19 accordance with the Administrative Procedure Act.

20 ~~(3) The first report of stamping agents required by~~
21 ~~subsection (1) of section 69-2708 shall be due thirty calendar days~~
22 ~~after May 30, 2003, the certifications by a tobacco product~~
23 ~~manufacturer described in subsection (1) of section 69-2706 shall be~~
24 ~~due forty five calendar days after May 30, 2003, and the directory~~
25 ~~described in subsection (2) of section 69-2706 shall be published or~~

1 ~~made available within ninety calendar days after May 30, 2003.~~

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

5 Sec. 13. (1) Any person that during a month acquired,
6 purchased, sold, possessed, transferred, transported, or caused to be
7 transported in or into this state cigarettes of a tobacco product
8 manufacturer or brand family that was not in the directory at the
9 time shall, within fifteen days following the end of that month, file
10 a report on a form prescribed by the Tax Commissioner and certify to
11 the state that the report is complete and accurate. The report shall
12 contain, in addition to any further information that the Tax
13 Commissioner may reasonably require to assist the Tax Commissioner in
14 enforcing sections 69-2701 to 69-2711 and sections 8, 10, 13, 14, 15,
15 and 16 of this act and sections 77-2601 to 77-2622 and sections 19,
16 20, 22, and 24 of this act and the Tobacco Products Tax Act, the
17 following information:

18 (a) The total number of those cigarettes, in each case
19 identifying by name and number of cigarettes (i) the manufacturers of
20 those cigarettes, (ii) the brand families of those cigarettes, (iii)
21 in the case of a sale or transfer, the name and address of the
22 recipient of those cigarettes, (iv) in the case of an acquisition or
23 purchase, the name and address of the seller or sender of those
24 cigarettes, and (v) the other states in whose directory the
25 manufacturer and brand family of those cigarettes were listed at the

1 time and whose stamps the person is authorized to affix; and

2 (b) In the case of acquisition, purchase, or possession,
3 the details of the person's subsequent sale or transfer of those
4 cigarettes, identifying by name and number of cigarettes (i) the
5 brand families of those cigarettes, (ii) the date of the sale or
6 transfer, (iii) the name and address of the recipient, (iv) the
7 number of stamps of each other state that the person affixed to the
8 packages containing those cigarettes during that month, (v) the total
9 number of cigarettes contained in the packages to which it affixed
10 each respective other state's stamp, (vi) by name and number of
11 cigarettes, the manufacturers and brand families of the packages to
12 which it affixed each respective other state's stamp, and (vii) a
13 certification that it reported each sale or transfer to the taxing
14 authority of the other state by fifteen days following the end of the
15 month in which the sale or transfer was made and attaching a copy of
16 all such reports. If the subsequent sale or transfer were from this
17 state into another state in packages not bearing a stamp of the other
18 state, the report shall also contain the information described in
19 subdivision (2)(c) of section 24 of this act.

20 (2) Reports under this section shall be in addition to
21 reports under sections 69-2708 and 77-2604 and section 24 of this
22 act.

23 Sec. 14. (1) The license of a stamping agent may be
24 subject to termination if its similar license is terminated in any
25 other state based on acts or omissions that would, if done in this

1 state, be grounds for license termination under this section, unless
2 the stamping agent demonstrates that its termination in the other
3 state was effected without due process. A stamping agent whose
4 license is terminated under this subsection shall be eligible for
5 reinstatement upon the earlier of the date specified by subsection
6 (7) of section 69-2709 for the act or omission in question or
7 reinstatement of its license by the other state.

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

19 (3) The applicable procedures under section 15 of this
20 act and section 77-2615.01 shall apply to terminations and removals
21 under this section.

22 Sec. 15. (1) The Tax Commissioner shall list on its web
23 site any person that both (a) claims not to be subject, or holds
24 itself out as not subject, to enforcement of sections 69-2701 to
25 69-2711 and sections 8, 10, 13, 14, 15, and 16 of this act and

1 sections 77-2601 to 77-2622 and sections 19, 20, 22, and 24 of this
2 act by reason of lack of jurisdiction of the state or sovereign
3 immunity and (b) the Tax Commissioner has a reasonable basis to
4 believe has not fully complied with such sections. The Tax
5 Commissioner shall promptly publish and regularly update the list of
6 such persons on the Tax Commissioner's web site.

7 (2) The Tax Commissioner shall not include on the list
8 any person described in subsection (1) of this section that submits
9 an enforceable certification in accordance with rules or regulations
10 adopted and promulgated by the Tax Commissioner that such person will
11 not assert that it is not subject to enforcement of sections 69-2701
12 to 69-2711 and sections 8, 10, 13, 14, 15, and 16 of this act and
13 sections 77-2601 to 77-2622 and sections 19, 20, 22, and 24 of this
14 act based on an asserted lack of state jurisdiction or claim of
15 sovereign immunity.

16 (3) Except as provided in subsection (4) of this section,
17 it shall be unlawful for any person to sell cigarettes or cigarette
18 inputs to, or purchase cigarettes from, any person that is on the
19 list described in subsection (1) of this section. A supplier of
20 cigarette inputs may obtain advance approval from the Tax
21 Commissioner to sell inputs to a person on the list if the supplier
22 demonstrates that the input will not be used for the manufacturing of
23 cigarettes.

24 (4) Notwithstanding subsection (3) of this section, a
25 person may sell cigarettes to, or purchase cigarettes from, persons

1 on the list if the tobacco product manufacturer and brand family of
2 such cigarettes is in the directory and, prior to the sale or
3 purchase, a stamping agent that is not on the list affixed a tax
4 stamp required under section 77-2603 or section 22 of this act to the
5 package containing such cigarettes.

6 (5) It shall be unlawful for any person that is on the
7 list described in subsection (1) of this section to sell, transport,
8 or cause to be transported cigarettes in or into this state unless
9 (a) the tobacco product manufacturer and brand family of such
10 cigarettes is in the directory and (b) prior to the sale or
11 transport, a stamping agent that is not on the list affixed a tax
12 stamp required under section 77-2603 or section 22 of this act to the
13 package containing such cigarettes.

14 (6) The Tax Commissioner shall provide a notice to any
15 person that the Tax Commissioner determines should be placed on the
16 list described in subsection (1) of this section. The notice shall
17 state the grounds for the listing and inform the person that, except
18 as provided in subsection (7) of this section, the person will be
19 placed on the list thirty days following the date of the notice.

20 (7) During the thirty days following the date of the
21 notice, the person may (a) submit the certification described in
22 subsection (2) of this section or (b) submit documentation to the Tax
23 Commissioner demonstrating that the Tax Commissioner's determination
24 described in the notice was incorrect. Unless the Tax Commissioner
25 determines that the person has satisfied this subsection, such person

1 shall be placed on the list thirty days following the date of the
2 notice.

3 (8) A person that is placed on the list shall have an
4 opportunity for a hearing before the Tax Commissioner within thirty
5 days after the date the person is placed on the list. The Tax
6 Commissioner shall remove the person from the list if the Tax
7 Commissioner determines that the person has demonstrated that such
8 person's inclusion on the list was not proper under this section.

9 (9) A person that unsuccessfully challenges being placed
10 on the list either in a hearing under subsection (8) of this section
11 or in court shall pay the state's reasonable attorney's fees and
12 costs incurred in contesting the challenge.

13 (10) If, for any reason during the period from thirty
14 days after the date of the notice until a final judgment, a person's
15 placement on the list described in subsection (1) of this section is
16 stayed or suspended, then the Tax Commissioner shall promptly remove
17 that person from the list during the time of the stay or suspension,
18 but shall note the fact of the stay on that list and shall send
19 notice of the stay to all persons described in subsection (5) of
20 section 69-2709. Any person that sells cigarettes or cigarette inputs
21 to, or purchases cigarettes from, that person after the earlier of
22 receiving notice of the stay of listing or ten days after the fact of
23 the stay was noted on the list, shall be jointly and severally liable
24 for any taxes applicable to such cigarettes under section 77-2602 and
25 for any escrow deposit due on such cigarettes under section 69-2703

1 during the period of the stay if the stay is subsequently lifted and
2 the placement on the list reinstated.

3 Sec. 16. The Tax Commissioner may adopt and promulgate
4 rules and regulations necessary to effect the purposes of sections
5 69-2704 to 69-2711 and sections 8, 10, 13, 14, 15, and 16 of this
6 act.

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

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

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

22 77-2601 For purposes of sections 77-2601 to 77-2615 and
23 sections 19, 20, 22, and 24 of this act:

24 (1) Person means and includes every individual, firm,
25 association, joint-stock company, partnership, limited liability

1 company, syndicate, ~~and corporation, trustee, or other legal entity,~~
2 including any Indian tribe or instrumentality thereof or any member
3 of an Indian tribe;

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

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

12 (4) Tax Commissioner means the Tax Commissioner of the
13 State of Nebraska;

14 (5) Cigarette means ~~any roll for smoking made wholly or~~
15 ~~in part of tobacco irrespective of size or shape and whether or not~~
16 ~~such tobacco is flavored, adulterated, or mixed with any other~~
17 ~~ingredient, the wrapper or cover of which is made of paper or any~~
18 ~~other material excepting tobacco; and a cigarette as defined in~~
19 section 69-2702 that is subject to federal excise tax;

20 (6) Consumer means any person, firm, association,
21 partnership, limited liability company, joint-stock company,
22 syndicate, or corporation not having a license to sell cigarettes;
23 and -

24 (7) Sales entity affiliate means an entity that (a) sells
25 cigarettes that it acquires directly from a manufacturer or importer

1 and (b) is affiliated with that manufacturer or importer. Entities
2 are affiliated with each other if one directly, or indirectly through
3 one or more intermediaries, controls or is controlled by or is under
4 common control with the other. Unless provided otherwise,
5 manufacturer or importer includes any sales entity affiliate of that
6 manufacturer or importer.

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

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

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

14 (b) Cigarette sales on an Indian tribe's Indian country
15 to tribal members.

16 (3) Except as provided in subsection (5) of this section,
17 the person seeking a refund of taxes shall submit an application to
18 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 22 of
21 this act and that the stamp was one that required payment of tax, (b)
22 that the person paid the applicable taxes in question, (c) that the
23 cigarettes were sold in an exempt transaction, and (d) that the
24 person has not previously obtained the refund on the cigarettes. The
25 documentation shall include, in addition to information necessary to

1 meet the requirements of subdivisions (3)(a) through (d) of this
2 section and any other information that the Tax Commissioner may
3 reasonably require, documents showing the identity of the seller and
4 purchaser and the places of shipment and delivery of the cigarettes.
5 The Tax Commissioner shall verify the accuracy and completeness of
6 the required documentation and information before granting the
7 requested refund.

8 (4) If a meritorious refund claim under subsection (3) of
9 this section is not paid within sixty days after submission of the
10 required documentation, the refund shall include interest at the
11 prime rate from the date of submission of the required 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 not
16 exceed the aggregate tax paid by entities owned and operated by that
17 tribe or member of that tribe on cigarettes sold in exempt
18 transactions on that tribe's Indian country during that year. Refunds
19 of taxes under subsection (3) of this section shall not be available
20 for cigarettes sold in exempt transactions on an Indian tribe's
21 Indian country that agrees upon a refund formula under this
22 subsection.

23 Sec. 20. (1) The Governor or his or her designated
24 representative may negotiate and execute an agreement with the
25 governing body of any federally recognized Indian tribe within the

1 State of Nebraska concerning the collection and dissemination of any
2 cigarette tax or other tobacco product tax pursuant to sections
3 77-2601 to 77-2622 and sections 19, 20, 22, and 24 of this act or
4 escrow collected pursuant to section 69-2703, on sales of cigarettes,
5 roll-your-own, or smokeless tobacco made or sold on a federally
6 recognized Indian tribe's Indian country. The agreement shall
7 specify:

8 (a) Its duration;

9 (b) Its purpose;

10 (c) Provisions for administering, collecting, and
11 enforcing the agreement;

12 (d) Remittance of taxes and escrow collected;

13 (e) The division of the proceeds of the tax and escrow
14 between the parties;

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

17 (g) A dispute resolution procedure;

18 (h) Adequate reporting and auditing provisions; and

19 (i) Any other necessary and proper matters.

20 (2) The agreement shall require that the state cigarette
21 tax and other tobacco product tax and any tribal taxes be identical
22 in rate and base of transactions.

23 (3) An Indian tribe entering into an agreement under this
24 section shall agree not to license or otherwise authorize an
25 individual tribal member or other person or entity to sell

1 cigarettes, roll-your-own, or smokeless tobacco in violation of the
2 terms of the agreement.

3 (4) Neither the state nor any agency or department
4 thereof shall enter into any future agreement, compact, or treaty
5 with any Indian tribe that is inconsistent with sections 77-2601 to
6 77-2622 and sections 19, 20, 22, and 24 of this act.

7 Sec. 21. Section 77-2603, Reissue Revised Statutes of
8 Nebraska, is amended to read:

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

25 (2) Any manufacturer, importer, sales entity affiliate,

1 wholesaler, or retailer that engages in the business of selling
2 cigarettes may apply to be licensed as a wholesale dealer in
3 accordance with this section. A license shall be issued by the Tax
4 Commissioner to an applicant upon the applicant's:

5 (a) Meeting all requirements in sections 69-2701 to
6 69-2711, sections 8, 10, 13, 14, 15, and 16 of this act and sections
7 77-2601 to 77-2615 and sections 19, 20, 22, and 24 of this act and
8 corresponding rules and regulations;

9 (b) Certifying on a form prescribed by the Tax
10 Commissioner that it will comply with the requirements in section
11 69-2708;

12 (c) Consenting to the jurisdiction of the state to
13 enforce the requirements of sections 69-2701 to 69-2711 and sections
14 8, 10, 13, 14, 15, and 16 of this act and sections 77-2601 to 77-2615
15 and sections 19, 20, 22, and 24 of this act and waiving any claim of
16 sovereign immunity to the contrary; and

17 (d) In the case of an applicant located outside of the
18 state, designating an agent in the state for service of process in
19 connection with enforcement of sections 69-2701 to 69-2711 and
20 sections 8, 10, 13, 14, 15, and 16 of this act and sections 77-2601
21 to 77-2615 and sections 19, 20, 22, and 24 of this act, and, if
22 approval is given by the Tax Commissioner, the manufacturer,
23 importer, sales entity affiliate, wholesaler, or retailer and, if
24 approval is given by the Tax Commissioner, the dealer shall furnish a
25 corporate surety bond, conditioned to faithfully comply with all the

1 requirements of sections 77-2601 to 77-2615 and sections 19, 20, 22,
2 and 24 of this act, in a sum not less than one thousand dollars.

3 (3) Nothing in sections 77-2601 to 77-2615 and sections
4 19, 20, 22, and 24 of this act shall prevent the Tax Commissioner
5 from affixing the stamps or meter impressions in lieu of the
6 provisions for affixing stamps and meter impressions by wholesalers
7 as determined by such rules and regulations adopted by the Tax
8 Commissioner.

9 (4) The Tax Commissioner shall list on its web site the
10 names of all persons licensed as wholesale dealers under this
11 section. Manufacturers, importers, and sales entity affiliates shall
12 be entitled to rely upon the list in selling cigarettes as provided
13 in section 69-2706.

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

1 brand family not listed in the directory will be purchased or
2 possessed solely for sale or transfer into another state as permitted
3 by section 69-2706. The directory license shall remain in effect for
4 a period of one year.

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

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

13 Sec. 22. In addition to the cigarette tax stamp set forth
14 in section 77-2603, a tribal tax stamp may be used if authorized by
15 the terms of an agreement executed pursuant to section 20 of this
16 act.

17 Sec. 23. Section 77-2604, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-2604 (1) Every wholesale dealer and retail dealer who
20 is subject to sections 77-2601 to 77-2622 and sections 19, 20, 22,
21 and 24 of this act shall make and file with the Tax Commissioner, on
22 or before the tenth day of each calendar month on blanks furnished by
23 the Tax Commissioner, true, correct, and sworn reports covering, for
24 the last preceding calendar month, the number of cigarettes
25 purchased, from whom purchased, the specific kinds and brands

1 thereof, the manufacturer, if known, and such other matters and in
2 such detail as the Tax Commissioner may require.

3 (2)(a) Each manufacturer and importer that sells
4 cigarettes in or into the state shall, within fifteen days following
5 the end of each month, file a report on a form to be prescribed by
6 the Tax Commissioner and certify to the state that the report is
7 complete and accurate.

8 (b) The report shall contain the following information:
9 The total number of cigarettes sold by that manufacturer or importer
10 in or into the state during that month and identifying by name and
11 number of cigarettes, (i) the manufacturers of those cigarettes, (ii)
12 the brand families of those cigarettes, and (iii) the purchasers of
13 those cigarettes. A manufacturer's or importer's report shall include
14 cigarettes sold in or into the state through its sales entity
15 affiliate.

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

23 (d) Upon request by the Tax Commissioner, a manufacturer
24 or importer shall provide copies of all sales reports referenced in
25 subdivisions (2)(a) and (b) of this section that it filed in other

1 states.

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

16 (f) The Tax Commissioner may share the information
17 reported under this section with the taxing or law enforcement
18 authorities of this state and other states.

19 Sec. 24. (1) Any person that sells cigarettes from this
20 state into another state shall, within fifteen days following the end
21 of each month, file a report on a form to be prescribed by the Tax
22 Commissioner and certify to the state that the report is complete and
23 accurate.

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

25 (a) The total number of cigarettes sold from this state

1 into another state by the person during that month, identifying by
2 name and number of cigarettes (i) the manufacturers of those
3 cigarettes, (ii) the brand families of those cigarettes, and (iii)
4 the name and address of each recipient of those cigarettes;

5 (b) The number of stamps of each other state the person
6 affixed to the packages containing those cigarettes during that
7 month, the total number of cigarettes contained in the packages to
8 which it affixed each respective other state's stamp and by name and
9 number of cigarettes, and the manufacturers and brand families of the
10 packages to which it affixed each respective other state's stamp; and

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

25 (3) In the case of a manufacturer or importer, the report

1 shall include cigarettes sold from this state into another state
2 through its sales entity affiliate. A sales entity affiliate shall
3 file a separate report under this section only to the extent that it
4 sold cigarettes from this state into another state not separately
5 reported under this section by its affiliated manufacturer or
6 importer.

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

10 Sec. 25. Section 77-2605, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-2605 The books, records, papers, receipts, invoices,
13 and supply of cigarettes of any person, including wholesale and
14 retail dealers, stamping agents, and persons transporting cigarettes,
15 subject to ~~the provisions of sections 77-2601 to 77-2615~~ and sections
16 19, 20, 22, and 24 of this act which pertain to the purchase or sale
17 of cigarettes shall be subject to inspection at any time during
18 ordinary business hours by the Tax Commissioner or his or her
19 representatives.

20 Sec. 26. Section 77-2607, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-2607 Each wholesale dealer may set aside such portion
23 of his or her stock of cigarettes as is not intended to be sold or
24 given away in this state and it will not be necessary to affix the
25 ~~above mentioned stamps or tax impressions thereon; Provided, required~~

1 under section 77-2606, except that if ~~said~~ such stock is not disposed
2 of and out of the possession of the ~~said~~ wholesale dealer within
3 ~~thirty-fifteen~~ days of the date of receipt thereof, the ~~said~~
4 cigarettes, packages, or pieces, ~~must~~ shall immediately be stamped as
5 required by ~~the provisions of~~ sections 77-2601 to 77-2615 and
6 sections 19, 20, 22, and 24 of this act. Each wholesale dealer shall
7 immediately mark in ink on each unopened box, carton, or other
8 container of such cigarettes, received and the date of receipt and
9 shall affix his or her signature thereto. Within forty-eight hours
10 after such box, carton, or other container is opened, he ~~must~~ or she
11 shall immediately affix such stamps or tax impressions to each
12 package ~~therein~~ and cancel the stamps affixed thereto, ~~in the manner~~
13 ~~herein designated~~.

14 Sec. 27. Section 77-2608, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 77-2608 The Tax Commissioner shall prepare and have
17 suitable stamps for use on each kind of piece or package of
18 cigarettes, except when cigarette tax meter impressions are affixed.
19 Requisition for the preparation of such stamps shall be made through
20 the materiel division of the Department of Administrative Services as
21 other state supplies are requisitioned, and the Tax Commissioner and
22 his or her bondsperson shall be liable for the value of all such
23 stamps delivered to him or her. The Auditor of Public Accounts shall
24 audit annually or as often as the auditor deems advisable the records
25 of the Tax Commissioner with respect to the money received from the

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

1 the stamps himself or herself after giving the wholesale dealers
2 sixty days' notice and purchasing all equipment used by them for the
3 purpose of affixing such stamps or meter impressions at a fair market
4 value.

5 Sec. 28. Section 77-2610, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-2610 Upon the written request of the original
8 purchaser thereof and upon the return of any unused stamps, the Tax
9 Commissioner shall redeem such stamps. The Tax Commissioner shall
10 prepare a voucher showing the amount of such returned unused stamps
11 and shall cause to be drawn a warrant upon the State Treasurer for
12 such amount in favor of the person returning such unused stamps. The
13 refunds shall be paid from the various funds named in section 77-2602
14 in the same proportions as the proceeds of the tax are allocated. By
15 the terms of sections 77-2601 to 77-2615 and sections 19, 20, 22, and
16 24 of this act, the Tax Commissioner and the State Treasurer are
17 specifically authorized to adjust all errors in payments for unused
18 stamps.

19 Sec. 29. Section 77-2612, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 77-2612 The Tax Commissioner may employ, with the advice
22 and consent of the Governor, a sufficient number of inspectors,
23 clerks, assistants, and agents to enforce the provisions of sections
24 77-2601 to 77-2622 and sections 19, 20, 22, and 24 of this act,
25 including the collection of all stamp taxes and all revenue from

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

14 The Tax Commissioner may adopt and promulgate rules and
15 regulations which are consistent with the provisions of sections
16 77-2601 to 77-2622 and sections 19, 20, 22, and 24 of this act and
17 their proper enforcement.

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

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

10 Sec. 30. Section 77-2613, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-2613 The State Treasurer shall place all sums of money
13 received under sections 77-2601 to 77-2615 and sections 19, 20, 22,
14 and 24 of this act as provided in section 77-2602, and from time to
15 time, upon voucher approved by the Tax Commissioner, disburse such
16 sum or sums as may be necessary to administer and carry out ~~the~~
17 ~~provisions of~~ sections 77-2601 to 77-2615 and sections 19, 20, 22,
18 and 24 of this act relating to the collection of ~~said~~the tax,
19 subject to the limitations ~~therein~~provided in such sections.

20 Sec. 31. Section 77-2614, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-2614 Any person who, with intent to defraud the state,
23 shall make, alter, forge, or counterfeit any license, ~~permit~~, stamp,
24 or cigarette tax meter impression provided for in sections 77-2601 to
25 77-2615 and sections 19, 20, 22, and 24 of this act, or who shall

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

11 Sec. 32. 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 19,
15 20, 22, and 24 of this act, or any rule or regulation ~~lawfully made~~
16 adopted and promulgated in accordance therewith, for which a specific
17 penalty is not otherwise provided or who shall, except as permitted
18 by sections 77-2601 to 77-2615 and sections 19, 20, 22, and 24 of
19 this act, sell, deliver, or accept, with intent to evade the
20 provisions of such sections, ~~77-2601 to 77-2615,~~ any cigarettes upon
21 which the tax provided by section 77-2602 has not been paid or who
22 affixes a stamp permitted under section 77-2603 or section 22 of this
23 act to a package of cigarettes of a tobacco product manufacturer or
24 brand family not included in the directory pursuant to section
25 69-2706 or who sells, offers, or possesses for sale in this state

1 cigarettes of a tobacco product manufacturer or brand family not
2 included in the directory shall be deemed guilty of a Class IV
3 felony. ~~Where~~ If any person is found to have in his or her possession
4 more than ten unstamped packages of cigarettes, except as permitted
5 under section 77-2607, it shall be prima facie evidence of attempt to
6 evade the provisions of sections 77-2601 to 77-2615 and sections 19,
7 20, 22, and 24 of this act.

8 Sec. 33. Section 77-2615.01, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 77-2615.01 (1) In addition to ~~the provisions of sections~~
11 77-2615 and 77-2622 and sections 19, 20, 22, and 24 of this act, for
12 any violation of sections 77-2601 to 77-2622 and sections 19, 20, 22,
13 and 24 of this act or the rules and regulations adopted and
14 promulgated under such sections, the Tax Commissioner may:

15 (a) After notice and hearing, suspend or revoke the
16 licenses of any person licensed under sections 28-1420 to 28-1429 or
17 77-2601 to 77-2622 and sections 19, 20, 22, and 24 of this act.
18 Notice of hearing shall be given as provided in the Administrative
19 Procedure Act; and

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

22 ~~(2) Any person whose license has been so revoked may~~
23 ~~apply at the expiration of sixty days for a reinstatement of his or~~
24 ~~her license. The license may be reinstated if it appears to the~~
25 ~~satisfaction of the Tax Commissioner that the licensee will comply~~

1 ~~with sections 77-2601 to 77-2622 and the rules and regulations~~
2 ~~adopted and promulgated under such sections.~~

3 ~~(3)-(2)~~ No person whose license has been suspended or
4 revoked shall sell cigarettes or permit cigarettes to be sold during
5 the period of suspension or revocation on the premises occupied by
6 him or her. No disciplinary proceeding or action shall be barred or
7 abated by the expiration, transfer, surrender, continuance, renewal,
8 or extension of any license issued under sections 28-1420 to 28-1429
9 or 77-2601 to 77-2622 and sections 19, 20, 22, and 24 of this act.

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

14 (4) Any person that sells cigarettes to or purchases
15 cigarettes from a person whose license has been suspended or revoked
16 ten days following removal from the list under subsection (4) of
17 section 77-2603 shall be jointly and severally liable for any taxes
18 applicable to such cigarettes under section 77-2602 and for any
19 escrow due on such cigarettes under section 69-2703.

20 Sec. 34. Section 77-2620, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-2620 All cigarettes or cigarette inputs subject to the
23 tax as imposed by section 77-2602, to which stamps have not been
24 affixed or tax impressions made, as required by sections 77-2601 to
25 77-2615 and sections 19, 20, 22, and 24 of this act, except as

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

1 to do, shall not in any way be responsible in any court for the
2 seizure or the confiscation of any unstamped packages of cigarettes
3 or cigarettes without tax impressions.

4 Sec. 35. Section 77-2622, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 77-2622 Failure to comply with ~~the provisions of~~ section
7 77-2621 shall be cause for revocation of the permit issued under ~~the~~
8 ~~provisions of~~ section 77-2621 and forfeiture of the bond posted
9 pursuant to section 77-2621.

10 Sec. 36. Original sections 59-1520, 59-1523, 69-502,
11 69-2702, 69-2703, 69-2705, 69-2706, 69-2708, 69-2709, 69-2710,
12 69-2711, 77-2601, 77-2603, 77-2604, 77-2605, 77-2607, 77-2608,
13 77-2610, 77-2612, 77-2613, 77-2614, 77-2615, 77-2615.01, 77-2620, and
14 77-2622, Reissue Revised Statutes of Nebraska, are repealed.