

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 397**

FINAL READING

Introduced by Briese, 41.

Read first time January 17, 2019

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 28-1418,  
2 28-1418.01, 28-1419, 28-1420, 28-1421, 28-1423, 28-1424, 28-1425,  
3 28-1427, 28-1429.02, 28-1429.03, 69-2705, 69-2706, 69-2707,  
4 69-2707.01, 69-2709, 69-2710, 69-2710.01, 69-2710.03, 77-2601, and  
5 77-2603, Reissue Revised Statutes of Nebraska; to change provisions  
6 relating to tobacco, electronic nicotine delivery systems, or  
7 alternative nicotine products; to define and redefine terms; to  
8 change escrow fund provisions for tobacco product manufacturers; to  
9 change provisions relating to nonparticipating manufacturers; to  
10 harmonize provisions; and to repeal the original sections.  
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1418, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 28-1418 Whoever, being a minor under the age of eighteen years,  
4 shall smoke cigarettes or cigars, use electronic nicotine delivery  
5 systems ~~vapor products~~ or alternative nicotine products, or use tobacco  
6 in any form whatever, in this state, shall be guilty of a Class V  
7 misdemeanor. Any minor charged with a violation of this section may be  
8 free from prosecution if he or she furnishes evidence for the conviction  
9 of the person or persons selling or giving him or her the cigarettes,  
10 cigars, electronic nicotine delivery systems ~~vapor products~~, alternative  
11 nicotine products, or tobacco.

12 Sec. 2. Section 28-1418.01, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

15 (1) Alternative nicotine product means any noncombustible product  
16 containing nicotine that is intended for human consumption, whether  
17 chewed, absorbed, dissolved, or ingested by any other means. Alternative  
18 nicotine product does not include any electronic nicotine delivery system  
19 ~~vapor product~~, cigarette, cigar, or other tobacco product, or any product  
20 regulated as a drug or device by the United States Food and Drug  
21 Administration under Chapter V of the Federal ~~federal~~ Food, Drug, and  
22 Cosmetic Act;

23 (2)(a) Electronic nicotine delivery system means any product or  
24 device containing nicotine, tobacco, or tobacco derivatives that employs  
25 a heating element, power source, electronic circuit, or other electronic,  
26 chemical, or mechanical means, regardless of shape or size, to simulate  
27 smoking by delivering the nicotine, tobacco, or tobacco derivatives in  
28 vapor, fog, mist, gas, or aerosol form to a person inhaling from the  
29 product or device.

30 (b) Electronic nicotine delivery system includes, but is not limited  
31 to, the following:

1        (i) Any substance containing nicotine, tobacco, or tobacco  
2 derivatives, whether sold separately or sold in combination with a  
3 product or device that is intended to deliver to a person nicotine,  
4 tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol  
5 form;

6        (ii) Any product or device marketed, manufactured, distributed, or  
7 sold as an electronic cigarette, electronic cigar, electronic cigarillo,  
8 electronic pipe, electronic hookah, or similar products, names,  
9 descriptors, or devices; and

10       (iii) Any component, part, or accessory of such a product or device  
11 that is used during operation of the product or device when sold in  
12 combination with any substance containing nicotine, tobacco, or tobacco  
13 derivatives.

14       (c) Electronic nicotine delivery system does not include the  
15 following:

16       (i) An alternative nicotine product, cigarette, cigar, or other  
17 tobacco product, or any product regulated as a drug or device by the  
18 United States Food and Drug Administration under Chapter V of the Federal  
19 Food, Drug, and Cosmetic Act; or

20       (ii) Any component, part, or accessory of such a product or device  
21 that is used during operation of the product or device when not sold in  
22 combination with any substance containing nicotine, tobacco, or tobacco  
23 derivatives;

24       (3) ~~(2)~~ Self-service display means a retail display that contains a  
25 tobacco product, a tobacco-derived product, an electronic nicotine  
26 delivery system ~~a vapor product~~, or an alternative nicotine product and  
27 is located in an area openly accessible to a retailer's customers and  
28 from which such customers can readily access the product without the  
29 assistance of a salesperson. Self-service display does not include a  
30 display case that holds tobacco products, tobacco-derived products,  
31 electronic nicotine delivery systems ~~vapor products~~, or alternative

1 nicotine products behind locked doors; and

2 ~~(4)~~ ~~(3)~~ Tobacco specialty store means a retail store that (a)  
3 derives at least seventy-five percent of its revenue from tobacco  
4 products, tobacco-derived products, electronic nicotine delivery systems  
5 ~~vapor products~~, or alternative nicotine products and (b) does not permit  
6 minors under the age of eighteen years to enter the premises unless  
7 accompanied by a parent or legal guardian. ~~;~~ ~~and~~

8 ~~(4)~~ ~~Vapor product means any noncombustible product containing~~  
9 ~~nicotine that employs a heating element, power source, electronic~~  
10 ~~circuit, or other electronic, chemical, or mechanical means, regardless~~  
11 ~~of shape or size, that can be used to produce vapor from nicotine in a~~  
12 ~~solution or other form. Vapor product includes any electronic cigarette,~~  
13 ~~electronic cigar, electronic cigarillo, electronic pipe, or similar~~  
14 ~~product or device and any vapor cartridge or other container of nicotine~~  
15 ~~in a solution or other form that is intended to be used with or in an~~  
16 ~~electronic cigarette, electronic cigar, electronic cigarillo, electronic~~  
17 ~~pipe, or similar product or device. Vapor product does not include an~~  
18 ~~alternative nicotine product, cigarette, cigar, or other tobacco product,~~  
19 ~~or any product regulated as a drug or device by the United States Food~~  
20 ~~and Drug Administration under Chapter V of the federal Food, Drug, and~~  
21 ~~Cosmetic Act.~~

22 Sec. 3. Section 28-1419, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 28-1419 Whoever shall sell, give, or furnish, in any way, any  
25 tobacco in any form whatever, or any cigarettes, cigarette paper,  
26 electronic nicotine delivery systems ~~vapor products~~, or alternative  
27 nicotine products, to any minor under eighteen years of age, is guilty of  
28 a Class III misdemeanor for each offense.

29 Sec. 4. Section 28-1420, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 28-1420 It shall be unlawful for any person, partnership, limited

1 liability company, or corporation to sell, keep for sale, or give away in  
2 course of trade, any cigars, tobacco, cigarettes, electronic nicotine  
3 delivery systems, or cigarette material to anyone without first obtaining  
4 a license as provided in sections 28-1421 and 28-1422. It shall also be  
5 unlawful for any wholesaler to sell or deliver any cigars, tobacco,  
6 cigarettes, electronic nicotine delivery systems, or cigarette material  
7 to any person, partnership, limited liability company, or corporation  
8 who, at the time of such sale or delivery, is not the recipient of a  
9 valid tobacco license for the current year to retail the same as provided  
10 in such sections. It shall also be unlawful for any person, partnership,  
11 limited liability company, or corporation to purchase or receive, for  
12 purposes of resale, any cigars, tobacco, cigarettes, electronic nicotine  
13 delivery systems, or cigarette material if such person, partnership,  
14 limited liability company, or corporation is not the recipient of a valid  
15 tobacco license to retail such tobacco products at the time the same are  
16 purchased or received. Whoever shall be found guilty of violating this  
17 section shall be guilty of a Class III misdemeanor for each offense.

18 Sec. 5. Section 28-1421, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 28-1421 Licenses for the sale of cigars, tobacco, cigarettes,  
21 electronic nicotine delivery systems, and cigarette material to persons  
22 over the age of eighteen years shall be issued to individuals,  
23 partnerships, limited liability companies, and corporations by the clerk  
24 or finance director of any city or village and by the county clerk of any  
25 county upon application duly made as provided in section 28-1422. The  
26 sale of cigarettes or cigarette materials that contain perfumes or drugs  
27 in any form is prohibited and is not licensed by the provisions of this  
28 section. Only cigarettes and cigarette material containing pure white  
29 paper and pure tobacco shall be licensed.

30 Sec. 6. Section 28-1423, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           28-1423 The term for which such license shall run shall be from the  
2 date of filing such application and paying such license fee to and  
3 including December 31 of the calendar year in which application for such  
4 license is made, and the license fee for any person, partnership, limited  
5 liability company, or corporation selling at retail shall be twenty-five  
6 dollars in cities of the metropolitan class, fifteen dollars in cities of  
7 the primary and first classes, and ten dollars in cities of all other  
8 classes and in towns and villages and in locations outside of the limits  
9 of cities, towns and villages. Any person, partnership, limited liability  
10 company, or corporation selling annually in the aggregate more than one  
11 hundred fifty thousand cigars, packages of cigarettes, electronic  
12 nicotine delivery systems, and packages of tobacco in any form, at  
13 wholesale, shall pay a license fee of one hundred dollars, and if such  
14 combined annual sales amount to less than one hundred fifty thousand  
15 cigars, packages of cigarettes, electronic nicotine delivery systems, and  
16 packages of tobacco, the annual license fee shall be fifteen dollars. No  
17 wholesaler's license shall be issued in any year on a less basis than one  
18 hundred dollars per annum unless the applicant for the same shall file  
19 with such application a statement duly sworn to by himself or herself, or  
20 if applicant is a partnership, by a member of the firm, or if a limited  
21 liability company, by a member or manager of the company, or if a  
22 corporation, by an officer or manager thereof, that in the past such  
23 wholesaler's combined sales of cigars, packages of cigarettes, electronic  
24 nicotine delivery systems, and packages of tobacco in every form have not  
25 exceeded in the aggregate one hundred fifty thousand annually, and that  
26 such sales will not exceed such aggregate amount for the current year for  
27 which the license is to issue. Any person swearing falsely in such  
28 affidavit shall be guilty of perjury and upon conviction thereof shall be  
29 punished as provided by section 28-915 and such wholesaler's license  
30 shall be revoked until the full license fee of ~~one hundred dollars~~ is  
31 paid. If application for license is made after July 1 of any calendar

1 year, the fee shall be one-half of the fee provided in this section.

2 Sec. 7. Section 28-1424, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 28-1424 The license~~,~~ provided for in sections 28-1421 and 28-1422  
5 shall, when issued, shall authorize the sale of cigars, tobacco,  
6 cigarettes, electronic nicotine delivery systems, and cigarette material  
7 by the licensee and employees~~,~~ to persons over the age of eighteen years~~,~~  
8 at the place of business described in such license for the term therein  
9 authorized~~,~~ unless the same be forfeited as provided in section 28-1425.

10 Sec. 8. Section 28-1425, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 28-1425 Any licensee who shall sell, give, or furnish in any way to  
13 any person under the age of eighteen years, or who shall willingly allow  
14 to be taken from his or her place of business by any person under the age  
15 of eighteen years, any cigars, tobacco, cigarettes, cigarette material,  
16 electronic nicotine delivery systems ~~vapor products,~~ or alternative  
17 nicotine products is guilty of a Class III misdemeanor. Any officer,  
18 director, or manager having charge or control, either separately or  
19 jointly with others, of the business of any corporation which violates  
20 sections ~~28-1419 28-1418.01,~~ 28-1420 to 28-1429, and 28-1429.03, if he or  
21 she has knowledge of such violation, shall be subject to the penalties  
22 provided in this section. In addition to the penalties provided in this  
23 section, such licensee shall be subject to the additional penalty of a  
24 revocation and forfeiture of his, her, their, or its license, at the  
25 discretion of the court before whom the complaint for violation of such  
26 sections may be heard. If such license is revoked and forfeited, all  
27 rights under such license shall at once cease and terminate.

28 Sec. 9. Section 28-1427, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 28-1427 Any person under the age of eighteen years who obtains ~~shall~~  
31 ~~obtain~~ cigars, tobacco, cigarettes, cigarette material, electronic

1 nicotine delivery systems ~~vapor products~~, or alternative nicotine  
2 products from a licensee by representing that he or she is of the age of  
3 eighteen years or over is guilty of a Class V misdemeanor.

4 Sec. 10. Section 28-1429.02, Reissue Revised Statutes of Nebraska,  
5 is amended to read:

6 28-1429.02 (1) Except as provided in subsection (2) of this section,  
7 it shall be unlawful to dispense cigarettes, other tobacco products,  
8 electronic nicotine delivery systems ~~vapor products~~, or alternative  
9 nicotine products from a vending machine or similar device. Any person  
10 violating this section is guilty of a Class III misdemeanor. In addition,  
11 upon conviction for a second offense, the court shall order a six-month  
12 suspension of the offender's license to sell tobacco and electronic  
13 nicotine delivery systems, if any, and, upon conviction for a third or  
14 subsequent offense, the court shall order the permanent revocation of the  
15 offender's license to sell tobacco and electronic nicotine delivery  
16 systems, if any.

17 (2) Cigarettes, other tobacco products, electronic nicotine delivery  
18 systems ~~vapor products~~, or alternative nicotine products may be dispensed  
19 from a vending machine or similar device when such machine or device is  
20 located in an area, office, business, plant, or factory which is not open  
21 to the general public or on the licensed premises of any establishment  
22 having a license issued under the Nebraska Liquor Control Act for the  
23 sale of alcoholic liquor for consumption on the premises when such  
24 machine or device is located in the same room in which the alcoholic  
25 liquor is dispensed.

26 (3) Nothing in this section shall be construed to restrict or  
27 prohibit a governing body of a city or village from establishing and  
28 enforcing ordinances at least as stringent as or more stringent than the  
29 provisions of this section.

30 Sec. 11. Section 28-1429.03, Reissue Revised Statutes of Nebraska,  
31 is amended to read:



1           28-1429.03 (1) Except as provided in subsection (2) of this section  
2 and section 28-1429.02, it shall be unlawful to sell or distribute  
3 cigarettes, cigars, electronic nicotine delivery systems ~~vapor products~~,  
4 alternative nicotine products, or tobacco in any form whatever through a  
5 self-service display. Any person violating this section is guilty of a  
6 Class III misdemeanor. In addition, upon conviction for a second or  
7 subsequent offense within a twelve-month period, the court shall order a  
8 six-month suspension of the license issued under section 28-1421.

9           (2) Cigarettes, cigars, electronic nicotine delivery systems ~~vapor~~  
10 ~~products~~, alternative nicotine products, or tobacco in any form whatever  
11 may be sold or distributed in a self-service display that is located in a  
12 tobacco specialty store or cigar shop as defined in section 53-103.08.

13           Sec. 12. (1) Notwithstanding subdivision (2)(b) of section 69-2703,  
14 a tobacco product manufacturer that elects to place funds into a  
15 qualified escrow fund pursuant to subdivision (2)(a) of section 69-2703  
16 may make an irrevocable assignment of its interest in the fund to the  
17 benefit of the State of Nebraska. Such assignment shall be permanent and  
18 apply to all monetary amounts in the subject qualified escrow fund or  
19 that may subsequently come into the fund, including those deposited into  
20 the qualified escrow fund prior to the assignment being executed, those  
21 deposited into the qualified escrow fund after the assignment is  
22 executed, and interest or other appreciation on the amounts. The tobacco  
23 product manufacturer, the Attorney General, and the financial institution  
24 where the qualified escrow fund is maintained may make such amendments to  
25 the qualified escrow fund agreement, the title to the account, and the  
26 account itself as may be necessary to effectuate an assignment of rights  
27 executed pursuant to this subsection (1) or a withdrawal of amounts from  
28 the qualified escrow fund pursuant to subsection (2) of this section. An  
29 assignment of rights executed pursuant to this section shall be in  
30 writing, shall have received prior approval issued in writing by the  
31 Attorney General, shall be signed by the tobacco product manufacturer or

1 a duly authorized representative of the tobacco product manufacturer  
2 making the assignment, and shall become effective upon delivery of the  
3 assignment to the Attorney General and the financial institution where  
4 the qualified escrow fund is maintained.

5 (2) Notwithstanding subdivision (2)(b) of section 69-2703, any  
6 escrow amounts assigned to the State of Nebraska pursuant to subsection  
7 (1) of this section shall be withdrawn by the state upon request by the  
8 State Treasurer and approval by the Attorney General. Any amounts  
9 withdrawn pursuant to this subsection shall be remitted to the State  
10 Treasurer for distribution in accordance with Article VII, section 5, of  
11 the Constitution of Nebraska, and shall be calculated on a dollar-for-  
12 dollar basis as a credit against any judgment or settlement described in  
13 subdivision (2)(b) of section 69-2703 which may be obtained against the  
14 tobacco product manufacturer who has assigned the amounts in the subject  
15 qualified escrow fund. Nothing in this section shall be construed to  
16 relieve a tobacco product manufacturer from any past, current, or future  
17 obligations the manufacturer may have pursuant to sections 69-2701 to  
18 69-2711 and section 12 of this act.

19 Sec. 13. Section 69-2705, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 69-2705 For purposes of sections 69-2704 to 69-2711:

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

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

31 (3) Cigarette inputs means any machinery or other component parts

1 typically used in the manufacture of cigarettes, including, without  
2 limitation, tobacco whether processed or unprocessed, cigarette papers  
3 and tubes, cigarette filters or any component parts intended for use in  
4 the making of cigarette filters, and any machinery typically used in the  
5 making of cigarettes;

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

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

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

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

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

14 (9) Master Settlement Agreement has the same meaning as in section  
15 69-2702;

16 (10) Nonparticipating manufacturer means any tobacco product  
17 manufacturer that is not a participating manufacturer;

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

27 (12) Package means any pack or other container on which a state  
28 stamp or tribal stamp could be applied consistent with and as required by  
29 sections 69-2701 to 69-2711 and section 12 of this act and 77-2601 to  
30 77-2622 that contains one or more individual cigarettes for sale. Nothing  
31 in such sections shall alter any other applicable requirement with

1 respect to the minimum number of cigarettes that may be contained in a  
2 pack or other container of cigarettes. References to package do not  
3 include a container of multiple packages;

4 (13) Participating manufacturer has the same meaning as in section  
5 II(jj) of the Master Settlement Agreement;

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

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

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

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

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

19 (19) Shortfall amount means the difference between (a) the full  
20 amount of the deposit required to be made by a nonparticipating  
21 manufacturer for a calendar quarter under section 69-2703 and (b) the sum  
22 of (i) any amounts precollected by a stamping agent and deposited into  
23 escrow for that calendar quarter on behalf of the nonparticipating  
24 manufacturer under section 69-2708.01, (ii) the amount deposited into  
25 escrow by the nonparticipating manufacturer for that calendar quarter  
26 under section 69-2703, (iii) any amounts deposited into escrow for that  
27 calendar quarter under subdivision (2)(d) of section 69-2703 by an  
28 importer on such nonparticipating manufacturer's cigarettes, and (iv) any  
29 amounts collected by the state for that calendar quarter under the bond  
30 posted by the nonparticipating manufacturer under section 69-2707.01. The  
31 shortfall amount, if any, for a nonparticipating manufacturer for a

1 calendar quarter shall be calculated by the Attorney General within  
2 fifteen days following the date on which the state determines the amount  
3 it will collect on the bond posted by the nonparticipating manufacturer  
4 as provided in section 69-2707.01;

5 (20) Stamping agent means a person that is authorized to affix  
6 stamps to packages or other containers of cigarettes under section  
7 77-2603 or 77-2603.01 or any person that is required to pay the tobacco  
8 tax imposed pursuant to section 77-4008 on roll-your-own cigarettes;

9 (21) Tax Commissioner means the Tax Commissioner of the State of  
10 Nebraska;

11 (22) Tobacco product manufacturer has the same meaning as in section  
12 69-2702;

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

14 (24) Unstamped cigarettes means any cigarettes that are not  
15 contained in a package bearing a stamp required under section 77-2603 or  
16 77-2603.01.

17 Sec. 14. Section 69-2706, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 69-2706 (1)(a) Every tobacco product manufacturer whose cigarettes  
20 are sold in this state, whether directly or through a distributor,  
21 retailer, or similar intermediary or intermediaries, shall execute and  
22 deliver on a form prescribed by the Tax Commissioner a certification to  
23 the Tax Commissioner and the Attorney General no later than the thirtieth  
24 day of April each year, certifying under penalty of perjury that, as of  
25 the date of such certification, such tobacco product manufacturer either  
26 is a participating manufacturer in compliance with subdivision (1) of  
27 section 69-2703 or is a nonparticipating manufacturer in full compliance  
28 with subdivision (2) of section 69-2703.

29 (b) A participating manufacturer shall include in its certification  
30 a list of its brand families. The participating manufacturer shall update  
31 such list thirty calendar days prior to any addition to or modification

1 of its brand families by executing and delivering a supplemental  
2 certification to the Tax Commissioner and the Attorney General.

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

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

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

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

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

28 (iv)(A) The name, address, and telephone number of the financial  
29 institution where the nonparticipating manufacturer has established such  
30 qualified escrow fund required pursuant to subdivision (2) of section  
31 69-2703 and all rules and regulations adopted and promulgated pursuant

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

12 (v) That such nonparticipating manufacturer consents to be sued in  
13 the district courts of the State of Nebraska for purposes of the state  
14 (A) enforcing any provision of sections 69-2703 to 69-2711 and section 12  
15 of this act and any rules and regulations adopted and promulgated  
16 thereunder or (B) bringing a released claim as defined in section  
17 69-2702; and

18 (vi) The information required to establish that such  
19 nonparticipating manufacturer has posted the appropriate bond or cash  
20 equivalent required under section 69-2707.01.

21 (e) A tobacco product manufacturer shall not include a brand family  
22 in its certification unless (i) in the case of a participating  
23 manufacturer, the participating manufacturer affirms that the brand  
24 family is to be deemed to be its cigarettes for purposes of calculating  
25 its payments under the Master Settlement Agreement for the relevant year  
26 in the volume and shares determined pursuant to the Master Settlement  
27 Agreement and (ii) in the case of a nonparticipating manufacturer, the  
28 nonparticipating manufacturer affirms that the brand family is to be  
29 deemed to be its cigarettes for purposes of subdivision (2) of section  
30 69-2703. Nothing in this section shall be construed as limiting or  
31 otherwise affecting the state's right to maintain that a brand family

1 constitutes cigarettes of a different tobacco product manufacturer for  
2 purposes of calculating payments under the Master Settlement Agreement or  
3 for purposes of section 69-2703.

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

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

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

20 (b) Neither a tobacco product manufacturer nor brand family shall be  
21 included or retained in the directory if the Attorney General recommends  
22 and notifies the Tax Commissioner who concludes, in the case of a  
23 nonparticipating manufacturer, that (i) any escrow payment required  
24 pursuant to subdivision (2) of section 69-2703 for any period for any  
25 brand family, whether or not listed by such nonparticipating  
26 manufacturer, has not been fully paid into a qualified escrow fund  
27 governed by a qualified escrow agreement that has been approved by the  
28 Attorney General or (ii) any outstanding final judgment, including  
29 interest thereon, for violations of section 69-2703 has not been fully  
30 satisfied for such brand family and such manufacturer;

31 (c) As a condition to being listed and having its brand families



1 listed in the directory, a tobacco product manufacturer shall also (i)  
2 certify annually that such manufacturer or its importer holds a valid  
3 permit under 26 U.S.C. 5713 and provide a copy of such permit to the Tax  
4 Commissioner and the Attorney General, (ii) upon request of the Tax  
5 Commissioner or Attorney General, provide documentary proof that it is  
6 not in violation of subdivision (1) of section 59-1520, and (iii) certify  
7 that it is in compliance with all reporting and registration requirements  
8 of 15 U.S.C. 376 and 376a;

9 (d) The Tax Commissioner shall update the directory no later than  
10 May 15 of each year to reflect certifications made on or before April 30  
11 as required in subsection (1) of this section. The Tax Commissioner shall  
12 continuously update the directory as necessary in order to correct  
13 mistakes and to add or remove a tobacco product manufacturer or brand  
14 family to keep the directory in conformity with the requirements of  
15 sections 69-2704 to 69-2711;

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

31 (f) Every stamping agent shall provide and update as necessary an

1 electronic mail address to the Tax Commissioner for the purpose of  
2 receiving any notifications as may be required by sections 69-2704 to  
3 69-2711.

4 (3) The failure of the Tax Commissioner to provide notice of any  
5 intended removal from the directory as required under subdivision (2)(e)  
6 of this section or the failure of a stamping agent to receive such notice  
7 shall not relieve the stamping agent of its obligations under sections  
8 69-2704 to 69-2711.

9 (4) It shall be unlawful for any person (a) to affix a Nebraska  
10 stamp pursuant to section 77-2603 to a package or other container of  
11 cigarettes of a tobacco product manufacturer or brand family not included  
12 in the directory, (b) to affix a tribal stamp to a package or other  
13 container of cigarettes of a tobacco product manufacturer or brand family  
14 not included in the directory except as authorized by an agreement  
15 pursuant to section 77-2602.06, or (c) to sell, offer, or possess for  
16 sale in this state cigarettes of a tobacco product manufacturer or brand  
17 family in this state not included in the directory.

18 Sec. 15. Section 69-2707, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 69-2707 (1) Any nonresident or foreign nonparticipating manufacturer  
21 that has not registered to do business in the state as a foreign  
22 corporation or business entity shall, as a condition precedent to having  
23 its brand families included or retained in the directory created in  
24 subsection (2) of section 69-2706, appoint and continually engage without  
25 interruption the services of an agent in Nebraska to act as agent for the  
26 service of process on whom all process, and any action or proceeding  
27 against it concerning or arising out of the enforcement of sections  
28 69-2703 to 69-2711 and section 12 of this act, may be served in any  
29 manner authorized by law. Such service shall constitute legal and valid  
30 service of process on the nonparticipating manufacturer. The  
31 nonparticipating manufacturer shall provide the name, address, telephone

1 number, and proof of the appointment and availability of such agent to  
2 the Tax Commissioner and Attorney General.

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

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

20 Sec. 16. Section 69-2707.01, Reissue Revised Statutes of Nebraska,  
21 is amended to read:

22 69-2707.01 (1) All nonparticipating manufacturers subject to the  
23 certification requirements of section 69-2706, or whose sales are  
24 authorized pursuant to an agreement under section 77-2602.06, shall post  
25 a bond, or its cash equivalent, for the benefit of the state, which is  
26 subject to execution under subsection (5) ~~(3)~~ of this section. The bond  
27 shall be posted by corporate surety located within the United States.  
28 The ~~, or the~~ cash equivalent of the bond shall be posted by the  
29 nonparticipating manufacturer in an account approved by the Attorney  
30 General state. ~~The bond or its cash equivalent shall be posted and~~  
31 ~~evidence of such posting shall be provided to the Tax Commissioner at~~

1 ~~least ten days in advance of each calendar quarter as a condition to the~~  
2 ~~nonparticipating manufacturer and its brand families being included in~~  
3 ~~the directory for that quarter.~~

4 (2) ~~The amount of the bond, or its cash equivalent, shall be the~~  
5 ~~greater of shall be determined as follows:~~

6 (a) ~~One hundred thousand dollars;~~

7 (b) ~~The greatest required escrow amount due from the~~  
8 ~~nonparticipating manufacturer, or its predecessors, successors,~~  
9 ~~affiliates, importers, or stamping agents, as such terms may be defined~~  
10 ~~and liabilities may be established within sections 69-2701 to 69-2711 and~~  
11 ~~section 12 of this act, for any of the preceding twenty calendar~~  
12 ~~quarters; or~~

13 (c) ~~The greatest required annual total of quarterly escrow amounts~~  
14 ~~due from the nonparticipating manufacturer, or its predecessors,~~  
15 ~~successors, affiliates, importers, or stamping agents, as such terms may~~  
16 ~~be defined and liabilities may be established within sections 69-2701 to~~  
17 ~~69-2711 and section 12 of this act, for any of the preceding five~~  
18 ~~calendar years, if the Attorney General deems the nonparticipating~~  
19 ~~manufacturer to pose an elevated risk for noncompliance.~~

20 (3) ~~The Attorney General may deem a nonparticipating manufacturer to~~  
21 ~~pose an elevated risk for noncompliance if:~~

22 (a) ~~The nonparticipating manufacturer or its brands or brand~~  
23 ~~families, or any predecessor, successor, affiliate, or importer or any of~~  
24 ~~their brands or brand families, has failed to deposit fully the amount~~  
25 ~~due on an escrow obligation with respect to any state at any time during~~  
26 ~~the calendar year or within the preceding five calendar years unless~~  
27 ~~either:~~

28 (i) ~~The nonparticipating manufacturer did not underdeposit knowingly~~  
29 ~~or recklessly and promptly cured the underdeposit within one hundred~~  
30 ~~eighty days of notice of the underdeposit; or~~

31 (ii) ~~The underdeposit or lack of deposit is the subject of a good~~

1 faith dispute in the form of ongoing litigation that has not reached a  
2 final order as reasonably documented to the Attorney General and the  
3 underdeposit is cured within one hundred eighty days of entry of a final  
4 order establishing the amount of the required escrow deposit;

5 (b) Any state has removed the nonparticipating manufacturer or its  
6 brands or brand families, or any predecessor, successor, affiliate, or  
7 importer or any of their brands or brand families, from the state's  
8 tobacco directory for noncompliance with the state's escrow deposit or  
9 tobacco tax laws at any time during the calendar year or within the  
10 preceding five calendar years, unless such removal is subject to a good  
11 faith dispute in the form of an ongoing challenge under administrative  
12 procedure or litigation that has not reached a final order as reasonably  
13 documented to the Attorney General;

14 (c) Any state has an unsatisfied final judgment against the  
15 nonparticipating manufacturer or its brands or brand families, or any  
16 predecessor, successor, affiliate, or importer or any of their brands or  
17 brand families, for escrow or for penalties, fees, costs, refunds, or  
18 attorney's fees related to noncompliance with state escrow laws;

19 (d) The nonparticipating manufacturer, or any predecessor,  
20 successor, or affiliate, sells its cigarettes or tobacco products  
21 directly to consumers via remote or other nonface-to-face means;

22 (e) A state or federal court determines that the nonparticipating  
23 manufacturer, or any predecessor, successor, or affiliate, has violated  
24 any tobacco tax or tobacco control law or engaged in unfair business  
25 practices or unfair competition;

26 (f) Any state has suspended or revoked a license granted to the  
27 nonparticipating manufacturer, or any predecessor, successor, or  
28 affiliate, to engage in any aspect of tobacco business, unless the  
29 suspension or revocation is subject to a good faith dispute in the form  
30 of an ongoing challenge under administrative procedure or litigation that  
31 has not reached a final order as reasonably documented to the Attorney

1 General;

2 (g) Any state or federal court has determined that the  
3 nonparticipating manufacturer, or any predecessor, successor, or  
4 affiliate, failed to comply with state or federal law imposing marking,  
5 labeling, and stamping requirements or requiring information to be  
6 affixed to, or contained in, the labels, markings, or packaging; or

7 (h) The nonparticipating manufacturer fails to submit or complete  
8 any required forms, documents, certification, or notices, in a timely  
9 manner or to the satisfaction of the Attorney General or Tax  
10 Commissioner, unless such failure is subject to a good faith dispute in  
11 the form of an ongoing challenge under administrative procedure or  
12 litigation that has not reached a final order as reasonably documented to  
13 the Attorney General.

14 (4) A nonparticipating manufacturer shall post the bond or its cash  
15 equivalent and shall provide evidence of such posting to the Attorney  
16 General and Tax Commissioner both annually, as required by section  
17 69-2706, and at least ten days in advance of each calendar quarter as a  
18 condition to the nonparticipating manufacturer and its brands or brand  
19 families being included in the directory.

20 ~~(a) Unless subdivision (c) of this subsection is applicable, for a~~  
21 ~~nonparticipating manufacturer or its affiliates which have been listed on~~  
22 ~~any state's directory for at least three years or for any~~  
23 ~~nonparticipating manufacturer whose sales are authorized pursuant to an~~  
24 ~~agreement under section 77-2602.06, the amount of the bond required shall~~  
25 ~~be twenty-five thousand dollars;~~

26 ~~(b) Unless subdivision (c) of this subsection is applicable, for a~~  
27 ~~nonparticipating manufacturer or its affiliates which have not been~~  
28 ~~listed on any state's directory for at least three years, the amount of~~  
29 ~~the bond required shall be fifty thousand dollars; and~~

30 ~~(c) For a nonparticipating manufacturer or its affiliates which have~~  
31 ~~failed, in the past three years, to make a full and timely escrow deposit~~

1 ~~due under section 69-2703, unless the failure was not knowing or~~  
2 ~~intentional and was promptly cured upon notice, or for any~~  
3 ~~nonparticipating manufacturer or its affiliates which were involuntarily~~  
4 ~~removed from any state's directory, unless the removal was determined to~~  
5 ~~have been erroneous or illegal, the amount of the bond required shall be~~  
6 ~~the greater of (i) fifty thousand dollars or (ii) the greatest amount of~~  
7 ~~escrow owed by the nonparticipating manufacturer or its predecessor in~~  
8 ~~any calendar year in Nebraska within the preceding five calendar years.~~

9       (5) (3) If a nonparticipating manufacturer that posted a bond  
10 pursuant to this section has failed to make, or have made on its behalf  
11 by an entity with joint and several liability, escrow deposits equal to  
12 the full amount owed for a quarter within fifteen days following the due  
13 date for the quarter under section 69-2703, the state may execute upon  
14 the bond, first to recover delinquent escrow, which amount shall be  
15 deposited into a qualified escrow account under section 69-2703, and then  
16 to recover civil penalties and costs authorized under such section.  
17 Escrow obligations above the amount collected on the bond remain due from  
18 that nonparticipating manufacturer and, as provided in subdivision (2)(d)  
19 of section 69-2703 and section 69-2708.01, from the importers and  
20 stamping agents that sold its cigarettes during that calendar quarter.

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

23       69-2709 (1) In addition to or in lieu of any other civil or criminal  
24 remedy provided by law, upon a determination that a stamping agent has  
25 violated subsection (4) of section 69-2706 or any rule or regulation  
26 adopted and promulgated pursuant thereto, the Tax Commissioner may revoke  
27 or suspend the license of any stamping agent in the manner provided by  
28 section 77-2615.01. For each violation of subsection (4) of section  
29 69-2706 or the rules and regulations, the Tax Commissioner may also  
30 impose a civil penalty in an amount not to exceed the greater of five  
31 hundred percent of the retail value of the cigarettes or five thousand

1 dollars upon a determination of violation of subsection (4) of section  
2 69-2706 or any rules or regulations adopted and promulgated pursuant  
3 thereto. Such penalty shall be imposed in the manner provided by section  
4 77-2615.01.

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

7 (a) Fails to provide a report required under section 69-2708,  
8 69-2710.01, or 77-2604.01;

9 (b) Files an incomplete or inaccurate report required under section  
10 69-2708, 69-2710.01, or 77-2604.01 or files an inaccurate certification  
11 required under section 69-2708, subsection (2) of section 77-2603, or  
12 section 69-2710.01;

13 (c) Fails to pay taxes as provided in section 77-2602 or deposit  
14 escrow as provided in section 69-2708.01;

15 (d) Sells cigarettes in or into the state in a package that bears a  
16 stamp required under section 77-2603 or 77-2603.01 that is not the  
17 correct stamp and provides for a lower level of tax than the correct  
18 stamp;

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

22 (f) Purchases, sells in or into the state, or affixes a stamp to a  
23 package containing cigarettes of a manufacturer or brand family that is  
24 not at the time listed in the directory, or possesses such cigarettes  
25 more than ten days after receiving notice that the manufacturer or brand  
26 family is not in the directory, unless such stamping agent possesses a  
27 directory license under section 77-2603 or unless expressly permitted  
28 under sections 69-2701 to 69-2711 and section 12 of this act or sections  
29 77-2601 to 77-2622; or

30 (g) Purchases or sells cigarettes in violation of subsection (5) of  
31 this section or section 69-2710.02.



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

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

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

24           (6) If a stamping agent whose license has been terminated is a  
25 tobacco product manufacturer, the tobacco product manufacturer and its  
26 brand families shall be removed from the directory.

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

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

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

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

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

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

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

25 (9) The Attorney General, on behalf of the Tax Commissioner, may  
26 seek an injunction to restrain a threatened or actual violation of  
27 subsection (4) of section 69-2706 or section 69-2708 by a stamping agent  
28 and to compel the stamping agent to comply with subsection (4) of section  
29 69-2706 or section 69-2708. In any action brought pursuant to this  
30 section, the state shall be entitled to recover the costs of  
31 investigation, costs of the action, and reasonable attorney's fees. This

1 subsection shall not apply to a stamping agent purchasing cigarettes  
2 which are not in violation of subsection (4) of section 69-2706 or  
3 section 69-2708.

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

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

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

24 (13) A tobacco product manufacturer that knowingly or intentionally  
25 sells cigarettes in violation of subsection (5) of this section or  
26 section 69-2710.01 and its brand families shall be removed from the  
27 directory.

28 (14) A nonparticipating manufacturer whose total nationwide reported  
29 sales on which federal excise tax is paid exceed the sum of its  
30 nationwide reports under 15 U.S.C. 375 et seq. and any intrastate sales  
31 reports under 15 U.S.C. 375 et seq. by more than five percent of its

1 total sales or one million cigarettes, whichever is less, shall be  
2 subject to removal from the directory unless it cures or satisfactorily  
3 explains the discrepancy within ten days after receipt of notice of the  
4 discrepancy from the Attorney General pursuant to section 69-2708.01.

5 (15) Any person that is not a stamping agent or tobacco product  
6 manufacturer that fails to file a complete and accurate report required  
7 under section 69-2708, 69-2710.01, 77-2604, or 77-2604.01 shall be  
8 entitled to cure the failure within ten days after receipt of notice of  
9 the discrepancy from the Attorney General pursuant to section 69-2708.01.  
10 If the person fails to fully cure the failure within such period, it  
11 shall be subject to a civil penalty of up to one thousand dollars per  
12 violation and shall be ineligible to hold any license of the state  
13 regarding cigarette sales until the date specified by subsection (7) of  
14 this section for violations of subdivision (2)(a) of this section.

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

19 (17) Any person that knowingly or intentionally purchases or sells  
20 cigarettes in violation of subsection (5) of this section or section  
21 69-2710.01 or that knowingly or intentionally sells cigarettes in or into  
22 the state in a package that bears a stamp required under section 77-2603  
23 or 77-2603.01 that is not the correct stamp and provides for a lower  
24 level of tax than the correct stamp shall for a first violation be  
25 subject to a civil penalty of up to one thousand dollars and be guilty of  
26 a Class IV misdemeanor and for a second or subsequent violation be  
27 subject to a civil penalty of up to five thousand dollars per violation  
28 and be guilty of a Class II misdemeanor. Each sale constitutes a separate  
29 violation.

30 Sec. 18. Section 69-2710, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

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

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

31           Sec. 19. Section 69-2710.01, Reissue Revised Statutes of Nebraska,

1 is amended to read:

2           69-2710.01 (1) Any person that during a month acquired, purchased,  
3 sold, possessed, transferred, transported, or caused to be transported in  
4 or into this state cigarettes of a tobacco product manufacturer or brand  
5 family that was not in the directory at the time shall, within fifteen  
6 days following the end of that month, file a report in the manner  
7 prescribed by the Tax Commissioner and certify to the state that the  
8 report is complete and accurate. The report shall contain, in addition to  
9 any further information that the Tax Commissioner may reasonably require  
10 to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711  
11 and section 12 of this act and 77-2601 to 77-2622 and the Tobacco  
12 Products Tax Act, the following information:

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

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

1 reported each sale or transfer to the taxing authority of the other state  
2 by fifteen days following the end of the month in which the sale or  
3 transfer was made and attaching a copy of all such reports. If the  
4 subsequent sale or transfer is from this state into another state in  
5 packages not bearing a stamp of the other state, the report shall also  
6 contain the information described in subdivision (2)(c) of section  
7 77-2604.01.

8 (2) Reports under this section shall be in addition to reports under  
9 sections 69-2708, 77-2604, and 77-2604.01.

10 Sec. 20. Section 69-2710.03, Reissue Revised Statutes of Nebraska,  
11 is amended to read:

12 69-2710.03 The Tax Commissioner may adopt and promulgate rules and  
13 regulations necessary to effect the purposes of sections 69-2703 to  
14 69-2711 and section 12 of this act.

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

17 77-2601 For purposes of sections 77-2601 to 77-2615:

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

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

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

29 (4) Tax Commissioner means the Tax Commissioner of the State of  
30 Nebraska;

31 (5) Cigarette means any product that contains nicotine, is intended

1 to be burned or heated under ordinary conditions of use, and consists of  
2 or contains (a) any roll of tobacco wrapped in paper or in any substance  
3 not containing tobacco; (b) tobacco, in any form, that is functional in  
4 the product, which, because of its appearance, the type of tobacco used  
5 in the filler, or its packaging and labeling, is likely to be offered to,  
6 or purchased by, consumers as a cigarette; or (c) any roll of tobacco  
7 wrapped in any substance containing tobacco which, because of its  
8 appearance, the type of tobacco used in the filler, or its packaging and  
9 labeling, is likely to be offered to, or purchased by, consumers as a  
10 cigarette described in subdivision (5)(a) of this section ~~roll for~~  
11 ~~smoking made wholly or in part of tobacco irrespective of size or shape~~  
12 ~~and whether or not such tobacco is flavored, adulterated, or mixed with~~  
13 ~~any other ingredient, the wrapper or cover of which is made of paper or~~  
14 ~~any other material excepting tobacco;~~

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

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

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

26 (9) Indian country means (a) all land in this state within the  
27 limits of any Indian reservation under the jurisdiction of the United  
28 States, notwithstanding the issuance of any patent, including rights-of-  
29 way running through the reservation, (b) all dependent Indian communities  
30 within the borders of this state, and (c) all Indian allotments in this  
31 state, the Indian titles to which have not been extinguished, including



1 rights-of-way running through such allotments.

2 Sec. 22. Section 77-2603, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

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

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

26 (a) Meeting all requirements of sections 69-2701 to 69-2711 and  
27 section 12 of this act and 77-2601 to 77-2615 and rules and regulations  
28 pursuant to such sections;

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

31 (c) In the case of an applicant located outside of the state,

1 designating an agent for service of process in Nebraska, and providing  
2 notice thereof as required by section 69-2707, in connection with  
3 enforcement of sections 69-2701 to 69-2711 and section 12 of this act and  
4 77-2601 to 77-2615, and, if approval is given by the Tax Commissioner,  
5 the manufacturer, importer, sales entity affiliate, wholesale dealer, or  
6 retail dealer shall furnish a corporate surety bond, conditioned to  
7 faithfully comply with all the requirements of sections 77-2601 to  
8 77-2615, in a sum not less than ten thousand dollars. Such bond shall be  
9 subject to forfeiture if the stamping agent fails to pay the shortfall  
10 amount under subsection (1) of section 69-2708.01 unless the stamping  
11 agent is excused from liability under subsection (3) of section  
12 69-2708.01.

13 (3) Nothing in sections 77-2601 to 77-2615 shall prevent the Tax  
14 Commissioner from affixing the stamps or meter impressions in lieu of the  
15 provisions for affixing stamps and meter impressions by stamping agents  
16 as determined by such rules and regulations adopted by the Tax  
17 Commissioner.

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

22 (5) A manufacturer, importer, sales entity affiliate, wholesale  
23 dealer, or retail dealer that engages in the business of selling  
24 cigarettes and that holds a valid stamping agent license under subsection  
25 (1) of this section may apply for a directory license allowing it to  
26 purchase or possess in the state cigarettes of a manufacturer or brand  
27 family not at the time of purchase listed in the directory for sale into  
28 another state if permitted under section 69-2706. A directory license  
29 shall be issued by the Tax Commissioner to an applicant upon the  
30 applicant's (a) demonstrating that it holds a valid license under  
31 subsection (1) of this section and (b) providing a certification by an

1 officer thereof on a form prescribed by the Tax Commissioner that any  
2 cigarettes of a manufacturer or brand family not listed in the directory  
3 will be purchased or possessed solely for sale or transfer into another  
4 state as permitted by section 69-2706. The directory license shall remain  
5 in effect for a period of one year.

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

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

13 Sec. 23. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,  
14 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.02, 28-1429.03,  
15 69-2705, 69-2706, 69-2707, 69-2707.01, 69-2709, 69-2710, 69-2710.01,  
16 69-2710.03, 77-2601, and 77-2603, Reissue Revised Statutes of Nebraska,  
17 are repealed.