

LEGISLATIVE BILL 590

Approved by the Governor May 26, 2011

Introduced by Gloor, 35.

FOR AN ACT relating to tobacco; to amend sections 59-1520, 59-1523, 69-502, 69-2702, 69-2703, 69-2705, 69-2706, 69-2707, 69-2708, 69-2709, 69-2710, 69-2711, 71-7606, 77-2601, 77-2602, 77-2602.03, 77-2603, 77-2604, 77-2605, 77-2607, 77-2608, 77-2610, 77-2612, 77-2613, 77-2614, 77-2615, 77-2615.01, 77-2620, and 77-2622, Reissue Revised Statutes of Nebraska; to provide, change, and eliminate provisions relating to licenses, disciplinary actions relating to licenses, the Master Settlement Agreement, manufacturer certifications, powers and duties, bonds, cigarette stamps, stamping agents, escrow deposits, reporting, a directory, and taxation; to define and redefine terms; to provide additional uses for dedicated revenue under the Nebraska Health Care Funding Act; to provide for an agreement with Indian tribes regarding cigarette sales, taxation, and distribution as prescribed; to provide and change penalties; to harmonize provisions; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

59-1520 It is unlawful for any person to:

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

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

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

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

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

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

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

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

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

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

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

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

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

amended to read:

59-1523 (1) The cigarette tax division of the Tax Commissioner may, after notice and hearing, revoke or suspend for any violation of section 59-1520 the license or licenses of any person licensed under the provisions of sections 28-1418 to 28-1429 or sections 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act.

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

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

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

(1) Agent means any person authorized by the Tax Commissioner to purchase and affix stamps or cigarette tax meter impressions on packages of cigarettes under sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act;

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

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

(4) Manufacturer means:

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

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

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

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

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

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

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

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

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

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

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

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

(2) Affiliate means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this subdivision, the terms owns, is owned, and ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term person means an individual, a partnership, a committee, an association, a corporation, or any other organization or group of persons;

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

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

to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (a) of this subdivision. The term cigarette includes roll-your-own tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition, nine-hundredths of an ounce of roll-your-own tobacco shall constitute one individual cigarette;

(5) Days means calendar days unless specified otherwise;

(6) Importer means any person in the United States to whom non-federal-excise-tax-paid cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or any person who smuggles or otherwise unlawfully brings cigarettes into the United States;

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

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

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

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

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

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

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

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

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

(c) Becomes a successor of an entity described in subdivision ~~(9)(a)~~ (13)(a) or ~~(9)(b)~~ (13)(b) of this section.

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

~~(10)~~ (14) Units sold means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the

~~state on packs or roll-your-own tobacco containers. The Tax Commissioner shall adopt and promulgate such rules and regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year. in packs required to bear a stamp pursuant to section 77-2603 or section 25 of this act or, in the case of roll-your-own tobacco, on which a tax is due pursuant to section 77-4008.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) An Indian tribe may seek release of escrow deposited pursuant to this section on cigarettes sold on an Indian tribe's Indian country to its tribal members pursuant to an agreement entered into between the state and the Indian tribe pursuant to section 23 of this act. Amounts the state collects on a bond under section 9 of this act shall not be subject to release under this section.

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

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

(ii) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a knowing violation

of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow. Such civil penalty shall be ~~disposed of~~ remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska; and

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

(d) An importer shall be jointly and severally liable for escrow deposits due from a nonparticipating manufacturer with respect to nonparticipating manufacturer cigarettes that it imported and which were then sold in this state, except as provided for by an agreement entered into pursuant to section 23 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Package means any pack or other container on which a state stamp or tribal stamp could be applied consistent with and as required by sections 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act and sections 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act that contains one or more individual cigarettes for sale. Nothing in such sections shall alter any other applicable requirement with respect to the minimum number of cigarettes that may be contained in a pack or other container of cigarettes. References to package do not include a container of multiple packages;

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

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

(15) Purchase means any acquisition in any manner or by any means

for any consideration. The term includes transporting or receiving product in connection with a purchase;

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

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

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

(19) Shortfall amount means the difference between (a) the full amount of the deposit required to be made by a nonparticipating manufacturer for a calendar quarter under section 69-2703 and (b) the sum of (i) any amounts precollected by a stamping agent and deposited into escrow for that calendar quarter on behalf of the nonparticipating manufacturer under section 11 of this act, (ii) the amount deposited into escrow by the nonparticipating manufacturer for that calendar quarter under section 69-2703, (iii) any amounts deposited into escrow for that calendar quarter under subdivision (2)(d) of section 69-2703 by an importer on such nonparticipating manufacturer's cigarettes, and (iv) any amounts collected by the state for that calendar quarter under the bond posted by the nonparticipating manufacturer under section 9 of this act. The shortfall amount, if any, for a nonparticipating manufacturer for a calendar quarter shall be calculated by the Attorney General within fifteen days following the date on which the state determines the amount it will collect on the bond posted by the nonparticipating manufacturer as provided in section 9 of this act;

~~(7)~~ (20) Stamping agent means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under section 77-2603 or section 25 of this act or any person that is required to pay the tobacco tax imposed pursuant to section 77-4008 on roll-your-own cigarettes;

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

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

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

(24) Unstamped cigarettes means any cigarettes that are not contained in a package bearing a stamp required under section 77-2603 or section 25 of this act.

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

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

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

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

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

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

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

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

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

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

(vi) The information required to establish that such nonparticipating manufacturer has posted the appropriate bond or cash equivalent required under section 9 of this act.

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

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

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

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

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

(c) As a condition to being listed and having its brand families listed in the directory, a tobacco product manufacturer shall also (i) certify

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

~~(e)~~ (d) The Tax Commissioner shall update the directory no later than May 15 of each year to reflect certifications made on or before April 30 as required in subsection (1) of this section. The Tax Commissioner shall continuously update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 69-2704 to ~~69-2710~~, 69-2711 and sections 9, 11, 14, 15, and 16 of this act;

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

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

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

(4) It shall be unlawful for any person (a) to affix a Nebraska stamp pursuant to section 77-2603 to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, ~~or~~ (b) to affix a tribal stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory except as authorized by an agreement pursuant to section 23 of this act, or (c) to sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family in this state not included in the directory.

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

69-2707 (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory created in subsection (2) of section 69-2706, appoint and continually engage without interruption the services of an agent in ~~the United States~~ Nebraska to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of sections 69-2703 to ~~69-2710~~, 69-2711 and sections 9, 11, 14, 15, and 16 of this act, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner and Attorney General.

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

(3) Any nonparticipating manufacturer whose products are sold in this state who has not appointed and engaged the services of an agent as

required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this section to have the nonparticipating manufacturer's brand families included or retained in the directory.

Sec. 9. (1) All nonparticipating manufacturers shall post a bond or its cash equivalent for the benefit of the state which is subject to execution under subsection (3) of this section. The bond shall be posted by corporate surety located within the United States, or the cash equivalent of the bond shall be posted by the nonparticipating manufacturer in an account approved by the state. The bond or its cash equivalent shall be posted and evidence of such posting shall be provided to the Tax Commissioner at least ten days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brand families being included in the directory for that quarter.

(2) The amount of the bond shall be determined as follows:

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

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

(c) For a nonparticipating manufacturer or its affiliates which have failed, in the past three years, to make a full and timely escrow deposit due under section 69-2703, unless the failure was not knowing or intentional and was promptly cured upon notice, or for any nonparticipating manufacturer or its affiliates which were involuntarily removed from any state's directory, unless the removal was determined to have been erroneous or illegal, the amount of the bond required shall be the greater of (i) fifty thousand dollars or (ii) the greatest amount of escrow owed by the nonparticipating manufacturer or its predecessor in any calendar year in Nebraska within the preceding five calendar years.

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

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

69-2708 (1) Not later than ~~twenty~~ calendar days after the end of each calendar quarter, and more frequently if so directed by the Tax Commissioner, ~~fifteen~~ days following the end of each month, each stamping agent shall submit, in the manner directed by the Tax Commissioner, such information as the Tax Commissioner requires to facilitate compliance with sections 69-2704 to ~~69-2710~~, 69-2711 and sections 9, 11, 14, 15, and 16 of this act, including, but not limited to, (a) a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous ~~calendar quarter~~ month or otherwise paid the ~~tax~~ total due for such cigarettes, the total number of cigarettes contained in the packages to which it affixed each respective type of stamp, and by name and number of cigarettes, the tobacco product manufacturers and brand families of the packages to which it affixed each respective type of stamp or similar information for roll-your-own on which tax was paid and (b) the total number of cigarettes acquired by the stamping agent during that month for sale in or into the state or for sale from this state into another state, sold in or into the state by the stamping agent during that month and held in inventory in the state or for sale into the state by the stamping agent as of the last business day of that month, in each case identifying by name and number of cigarettes, (i) the manufacturers of those cigarettes and (ii) the brand families of those cigarettes. In the case of a stamping agent that is a retailer, reports under subdivision (1)(a) of this section do not have to include cigarettes

contained in packages that bore a stamp required under section 77-2603 or section 25 of this act at the time the stamping agent received them and that the stamping agent then sold at retail. The stamping agent shall also submit a certification stating that the information provided to the Tax Commissioner is complete and accurate. The stamping agent shall maintain, and make available to the Tax Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Tax Commissioner for a period of five years. The Tax Commissioner may share the information reported under this section with the taxing or law enforcement authorities of this state or other states. The Tax Commissioner may also share with a nonparticipating manufacturer information reported under this section pertaining to such nonparticipating manufacturer's cigarettes.

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

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

(4) ~~To promote compliance with sections 69-2704 to 69-2707, a tobacco product manufacturer subject to the requirements of subdivision (1)(e) of section 69-2706 shall make the escrow deposits required by section 69-2703 in quarterly installments during the year in which the sales covered by such deposits are made: (a) Through the end of the calendar year following the year the tobacco product manufacturer is listed in the directory established pursuant to section 69-2706; (b) if the tobacco product manufacturer is removed from, then subsequently relisted in, the directory, then for all periods following the relisting through the end of the calendar year following the year the tobacco product manufacturer is relisted in the directory; (c) if the tobacco product manufacturer has failed to make a complete and timely escrow deposit for any calendar year as required by section 69-2703 or for any quarter as required in this section; or (d) if the tobacco product manufacturer has failed to pay any judgment, including any civil penalty ordered under section 69-2703 or 69-2709. The Tax Commissioner or the Attorney General may require production of information sufficient to enable the Tax Commissioner or Attorney General to determine the adequacy of the amount of the installment deposit. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers subject to the requirements of subdivision (1)(e) of section 69-2706 make quarterly payments.~~ a quarterly escrow deposit under subdivision (2) of section 69-2703. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers subject to subdivision (2) of section 69-2703 make quarterly payments.

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

(2) The liability of a stamping agent for escrow deposits shall be calculated as follows: If there is a shortfall amount for a nonparticipating manufacturer for a calendar quarter, each stamping agent that sold cigarettes of that nonparticipating manufacturer during the calendar quarter shall deposit into such escrow account as shall be designated by the state an amount equal to the applicable shortfall amount multiplied by a fraction, the numerator of which is the number of cigarettes of that nonparticipating manufacturer sold in or into the state by the stamping agent during that calendar quarter and the denominator of which is the total number of cigarettes of that nonparticipating manufacturer sold by all stamping agents in or into the state during that calendar quarter, except that any nonparticipating manufacturer cigarettes sold in or into the state by a stamping agent during the calendar quarter in which the stamping agent collected and deposited the required escrow deposit amount on or before the due date for deposits for that quarter under subdivision (2) of section 69-2703 shall be excluded from both the numerator and the denominator of the fraction. To the extent a stamping agent makes payments with respect to a

shortfall amount under this subsection, such stamping agent shall have a claim against the nonparticipating manufacturer for such amount.

(3) A stamping agent shall not be liable for escrow deposits under subsections (1) and (2) of this section if, at the time of purchase of such nonparticipating manufacturer's cigarettes:

(a) The nonparticipating manufacturer is on the directory pursuant to section 69-2706; and

(b) The state denotes on the directory that the nonparticipating manufacturer has posted the appropriate bond required under section 9 of this act.

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

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

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

(a) Fails to provide a report required under section 69-2708 or section 14 or 27 of this act;

(b) Files an incomplete or inaccurate report required under section 69-2708 or section 14 or 27 of this act or files an inaccurate certification required under section 69-2708, subsection (2) of section 77-2603, or section 14 of this act;

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

(d) Sells cigarettes in or into the state in a package that bears a stamp required under section 77-2603 or section 25 of this act that is not the correct stamp and provides for a lower level of tax than the correct stamp;

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

(f) Purchases, sells in or into the state, or affixes a stamp to a package containing cigarettes of a manufacturer or brand family that is not at the time listed in the directory, or possesses such cigarettes more than ten days after receiving notice that the manufacturer or brand family is not in the directory, unless such stamping agent possesses a directory license under section 77-2603 or unless expressly permitted under sections 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act or sections 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act; or

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

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

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

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

has been terminated.

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

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

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

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

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

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

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

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

~~(3)~~ (9) The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (4) of section 69-2706 or ~~subsection (1) or (4) of section 69-2708~~ by a stamping agent and to compel the stamping agent to comply with ~~any of such subsections.~~ subsection (4) of section 69-2706 or section 69-2708. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees. This subsection shall not apply to a stamping agent purchasing cigarettes which are not in violation of subsection (4) of section 69-2706 or section 69-2708.

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

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

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

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

(14) A nonparticipating manufacturer whose total nationwide reported sales on which federal excise tax is paid exceed the sum of its nationwide reports under 15 U.S.C. 375 et seq. and any intrastate sales reports under 15 U.S.C. 375 et seq. by more than five percent of its total sales or one million cigarettes, whichever is less, shall be subject to removal from the directory unless it cures or satisfactorily explains the discrepancy within ten days

after receipt of notice of the discrepancy from the Attorney General pursuant to section 11 of this act.

(15) Any person that is not a stamping agent or tobacco product manufacturer that fails to file a complete and accurate report required under section 69-2708 or 77-2604 or section 14 or 27 of this act shall be entitled to cure the failure within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 11 of this act. If the person fails to fully cure the failure within such period, it shall be subject to a civil penalty of up to one thousand dollars per violation and shall be ineligible to hold any license of the state regarding cigarette sales until the date specified by subsection (7) of this section for violations of subdivision (2)(a) of this section.

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

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

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

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

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

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

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

Sec. 14. (1) Any person that during a month acquired, purchased, sold, possessed, transferred, transported, or caused to be transported in or into this state cigarettes of a tobacco product manufacturer or brand family that was not in the directory at the time shall, within fifteen days following the end of that month, file a report on a form and in the manner prescribed by the Tax Commissioner and certify to the state that the report

is complete and accurate. The report shall contain, in addition to any further information that the Tax Commissioner may reasonably require to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act and sections 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act and the Tobacco Products Tax Act, the following information:

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

(b) In the case of acquisition, purchase, or possession, the details of the person's subsequent sale or transfer of those cigarettes, identifying by name and number of cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer, (iii) the name and address of the recipient, (iv) the number of stamps of each other state that the person affixed to the packages containing those cigarettes during that month, (v) the total number of cigarettes contained in the packages to which it affixed each respective other state's stamp, (vi) the manufacturers and brand families of the packages to which it affixed each respective other state's stamp, and (vii) a certification that it reported each sale or transfer to the taxing authority of the other state by fifteen days following the end of the month in which the sale or transfer was made and attaching a copy of all such reports. If the subsequent sale or transfer is from this state into another state in packages not bearing a stamp of the other state, the report shall also contain the information described in subdivision (2)(c) of section 27 of this act.

(2) Reports under this section shall be in addition to reports under sections 69-2708 and 77-2604 and section 27 of this act.

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

(2) A tobacco product manufacturer and its brand families may be removed from the directory if it is removed from the directory of another state based on acts or omissions that would, if done in this state, be grounds for removal from the directory under section 69-2706, 69-2707, or 69-2710 or subsection (6) of section 69-2709 or section 9 of this act, unless the tobacco product manufacturer demonstrates that its removal from the other state's directory was effected without due process, that it fully cured such violation and provided notice of such cure to the Department of Revenue within thirty days after receipt of notice of the violation, or that it secured a temporary injunction against removal from the directory in the district court of Lancaster County. For purposes of a temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory shall constitute irreparable harm. If, after thirty days, the tobacco product manufacturer remains in noncompliance and has not obtained a temporary injunction pursuant to this subsection, the tobacco product manufacturer shall be removed from the directory. A manufacturer that is removed from the directory under this subsection shall be eligible for reinstatement upon the earlier of the date on which it cures the violation or is reinstated to the directory in the other state.

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

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

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

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

Sec. 18. Section 71-7606, Reissue Revised Statutes of Nebraska, is amended to read:

71-7606 (1) The purpose of the Nebraska Health Care Funding Act is to provide for the use of dedicated revenue for health-care-related expenditures and administration and enforcement of the Master Settlement Agreement as defined in section 69-2702.

(2) Any funds appropriated or distributed under the act shall not be considered ongoing entitlements or obligations on the part of the State of Nebraska and shall not be used to replace existing funding for existing programs.

(3) No funds appropriated or distributed under the act shall be used for abortion, abortion counseling, referral for abortion, or research or activity of any kind involving the use of human fetal tissue obtained in connection with the performance of an induced abortion or involving the use of human embryonic stem cells or for the purpose of obtaining other funding for such use.

(4) The Department of Health and Human Services shall report annually to the Legislature and the Governor regarding the use of funds appropriated under the act and the outcomes achieved from such use.

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

77-2601 For purposes of sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act:

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

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

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

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

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

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

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

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

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

Sec. 20. Section 77-2602, Reissue Revised Statutes of Nebraska, is amended to read:

77-2602 (1) Every ~~person~~ stamping agent engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition

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

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

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

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

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

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

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

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

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

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

(h) Eighth, beginning July 1, 2008, and continuing until June 30, 2009, the State Treasurer shall place the equivalent of two million fifty thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2009, and continuing until June 30, 2016, the State Treasurer shall place the equivalent of two million five

hundred seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2016, and every fiscal year thereafter, the State Treasurer shall place the equivalent of five million seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the distribution pursuant to this subdivision.

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

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

Sec. 21. Section 77-2602.03, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 22. (1) A person that paid taxes applicable under section 77-2602 on cigarettes sold in an exempt transaction shall be eligible for a refund of the taxes paid on those cigarettes.

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

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

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

(3) Except as provided in subsection (5) of this section, the person seeking a refund of taxes shall submit an application to the Tax Commissioner providing documentation sufficient to demonstrate (a) that the cigarettes were sold in a package bearing the correct stamp required under section 77-2603 or section 25 of this act and that the stamp was one that required payment of tax, (b) that the person paid the applicable taxes in question, (c) that the cigarettes were sold in an exempt transaction, and (d) that the person has not previously obtained the refund on the cigarettes. The documentation shall include, in addition to information necessary to meet the requirements of subdivisions (3)(a) through (d) of this section and any other information that the Tax Commissioner may reasonably require, documents showing the identity of the seller and purchaser and the places of shipment and delivery of the cigarettes. The Tax Commissioner shall verify the accuracy and completeness of the required documentation and information before granting the requested

refund.

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

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

Sec. 23. (1) The Governor or his or her designated representative may negotiate and execute an agreement with the governing body of any federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any cigarette tax or other tobacco product tax under this section and sections 22 and 25 of this act or escrow collected pursuant to section 69-2703, on sales of cigarettes, roll-your-own, or smokeless tobacco made or sold on a federally recognized Indian tribe's Indian country. The agreement shall specify:

- (a) Its duration;
- (b) Its purpose;
- (c) Provisions for administering, collecting, and enforcing the agreement and for the mutual waiver of sovereign immunity objections with respect to such provisions;
- (d) Remittance of taxes and escrow collected;
- (e) The division of the proceeds of the tax and escrow between the parties;
- (f) The method to be employed in accomplishing the partial or complete termination of the agreement;
- (g) A dispute resolution procedure;
- (h) Adequate reporting and auditing provisions; and
- (i) Any other necessary and proper matters.

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

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

(4) The agreement may provide for the sale of cigarettes not included in the directory under section 69-2706, but only if the agreement requires that such cigarettes bear the tribal stamp under section 25 of this act and only if the agreement includes provisions to account for escrow deposits on such cigarettes in amounts equal to and in a manner consistent with the deposits required of manufacturers under section 69-2703 or otherwise requires payment of escrow by the manufacturers in accordance with section 69-2703 and pursuant to section 11 of this act.

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

(6) The state may, in the best interests of the state, enter into any future agreement, compact, or treaty with any Indian tribe that is consistent with sections 22, 23, and 25 of this act.

Sec. 24. Section 77-2603, Reissue Revised Statutes of Nebraska, is amended to read:

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

meter machines may be used when approved by the Tax Commissioner to affix a suitable stamp or impression on each package of cigarettes and cigarettes with a tax meter impression shall be treated as stamped cigarettes for purposes of sections 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act and sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act. Before any ~~wholesale dealer~~ person is issued a ~~permit~~ license to affix stamps or cigarette tax meter impressions, the ~~wholesale dealer~~ person shall make application to become licensed as a stamping agent to the Tax Commissioner on a form provided by the Tax Commissioner to engage in such activity.

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

(a) Meeting all requirements of sections 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act and sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act and rules and regulations pursuant to such sections;

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

(c) In the case of an applicant located outside of the state, designating an agent for service of process in Nebraska, and providing notice thereof as required by section 69-2707, in connection with enforcement of sections 69-2701 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act and sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act, and, if approval is given by the Tax Commissioner, the manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer and, if approval is given by the Tax Commissioner, the dealer shall furnish a corporate surety bond, conditioned to faithfully comply with all the requirements of sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act, in a sum not less than ~~one~~ ten thousand dollars. Such bond shall be subject to forfeiture if the stamping agent fails to pay the shortfall amount under subsection (1) of section 11 of this act unless the stamping agent is excused from liability under subsection (3) of section 11 of this act.

(3) Nothing in sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act shall prevent the Tax Commissioner from affixing the stamps or meter impressions in lieu of the provisions for affixing stamps and meter impressions by ~~wholesalers~~ stamping agents as determined by such rules and regulations adopted by the Tax Commissioner.

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

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

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

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

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

Sec. 26. Section 77-2604, Reissue Revised Statutes of Nebraska, is amended to read:

77-2604 (1) Every stamping agent, wholesale dealer, and retail dealer who is subject to sections 77-2601 to 77-2622 and sections 22, 23,

25, and 27 of this act shall make and file with the Tax Commissioner, on or before the tenth fifteenth day of each calendar month on blanks furnished by the Tax Commissioner, true, correct, and sworn reports covering, for the last preceding calendar month, the number of cigarettes purchased, from whom purchased, the specific kinds and brands thereof, the manufacturer, if known, and such other matters and in such detail as the Tax Commissioner may require.

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

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

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

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

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

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

Sec. 27. (1) Any person that sells cigarettes from this state into another state shall, within fifteen days following the end of each month, file a report on a form and in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate.

(2) The report shall contain the following information:

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

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

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

(3) In the case of a manufacturer or importer, the report shall include cigarettes sold from this state into another state through its sales entity affiliate. A sales entity affiliate shall file a separate report under

this section only to the extent that it sold cigarettes from this state into another state not separately reported under this section by its affiliated manufacturer or importer.

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

Sec. 28. Section 77-2605, Reissue Revised Statutes of Nebraska, is amended to read:

77-2605 The books, records, papers, receipts, invoices, and supply of cigarettes of any person, including wholesale and retail dealers, stamping agents, and persons transporting cigarettes, subject to the provisions of sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act which pertain to the purchase or sale of cigarettes shall be subject to inspection at any time during ordinary business hours by the Tax Commissioner or his or her representatives.

Sec. 29. Section 77-2607, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 30. Section 77-2608, Reissue Revised Statutes of Nebraska, is amended to read:

77-2608 The Tax Commissioner shall prepare and have suitable stamps for use on each kind of piece or package of cigarettes, except when cigarette tax meter impressions are affixed. Requisition for the preparation of such stamps shall be made through the materiel division of the Department of Administrative Services as other state supplies are requisitioned, and the Tax Commissioner and his or her bondsperson shall be liable for the value of all such stamps delivered to him or her. The Auditor of Public Accounts shall audit annually or as often as the auditor deems advisable the records of the Tax Commissioner with respect to the money received from the sale of stamps and as revenue from tax meter impressions for the purpose of determining the accuracy and correctness of the same. The Tax Commissioner shall sell or distribute the stamps only to licensed ~~wholesale dealers,~~ stamping agents, as defined provided in section 77-2601, section 77-2603 or section 25 of this act, and ~~he or she~~ the stamping agent shall keep an accurate record of all stamps coming into and leaving ~~his or her hands.~~ the stamping agent's possession. Such stamps shall be sold and accounted for at the face value thereof, except that the Tax Commissioner may, by rule and regulation certified to the State Treasurer, authorize the sale thereof to ~~wholesale dealers~~ stamping agents in this state or outside of this state at a discount of one and eighty-five hundredths percent of such face value of the tax as a commission for affixing and canceling such stamps, ~~except that for stamps sold beginning October 1, 2002, through September 30, 2004, the authorized commission for affixing and canceling such stamps shall be one and seven-tenths percent of the face value of the tax.~~ Any ~~wholesale dealer~~ stamping agent using a tax meter machine shall be entitled to the same discount as allowed a ~~wholesale dealer~~ stamping agent for affixing and canceling the stamps. The money received by the Tax Commissioner from the sale of the stamps and as revenue from such tax meter impressions shall be deposited by him or her daily with the State Treasurer who shall credit such money as provided in section 77-2602. Upon proof by the Tax Commissioner that he or she can affix such stamps or meter impressions, warehouse and distribute such cigarettes, and collect such revenue at a cost less than any discount allowed to ~~wholesale dealers~~ stamping agents pursuant to this section, he or she may then proceed to affix the stamps himself or herself after giving the ~~wholesale dealers~~ stamping agents sixty days' notice and purchasing all equipment used by them for the purpose of affixing such stamps or meter impressions at a fair market value.

Sec. 31. Section 77-2610, Reissue Revised Statutes of Nebraska, is amended to read:

77-2610 Upon the written request of the original purchaser thereof and upon the return of any unused stamps, the Tax Commissioner shall redeem such stamps. The Tax Commissioner shall prepare a voucher showing the amount of such returned unused stamps and shall cause to be drawn a warrant upon the State Treasurer for such amount in favor of the person returning such unused stamps. The refunds shall be paid from the various funds named in section 77-2602 in the same proportions as the proceeds of the tax are allocated. By the terms of sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act, the Tax Commissioner and the State Treasurer are specifically authorized to adjust all errors in payments for unused stamps.

Sec. 32. Section 77-2612, Reissue Revised Statutes of Nebraska, is amended to read:

77-2612 The Tax Commissioner may employ, with the advice and consent of the Governor, a sufficient number of inspectors, clerks, assistants, and agents to enforce ~~the provisions of~~ sections 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act, including the collection of all stamp taxes and all revenue from cigarette tax meters. In such enforcement, the Tax Commissioner may call to his or her aid the Attorney General, any county attorney, any sheriff, any deputy sheriff, or any other peace officer. The compensation of all persons employed shall be fixed by the Governor and shall be paid from the revenue derived under such sections. ~~77-2601 to 77-2622.~~ The expenses of administering such sections, ~~77-2601 to 77-2622,~~ including necessary assistants, clerical help, cost of enforcement, cost of stamps, and incidental expenses, when approved by the Tax Commissioner, shall be paid by warrants, issued against the General Fund, but such warrants shall not exceed four percent of the funds collected under such sections, ~~77-2601 to 77-2622,~~ such expenses in each instance to be approved by the Tax Commissioner.

The Tax Commissioner may adopt and promulgate rules and regulations which are consistent with ~~the provisions of~~ sections 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act and their proper enforcement.

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

Sec. 33. Section 77-2613, Reissue Revised Statutes of Nebraska, is amended to read:

77-2613 The State Treasurer shall place all sums of money received under sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act as provided in section 77-2602, and from time to time, upon voucher approved by the Tax Commissioner, disburse such sum or sums as may be necessary to administer and carry out the provisions of sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act relating to the collection of ~~said the~~ tax, subject to the limitations ~~therein~~ provided in such sections.

Sec. 34. Section 77-2614, Reissue Revised Statutes of Nebraska, is amended to read:

77-2614 Any person who, with intent to defraud the state, shall make, alter, forge, or counterfeit any license, permit, stamp, or cigarette tax meter impression provided for in sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act, or who shall have in his or her possession any forged, counterfeited, spurious, or altered license, permit, stamp, or cigarette tax meter impression, with intent to use the same, knowing or having reasonable grounds to believe the same to be such, or shall have in his or her possession one or more cigarette stamps or cigarette tax meter impressions which he or she knows have been removed from the pieces or packages of cigarettes to which they were affixed, or who affixes to any piece or package of cigarettes a stamp or cigarette tax meter impression which he or she knows has been removed from any other piece or package of cigarettes shall be deemed guilty of a Class IV felony.

Sec. 35. Section 77-2615, Reissue Revised Statutes of Nebraska, is amended to read:

77-2615 Any person who shall violate any of the provisions of violates sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act, or any rule or regulation lawfully made adopted and promulgated in accordance therewith, for which a specific penalty is not otherwise provided or who shall, except as permitted by sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act, sell, deliver, or accept, with intent to evade the provisions of such sections, 77-2601 to 77-2615, any cigarettes upon which the tax provided by section 77-2602 has not been paid or who affixes a stamp permitted under section 77-2603 or section 25 of this act to a package of cigarettes of a tobacco product manufacturer or brand family not included in the directory pursuant to section 69-2706 or who sells, offers, or possesses for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory shall be deemed guilty of a Class IV felony. ~~Where~~ If any person is found to have in his or her possession more than ten unstamped packages of cigarettes, except as permitted under section 77-2607, it shall be prima facie evidence of attempt to evade the provisions of sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act.

Sec. 36. Section 77-2615.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-2615.01 (1) In addition to the provisions of sections 77-2615 and 77-2622, for any violation of sections 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act or the rules and regulations adopted and promulgated under such sections, the Tax Commissioner may:

(a) After notice and hearing, suspend or revoke the licenses of any person licensed under sections 28-1420 to 28-1429 or 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act. Notice of hearing shall be given as provided in the Administrative Procedure Act; and

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

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

~~(3) (2) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of suspension or revocation on the premises occupied by him or her. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under sections 28-1420 to 28-1429 or 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act.~~

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

(4) If a person's license has been suspended or revoked and the person's name has been removed for at least ten days from the list of licensed entities published by the Tax Commissioner under subsection (4) of section 77-2603, any person that sells cigarettes to or purchases cigarettes from such person shall be jointly and severally liable for any taxes applicable to such cigarettes under section 77-2602 and for any escrow due on such cigarettes under section 69-2703.

Sec. 37. Section 77-2620, Reissue Revised Statutes of Nebraska, is amended to read:

77-2620 All cigarettes subject to the tax as imposed by section 77-2602, to which stamps have not been affixed or tax impressions made, as required by sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this act, except as permitted by the provisions of section 77-2607, when found in any place in this state are declared to be contraband goods and may be seized by the Tax Commissioner, by the Tax Commissioner's agents or employees, or by any peace officer of this state, when directed by the Tax Commissioner to do so, without a warrant. The Tax Commissioner may, upon satisfactory proof, direct the return of any confiscated cigarettes when he or she has reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed under section 77-2602. The Tax Commissioner may, in the absence of proof of good faith, confiscate any unstamped cigarettes or cigarettes without tax impressions found in the possession of any person, except as permitted by section 77-2607. Any cigarettes forfeited to the state under this section shall be destroyed or used for law enforcement purposes and then destroyed. ~~and may within a reasonable time thereafter, by a public notice of at least fifteen days before the day of sale, sell such confiscated~~

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

Sec. 38. Section 77-2622, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 39. Sections 23 and 39 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on January 1, 2013.

Sec. 40. Original sections 59-1520, 59-1523, 69-502, 69-2702, 69-2703, 69-2705, 69-2706, 69-2707, 69-2708, 69-2709, 69-2710, 69-2711, 71-7606, 77-2601, 77-2602, 77-2602.03, 77-2603, 77-2604, 77-2605, 77-2607, 77-2608, 77-2610, 77-2612, 77-2613, 77-2614, 77-2615, 77-2615.01, 77-2620, and 77-2622, Reissue Revised Statutes of Nebraska, are repealed.