

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 397

Introduced by Briese, 41.

Read first time January 17, 2019

Committee: General Affairs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 nicotine products behind locked doors; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 faith dispute as documented to the satisfaction of the Attorney General
2 and the underdeposit is cured within one hundred eighty days of entry of
3 a final order establishing the amount of the required escrow deposit;

4 (b) Any state has removed the nonparticipating manufacturer or its
5 brands or brand families, or any predecessor, successor, affiliate, or
6 importer or any of their brands or brand families, from the state's
7 tobacco directory for noncompliance with the state's escrow deposit or
8 tobacco tax laws at any time during the calendar year or within the
9 preceding five calendar years;

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

16 (d) The nonparticipating manufacturer, or any predecessor,
17 successor, or affiliate, sells its cigarettes or tobacco products
18 directly to consumers via remote or other non-face-to-face means;

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

23 (f) Any state has suspended or revoked a license granted to the
24 nonparticipating manufacturer, or any predecessor, successor, or
25 affiliate, to engage in any aspect of tobacco business;

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

31 (h) The nonparticipating manufacturer fails to submit or complete

1 any required forms, documents, certification, or notices, in a timely
2 manner or to the satisfaction of the Attorney General or Tax
3 Commissioner.

4 (4) A nonparticipating manufacturer shall post the bond or its cash
5 equivalent and shall provide evidence of such posting to the Attorney
6 General and Tax Commissioner both annually, as required by section
7 69-2706, and at least ten days in advance of each calendar quarter as a
8 condition to the nonparticipating manufacturer and its brands or brand
9 families being included in the directory.

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

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

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

30 (5) (3) If a nonparticipating manufacturer that posted a bond
31 pursuant to this section has failed to make, or have made on its behalf

1 by an entity with joint and several liability, escrow deposits equal to
2 the full amount owed for a quarter within fifteen days following the due
3 date for the quarter under section 69-2703, the state may execute upon
4 the bond, first to recover delinquent escrow, which amount shall be
5 deposited into a qualified escrow account under section 69-2703, and then
6 to recover civil penalties and costs authorized under such section.
7 Escrow obligations above the amount collected on the bond remain due from
8 that nonparticipating manufacturer and, as provided in subdivision (2)(d)
9 of section 69-2703 and section 69-2708.01, from the importers and
10 stamping agents that sold its cigarettes during that calendar quarter.

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

13 69-2709 (1) In addition to or in lieu of any other civil or criminal
14 remedy provided by law, upon a determination that a stamping agent has
15 violated subsection (4) of section 69-2706 or any rule or regulation
16 adopted and promulgated pursuant thereto, the Tax Commissioner may revoke
17 or suspend the license of any stamping agent in the manner provided by
18 section 77-2615.01. For each violation of subsection (4) of section
19 69-2706 or the rules and regulations, the Tax Commissioner may also
20 impose a civil penalty in an amount not to exceed the greater of five
21 hundred percent of the retail value of the cigarettes or five thousand
22 dollars upon a determination of violation of subsection (4) of section
23 69-2706 or any rules or regulations adopted and promulgated pursuant
24 thereto. Such penalty shall be imposed in the manner provided by section
25 77-2615.01.

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

28 (a) Fails to provide a report required under section 69-2708,
29 69-2710.01, or 77-2604.01;

30 (b) Files an incomplete or inaccurate report required under section
31 69-2708, 69-2710.01, or 77-2604.01 or files an inaccurate certification

1 required under section 69-2708, subsection (2) of section 77-2603, or
2 section 69-2710.01;

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

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

9 (e) Sells unstamped cigarettes in, into, or from the state or
10 possesses unstamped cigarettes in the state except as provided in section
11 77-2607;

12 (f) Purchases, sells in or into the state, or affixes a stamp to a
13 package containing cigarettes of a manufacturer or brand family that is
14 not at the time listed in the directory, or possesses such cigarettes
15 more than ten days after receiving notice that the manufacturer or brand
16 family is not in the directory, unless such stamping agent possesses a
17 directory license under section 77-2603 or unless expressly permitted
18 under sections 69-2701 to 69-2711 and section 12 of this act or sections
19 77-2601 to 77-2622; or

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

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

28 (4) In the case of a knowing or intentional violation under
29 subdivision (2)(a), (b), (c), or (d) of this section, or of any violation
30 described in subdivision (2)(e) or (f) of this section, the stamping
31 agent shall for a first violation be subject to a civil penalty of up to

1 one thousand dollars and be guilty of a Class IV misdemeanor and for a
2 second or subsequent violation be subject to a civil penalty of up to
3 five thousand dollars per violation and be guilty of a Class II
4 misdemeanor. In the case of violations described in subdivision (2)(d),
5 (e), or (f) of this section, each sale constitutes a separate offense.

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

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

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

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

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

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

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

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

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

15 (9) The Attorney General, on behalf of the Tax Commissioner, may
16 seek an injunction to restrain a threatened or actual violation of
17 subsection (4) of section 69-2706 or section 69-2708 by a stamping agent
18 and to compel the stamping agent to comply with subsection (4) of section
19 69-2706 or section 69-2708. In any action brought pursuant to this
20 section, the state shall be entitled to recover the costs of
21 investigation, costs of the action, and reasonable attorney's fees. This
22 subsection shall not apply to a stamping agent purchasing cigarettes
23 which are not in violation of subsection (4) of section 69-2706 or
24 section 69-2708.

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

31 (11) If a court determines that a person has violated any portion of

1 sections 69-2704 to 69-2711, the court shall order the payment of any
2 profits, gains, gross receipts, or other benefits from the violation to
3 be remitted to the State Treasurer for distribution in accordance with
4 Article VII, section 5, of the Constitution of Nebraska. Unless otherwise
5 expressly provided, the remedies or penalties provided by sections
6 69-2704 to 69-2711 are cumulative to each other and to the remedies or
7 penalties available under all applicable laws of this state.

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

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

18 (14) A nonparticipating manufacturer whose total nationwide reported
19 sales on which federal excise tax is paid exceed the sum of its
20 nationwide reports under 15 U.S.C. 375 et seq. and any intrastate sales
21 reports under 15 U.S.C. 375 et seq. by more than five percent of its
22 total sales or one million cigarettes, whichever is less, shall be
23 subject to removal from the directory unless it cures or satisfactorily
24 explains the discrepancy within ten days after receipt of notice of the
25 discrepancy from the Attorney General pursuant to section 69-2708.01.

26 (15) Any person that is not a stamping agent or tobacco product
27 manufacturer that fails to file a complete and accurate report required
28 under section 69-2708, 69-2710.01, 77-2604, or 77-2604.01 shall be
29 entitled to cure the failure within ten days after receipt of notice of
30 the discrepancy from the Attorney General pursuant to section 69-2708.01.
31 If the person fails to fully cure the failure within such period, it

1 shall be subject to a civil penalty of up to one thousand dollars per
2 violation and shall be ineligible to hold any license of the state
3 regarding cigarette sales until the date specified by subsection (7) of
4 this section for violations of subdivision (2)(a) of this section.

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

9 (17) Any person that knowingly or intentionally purchases or sells
10 cigarettes in violation of subsection (5) of this section or section
11 69-2710.01 or that knowingly or intentionally sells cigarettes in or into
12 the state in a package that bears a stamp required under section 77-2603
13 or 77-2603.01 that is not the correct stamp and provides for a lower
14 level of tax than the correct stamp shall for a first violation be
15 subject to a civil penalty of up to one thousand dollars and be guilty of
16 a Class IV misdemeanor and for a second or subsequent violation be
17 subject to a civil penalty of up to five thousand dollars per violation
18 and be guilty of a Class II misdemeanor. Each sale constitutes a separate
19 violation.

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

22 69-2710 (1) Before any tobacco product manufacturer may be removed
23 from the directory, the Tax Commissioner shall provide the tobacco
24 product manufacturer thirty days' notice of the intended action and shall
25 post the notice in the directory. The tobacco product manufacturer shall
26 have thirty days to come into compliance with sections 69-2703 to 69-2711
27 and section 12 of this act or, in the alternative, secure a temporary
28 injunction against removal in the district court of Lancaster County. For
29 purposes of the temporary injunction sought pursuant to this subsection,
30 loss of the ability to sell tobacco products as a result of removal from
31 the directory shall constitute irreparable harm. If after thirty days the

1 tobacco product manufacturer remains in noncompliance and has not
2 obtained a temporary injunction pursuant to this subsection, the tobacco
3 product manufacturer shall be removed from the directory.

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

21 Sec. 19. Section 69-2710.01, Reissue Revised Statutes of Nebraska,
22 is amended to read:

23 69-2710.01 (1) Any person that during a month acquired, purchased,
24 sold, possessed, transferred, transported, or caused to be transported in
25 or into this state cigarettes of a tobacco product manufacturer or brand
26 family that was not in the directory at the time shall, within fifteen
27 days following the end of that month, file a report in the manner
28 prescribed by the Tax Commissioner and certify to the state that the
29 report is complete and accurate. The report shall contain, in addition to
30 any further information that the Tax Commissioner may reasonably require
31 to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711

1 and section 12 of this act and 77-2601 to 77-2622 and the Tobacco
2 Products Tax Act, the following information:

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

12 (b) In the case of acquisition, purchase, or possession, the details
13 of the person's subsequent sale or transfer of those cigarettes,
14 identifying by name and number of cigarettes (i) the brand families of
15 those cigarettes, (ii) the date of the sale or transfer, (iii) the name
16 and address of the recipient, (iv) the number of stamps of each other
17 state that the person affixed to the packages containing those cigarettes
18 during that month, (v) the total number of cigarettes contained in the
19 packages to which it affixed each respective other state's stamp, (vi)
20 the manufacturers and brand families of the packages to which it affixed
21 each respective other state's stamp, and (vii) a certification that it
22 reported each sale or transfer to the taxing authority of the other state
23 by fifteen days following the end of the month in which the sale or
24 transfer was made and attaching a copy of all such reports. If the
25 subsequent sale or transfer is from this state into another state in
26 packages not bearing a stamp of the other state, the report shall also
27 contain the information described in subdivision (2)(c) of section
28 77-2604.01.

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

31 Sec. 20. Section 69-2710.03, Reissue Revised Statutes of Nebraska,

1 is amended to read:

2 69-2710.03 The Tax Commissioner may adopt and promulgate rules and
3 regulations necessary to effect the purposes of sections 69-2703 to
4 69-2711 and section 12 of this act.

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

7 77-2601 For purposes of sections 77-2601 to 77-2615:

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

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

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

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

21 (5) Cigarette means any product that contains nicotine, is intended
22 to be burned or heated under ordinary conditions of use, and consists of
23 or contains (a) any roll of tobacco wrapped in paper or in any substance
24 not containing tobacco; (b) tobacco, in any form, that is functional in
25 the product, which, because of its appearance, the type of tobacco used
26 in the filler, or its packaging and labeling, is likely to be offered to,
27 or purchased by, consumers as a cigarette; or (c) any roll of tobacco
28 wrapped in any substance containing tobacco which, because of its
29 appearance, the type of tobacco used in the filler, or its packaging and
30 labeling, is likely to be offered to, or purchased by, consumers as a
31 cigarette described in subdivision (5)(a) of this section ~~roll for~~

1 ~~smoking made wholly or in part of tobacco irrespective of size or shape~~
2 ~~and whether or not such tobacco is flavored, adulterated, or mixed with~~
3 ~~any other ingredient, the wrapper or cover of which is made of paper or~~
4 ~~any other material excepting tobacco;~~

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

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

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

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

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

25 77-2603 (1) The tax, as levied in section 77-2602, shall be paid and
26 stamps or cigarette tax meter impressions shall be affixed or printed
27 with a cigarette tax meter by the person having possession and ownership
28 of such cigarettes after the same shall have come to rest in this state
29 and intended to be sold or given away in this state. Nothing in sections
30 77-2601 to 77-2615 shall be construed to require a stamping agent to fix
31 the retail price or to require any retail dealer to sell at any

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

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

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

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

21 (c) In the case of an applicant located outside of the state,
22 designating an agent for service of process in Nebraska, and providing
23 notice thereof as required by section 69-2707, in connection with
24 enforcement of sections 69-2701 to 69-2711 and section 12 of this act and
25 77-2601 to 77-2615, and, if approval is given by the Tax Commissioner,
26 the manufacturer, importer, sales entity affiliate, wholesale dealer, or
27 retail dealer shall furnish a corporate surety bond, conditioned to
28 faithfully comply with all the requirements of sections 77-2601 to
29 77-2615, in a sum not less than ten thousand dollars. Such bond shall be
30 subject to forfeiture if the stamping agent fails to pay the shortfall
31 amount under subsection (1) of section 69-2708.01 unless the stamping

1 agent is excused from liability under subsection (3) of section
2 69-2708.01.

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

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

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

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

30 (7) The Tax Commissioner shall list on its web site the names of all
31 persons holding a directory license. Manufacturers, importers, sales

1 entity affiliates, and stamping agents shall be entitled to rely upon the
2 list in selling cigarettes as provided in section 69-2706.

3 Sec. 23. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,
4 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.02, 28-1429.03,
5 69-2705, 69-2706, 69-2707, 69-2707.01, 69-2709, 69-2710, 69-2710.01,
6 69-2710.03, 77-2601, and 77-2603, Reissue Revised Statutes of Nebraska,
7 are repealed.