

## LEGISLATIVE BILL 730

Approved by the Governor March 11, 1987

Introduced by Revenue Committee, V. Johnson, 8,  
Chairperson; Rogers, 41; Peterson, 21;  
Hartnett, 45; Landis, 46

AN ACT relating to tobacco; to amend sections 59-1502, 77-2602, 77-2602.03, 77-2608, and 77-27,132, Reissue Revised Statutes of Nebraska, 1943; to adopt the Tobacco Products Tax Act; to redefine a term; to increase the cigarette tax; to authorize a credit; to change the wholesale discount amount; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Sections 1 to 25 of this act shall be known and may be cited as the Tobacco Products Tax Act.

Sec. 2. For purposes of the Tobacco Products Tax Act, unless the context otherwise requires, the definitions found in sections 3 to 7 of this act shall be used.

Sec. 3. Cancel shall mean to discontinue for up to five years all rights and privileges under a license.

Sec. 4. First owner shall mean any person:  
(1) Engaged in the business of selling tobacco products in this state who brings or causes to be brought into this state from outside this state any tobacco products for sale in this state, including a retailer who purchases directly from suppliers outside this state who are not licensed pursuant to subsection (2) of section 9 of this act;

(2) Who makes, manufactures, or fabricates tobacco products in this state for sale in this state;  
or

(3) Engaged in business outside this state who ships or transports tobacco products to retailers in this state and who becomes licensed pursuant to subsection (2) of section 9 of this act.

Sec. 5. Revoke shall mean to permanently void and recall all rights and privileges of a person to obtain a license.

Sec. 6. Suspend shall mean to temporarily interrupt for up to one year all rights and privileges under a license.

Sec. 7. Tobacco products shall mean (1) cigars, (2) cheroots, (3) stogies, (4) periques, (5) granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, (6) snuff, (7) snuff flour, (8) cavendish, (9) plug and twist tobacco, (10) fine cut and other chewing tobacco, (11) shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and (12) other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise or both for chewing and smoking, except that tobacco products shall not mean cigarettes as defined in section 77-2601.

Sec. 8. (1) Commencing on or after January 1, 1988, a tax is hereby imposed upon the first owner of tobacco products to be sold in this state. The tax shall be fifteen per cent of (a) the purchase price of such tobacco products paid by the first owner or (b) the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others. Such tax shall be in addition to all other taxes.

(2) Whenever any person who is licensed under section 9 of this act purchases tobacco products from another person licensed under section 9 of this act, the seller shall be liable for the payment of the tax.

Sec. 9. (1) Commencing on or after January 1, 1988, each first owner of tobacco products to be sold in this state shall be licensed by the Tax Commissioner. Every application for such license shall be made on a form prescribed by the Tax Commissioner. The application shall include: (a) The name and address of the applicant or, if the applicant is a firm, partnership, or association, the name and address of each of its members or, if the applicant is a corporation, the name and address of each of its officers and the address of its principal place of business; (b) the location of the place of business to be licensed; and (c) such other information as the Tax Commissioner may require for the purpose of administering the Tobacco Products Tax Act.

(2) A person outside of this state who ships or transports tobacco products to any person in this state to be sold in this state may make application for a license and be granted such a license by the Tax Commissioner. If a license is granted, such person shall be subject to the Tobacco Products Tax Act and

shall be entitled to act as a licensee. A person outside this state who receives a license shall have established sufficient contact with this state for the exercise of personal jurisdiction over the person in any matter or issue arising under the act.

Sec. 10. An application for a license shall be required for each place of business of a first owner and shall be accompanied by a fee of twenty-five dollars. Such license shall be a continuing license unless the license is revoked, canceled, or suspended, and the fees shall be nonrefundable.

Sec. 11. Upon receipt of an application in proper form and payment of the fee, the Tax Commissioner shall issue a license to the applicant, except as provided in section 13 of this act. The license shall permit the applicant to whom it is issued to engage in business at the place of business shown on the license. A license shall not be assignable, shall be valid only for the person in whose name it is issued, and shall be valid unless suspended, canceled, or revoked by the Tax Commissioner.

Sec. 12. The Tax Commissioner may revoke, cancel, or suspend any license for a violation of the Tobacco Products Tax Act or any rule or regulation adopted and promulgated by the Tax Commissioner in administering the act. If a license is revoked, canceled, or suspended, the licensee shall immediately surrender such license to the Tax Commissioner. No determination of revocation, cancellation, or suspension shall be made until notice has been given and a hearing has been held by the Tax Commissioner as provided in section 19 of this act, if requested by the licensee.

Sec. 13. The Tax Commissioner may restore licenses which have been revoked, canceled, or suspended, but the Tax Commissioner shall not issue a new license after the revocation of such a license unless he or she is satisfied that the former licensee will comply with the Tobacco Products Tax Act. A person whose license has previously been revoked, canceled, or suspended shall pay the Tax Commissioner a fee of twenty-five dollars for the issuance of a license after each revocation, cancellation, or suspension.

Sec. 14. (1) On or before the tenth day of each calendar month commencing on or after January 1, 1988, every person licensed under subsection (1) of section 9 of this act shall file a return with the Tax Commissioner showing either the quantity and the price of each tobacco product brought or caused to be brought into this state for sale or the quantity and the price

of each tobacco product made, manufactured, or fabricated in this state for sale in this state, whichever is applicable, during the preceding calendar month.

(2) Every person licensed pursuant to subsection (2) of section 9 of this act shall, in the manner described in subsection (1) of this section, file a return showing in detail the different kinds, quantity, and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by such retailers during the preceding calendar month.

(3) Returns shall be made upon forms furnished and prescribed by the Tax Commissioner. Each return shall be accompanied by a remittance for the full tax liability shown, less an amount of such liability equal to the amount allowed a payer of the sales and use tax pursuant to subdivision (1)(d) of section 77-2708 as compensation to reimburse the licensee for his or her expenses incurred in complying with the Tobacco Products Tax Act.

Sec. 15. As soon as practicable after any return is filed, the Tax Commissioner shall examine the return. If the Tax Commissioner, in his or her judgment, finds that the return is incorrect and any amount of tax due from the licensee is unpaid, he or she shall notify the licensee of the deficiency. Such notice shall be sent to the licensee by registered or certified mail.

Sec. 16. (1) If any licensee fails to file a return within the time prescribed, the Tax Commissioner may make a return for the licensee from his or her own knowledge and from such information as he or she can obtain through investigation and inspection or otherwise and shall assess a tax on such basis.

(2) Such tax shall be paid within ten days after the Tax Commissioner sends a written notice of the amount by registered or certified mail to the licensee. Any such return and assessment made by the Tax Commissioner on account of the failure of the licensee to make a return shall be deemed prima facie correct and valid, and the licensee shall have the burden of establishing that such return and assessment is incorrect or invalid in any action or proceeding based on such return and assessment.

Sec. 17. (1) Every licensee shall keep complete and accurate records for all places of business, including itemized invoices of tobacco products (a) held, purchased, manufactured, or brought

in or caused to be brought into this state or (b) for a licensee located outside of this state, shipped or transported to retailers in this state.

(2) All books, records, and other papers and documents required to be kept by this section shall be preserved for a period of at least three years after the due date of the tax imposed by the Tobacco Products Tax Act unless the Tax Commissioner, in writing, authorizes their destruction or disposal at an earlier date.

(3) At any time during usual business hours, duly authorized agents or employees of the Tax Commissioner may enter any place of business of a licensee and inspect the premises, the records required to be kept pursuant to this section, and the tobacco products contained in such place of business for purposes of determining whether or not such licensee is in full compliance with the act. Refusal to permit such inspection by a duly authorized agent or employee of the Tax Commissioner shall be grounds for revocation, cancellation, or suspension of the license.

Sec. 18. When tobacco products for which the tax imposed by the Tobacco Products Tax Act has been reported and paid are (1) sold, shipped, or transported by the licensee to retailers, licensees, or ultimate consumers outside this state or (2) returned to the manufacturer by the licensee, a refund or credit of the tax shall be made to the licensee. For the purpose of making such credit or refund, the Tax Commissioner may issue a tax credit or may prepare a voucher showing the net amount of such refund due. The Tax Commissioner shall have a warrant drawn upon the State Treasurer for the amount of any such refund certified by the Tax Commissioner.

Sec. 19. A licensee may request a hearing on any proposed notice of deficiency issued by the Tax Commissioner. A licensee may also request a hearing after notice that the Tax Commissioner intends to revoke, cancel, or suspend a license. Such request shall be made within twenty days after the receipt of the notice of deficiency or the notice that the Tax Commissioner intends to revoke, cancel, or suspend a license. At such hearing the Tax Commissioner, or any officer or employee of the Tax Commissioner designated in writing, may examine any books, papers, or memoranda bearing upon the matter at issue and require the attendance of any licensee or any officer or employee of such licensee having knowledge pertinent to such hearing. The Tax Commissioner or his or her designee shall have the power to administer oaths to persons

testifying at such hearing.

During the hearing, the Tax Commissioner or his or her designee shall not be bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony shall invalidate any order or decision made or approved by the Tax Commissioner.

Sec. 20. Within a reasonable time after the hearing pursuant to section 19 of this act, the Tax Commissioner shall make a final decision or final determination and notify the licensee by registered or certified mail of such decision or determination. If any tax or additional tax becomes due, such notice shall be accompanied by a demand for payment of any tax due. A licensee may appeal the decision of the Tax Commissioner in the manner prescribed in Chapter 84, article 9.

Sec. 21. The Tax Commissioner may recover the amount of any tax, interest, or penalty imposed under the Tobacco Products Tax Act in a civil action. The Uniform State Tax Lien Registration and Enforcement Act shall apply to such taxes, interest, or penalties. The collection of such tax, interest, or penalty shall not be a bar to any criminal prosecution pursuant to section 24 of this act.

Sec. 22. (1) Any tax imposed by section 8 of this act which is not paid on the due date shall bear interest at the rate prescribed by section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the due date until paid.

(2) If the Tax Commissioner finds that a licensee has made a false and fraudulent return with intent to evade the Tobacco Products Tax Act, the Tax Commissioner shall assess a penalty of twenty-five per cent of the entire tax due for which the false and fraudulent return was made, excluding interest.

Sec. 23. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to administer and enforce the Tobacco Products Tax Act.

Sec. 24. Any person who violates the Tobacco Products Tax Act or any person who sells, delivers, or accepts tobacco products with the intent to evade the act shall be guilty of a Class IV felony.

Sec. 25. There is hereby created a cash fund in the Department of Revenue to be known as the Tobacco Products Administration Cash Fund. All revenue collected or received by the Tax Commissioner from the license fees and taxes imposed by the Tobacco Products

Tax Act shall be deposited in the Tobacco Products Administration Cash Fund. All costs required for administration of the Tobacco Products Tax Act shall be paid from such fund. Any receipts in excess of the amounts sufficient to cover the costs of administration shall lapse to the General Fund, except that the State Treasurer shall first transfer such amount to the Tax Refund Fund as the Tax Commissioner determines to be equal to the credits and refunds allowed under the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 26. That section 59-1502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

59-1502. As used in ~~sections 59-1501 to 59-1518~~ the Unfair Cigarette Sales Act, unless the context otherwise requires:

(1) Person shall mean and include any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary, or conservator;

(2) Cigarettes shall mean and include 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 substance or material, excepting tobacco;

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

(4) Wholesaler shall include any person who:

(a) Purchases cigarettes directly from the manufacturer;

(b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers or to other persons for the purpose of bona fide resale to retail dealers or to other persons for the purpose of resale only; or

(c) Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained in sections 59-1501 to 59-1518 the Unfair Cigarette Sales Act shall prevent a person from qualifying in different capacities as both a wholesaler and retailer under the applicable provisions of sections 59-1501 to 59-1518 the act;

(5) Retailer shall mean and include any person who operates a store, stand, booth, or concession for the purpose of making sales of cigarettes at retail, including sales through vending machines;

(6) Sell at retail, sale at retail, and retail sales shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use, including sales through vending machines;

(7) Sell at wholesale, sale at wholesale, and wholesale sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale;

(8) Basic cost of cigarettes shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower, less all trade discounts and customary discounts the normal discount for cash afforded for prompt payment, but excluding any special, extraordinary, or anticipatory discounts for payment within a shorter period of time than the prompt payment date required for eligibility for the normal discount for cash, to which shall be added the full value of any stamps which may be required by any cigarette tax act of this state and by ordinance of any municipality thereof of this state in effect or hereafter enacted, if not already included by the manufacturer in his or her list price;

(9) Division shall mean the cigarette tax division of the Tax Commissioner; and

(10) Business day shall mean any day other than a Sunday or legal holiday.

Sec. 27. That section 77-2602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2602. Every person 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, ~~twenty-three~~ twenty-seven 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. ~~Fourteen~~ Eighteen cents of such tax shall be placed in the General Fund. The remaining proceeds of such tax shall be distributed in the following order:

First, beginning July 1, 1980, the equivalent of one cent of such tax shall be placed in the Nebraska Outdoor Recreation Development Cash Fund;

Second, beginning July 1, 1983, the equivalent of one cent of such tax shall be placed in the Nebraska Cancer Research Fund to carry out sections 81-637 to 81-640;

Third, there shall be placed in the University Buildings Renovation and Land Acquisition Fund the sum of one million seven hundred sixty-five thousand one hundred fifty-three dollars and in the State College Buildings Renovation and Land Acquisition Fund the sum of three hundred sixty-one thousand two hundred twenty-two dollars each year for fiscal year 1984-85 through fiscal year 1993-94. Such amounts are hereby appropriated and the unexpended balances existing in such funds at the end of each fiscal year or biennium through June 30, 1994, are hereby reappropriated. The money in such funds shall be used for payment of the costs of building repair, remodeling, and renovation projects and equipment and land acquisition projects of the University of Nebraska and the Nebraska state colleges authorized by sections 85-1,111, 85-1,112, 85-322, and 85-323;

Fourth, beginning July 1, 1986, the equivalent of four cents of such tax, but in any event not less than four million four hundred fourteen thousand dollars, shall be placed in the University Facilities Construction Fund each fiscal year to carry out section 85-1,113. The Legislature shall appropriate the sum of four million four hundred fourteen thousand dollars each year for fiscal year 1986-87 either through fiscal year 1995-96 or until all financial obligations incurred in the contracts entered into by the Board of Regents pursuant to section 85-1,114 are discharged, whichever occurs first. The unexpended balance existing in the

University Facilities Construction Fund on June 15 of each year shall be transferred to the General Fund; and Fifth, the balance of such proceeds shall be placed in a special fund to be known as the Nebraska Capital Construction Fund and disbursements from such fund shall be as the Legislature shall from time to time provide.

The Legislature hereby finds and determines that the projects funded from the University Buildings Renovation and Land Acquisition Fund, the State College Buildings Renovation and Land Acquisition Fund, and the University Facilities Construction 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 not be reduced until all contracts relating to the construction and financing of the projects funded from such funds are completed 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 (1) the General Fund, (2) the Nebraska Outdoor Recreation Development Cash Fund, (3) the Nebraska Cancer Research Fund, (4) the University Buildings Renovation and Land Acquisition Fund and the State College Buildings Renovation and Land Acquisition Fund, and (5) the University Facilities Construction Fund shall not be made a higher priority than or an equal priority to any of the programs or projects specified in subdivisions (1) to (5) of this section.

Sec. 28. That section 77-2602.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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 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 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 Department of Revenue shall credit to each wholesaler an amount equal to the additional tax on two weeks of such

wholesaler's average purchases of tax stamps.

Sec. 29. That section 77-2608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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 office of the State Purchasing Agent as other state supplies are requisitioned, and the Tax Commissioner and his or her bondsman 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 the stamps only to licensed wholesale dealers, as defined in section 77-2601, and he or she shall keep an accurate record of all stamps coming into and leaving his or her hands. 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 in this state or outside of this state at a discount of four three and four-tenths per cent of such face value of the tax as a commission for affixing and canceling such stamps. Any wholesale dealer using a tax meter machine shall be entitled to the same discount as allowed a wholesale dealer 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 the four three and four-tenths per cent discount allowed to wholesale dealers, he or she may then proceed to affix the stamps himself or herself, after giving the wholesale dealers 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. 30. That section 77-27,132, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,132. (1) There is hereby created a fund to be designated the Tax Refund Fund which shall be set apart and maintained by the State Treasurer for prompt payments of all tax refunds under Chapter 66, article 4, the Special Fuel Tax Act, the Tobacco Products Tax Act, and the Nebraska Revenue Act of 1967 and for transfers to the Nongame and Endangered Species Conservation Fund pursuant to sections 37-439 and 77-27,119.01. Such fund shall be in such amount as the State Treasurer, with the advice of the Tax Commissioner, shall determine is necessary to meet current refunding requirements under such provisions. Any money in the Tax Refund Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of 1967. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the aforementioned bank and of the amounts so deposited the State Treasurer shall (a) first credit to the Tax Refund Fund such amounts as are necessary to maintain such Tax Refund Fund at the level required by subsection (1) of this section, (b) then, commencing with all amounts credited on or after July 1, 1986, and on or before June 30, 1987, credit to the Highway Trust Fund the portion of the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers which is attributable to a sales and use tax rate of three and one half per cent, and (c) commencing with all amounts credited on or after July 1, 1987, credit to the Highway Trust Fund all of the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers. The balance of the amounts so paid shall be credited to the General Fund.

Sec. 31. Sections 1 to 25, 30, and 33 of this act shall become operative on January 1, 1988. Sections 31 and 34 shall become operative on their effective date. The remaining sections shall become operative on July 1, 1987, but if this act passes without an emergency clause, the remaining sections shall become operative on October 1, 1987.

Sec. 32. That original sections 59-1502, 77-2602, 77-2602.03, and 77-2608, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 33. That original section 77-27,132, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 34. Since an emergency exists, this act

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shall be in full force and take effect, from and after its passage and approval, according to law.