

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 916

Introduced by Lynch, 13

Read first time January 5, 2000

Committee: Revenue

A BILL

1 FOR AN ACT relating to the cigarette tax; to amend sections
2 77-2601, 77-2603, 77-2604, 77-2605, 77-2607, 77-2610,
3 77-2613, 77-2614, 77-2615, and 77-2620, Reissue Revised
4 Statutes of Nebraska, and section 77-2612, Revised
5 Statutes Supplement, 1998; to prohibit affixing stamps or
6 meter impressions as prescribed; to provide a penalty; to
7 harmonize provisions; and to repeal the original
8 sections.

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

1 Section 1. No tax stamp or cigarette tax meter
2 impression denoting the tax thereon shall be affixed to any
3 cigarette package:

4 (1) That bears any label or notice prescribed by the
5 United States Department of the Treasury to identify cigarettes
6 exempt from tax by the United States pursuant to 26 U.S.C. 5704(b)
7 concerning cigarettes intended for shipment to a foreign country,
8 Puerto Rico, the Virgin Islands, or a possession of the United
9 States or for consumption beyond the jurisdiction of the internal
10 revenue laws of the United States, including any notice or label
11 described in 27 C.F.R. section 290.185;

12 (2) That is not labeled in conformity with the provisions
13 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.
14 section 1331 et seq., or any other federal requirement for the
15 placement of labels, warnings, and other information applicable to
16 cigarette packages intended for domestic consumption; or

17 (3) The packaging of which has been modified or altered
18 by a person other than the manufacturer, including by the placement
19 of a sticker to cover information on the package. For purposes of
20 this subdivision, a cigarette package shall not be deemed to have
21 been modified or altered by a person other than the manufacturer if
22 the most recent modification to or alteration of the package was by
23 the manufacturer or by a person authorized by the manufacturer.

24 Sec. 2. Any person who affixes a tax stamp or cigarette
25 tax meter impression in violation of section 1 of this act is
26 guilty of a Class IV felony. The permit to affix stamps or
27 cigarette tax meter impressions of any person convicted under this
28 section shall be revoked and such person shall not be eligible to

1 affix tax stamps or cigarette tax meter impressions for a period of
2 one year.

3 Sec. 3. Section 77-2601, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-2601. ~~As used in~~ For purposes of sections 77-2601 to
6 77-2615 and sections 1 and 2 of this act: (1) ~~The word person~~
7 Person means and includes every individual, firm, association,
8 joint-stock company, partnership, limited liability company,
9 syndicate, and corporation; (2) ~~the term~~ wholesale dealer includes
10 only those persons who sell cigarettes to licensed retail dealers
11 other than branch stores operated by or connected with such
12 wholesale dealer or for purposes of resale only as prescribed by
13 section 28-1423; (3) ~~the term~~ retail dealer includes every person
14 other than a wholesale dealer engaged in the business of selling
15 cigarettes in this state irrespective of quantity, amount, or
16 number of sales thereof; (4) ~~the term~~ ~~department~~ ~~shall mean~~
17 department means the Tax Commissioner as it now exists, or whatever
18 agency of the state succeeds to its functions, by whatever name
19 known; (5) ~~the term~~ director means the Tax Commissioner, or his or
20 her successor, by whatever name known; (6) ~~the term~~ cigarettes
21 includes any roll for smoking made wholly or in part of tobacco
22 irrespective of size or shape and whether or not such tobacco is
23 flavored, adulterated, or mixed with any other ingredient, the
24 wrapper or cover of which is made of paper or any other material
25 excepting tobacco; and (7) ~~the term~~ consumer means any person,
26 firm, association, partnership, limited liability company,
27 joint-stock company, syndicate, or corporation not having a license
28 to sell cigarettes.

1 Sec. 4. Section 77-2603, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-2603. The tax~~7~~ as levied in section 77-2602~~7~~ shall be
4 paid and the stamps or cigarette tax meter impressions~~7~~, ~~hereinafter~~
5 provided for~~7~~ in this section shall be affixed or printed with a
6 cigarette tax meter by the person having possession and ownership
7 of such cigarettes after the same ~~shall~~ have come to rest in this
8 state and intended to be sold or given away in this state, except ~~7~~
9 ~~PROVIDED~~~~7~~, that nothing in sections 77-2601 to 77-2615 and sections
10 1 and 2 of this act requires ~~shall be construed to require~~ a
11 wholesale dealer to fix the retail price or ~~to require~~ requires any
12 retailer to sell at any particular price. Subject to such rules
13 and regulations as the Tax Commissioner shall prescribe, tax meter
14 machines may be used when approved by the Tax Commissioner to affix
15 a suitable stamp or impression on each package of cigarettes.
16 Before any wholesale dealer shall be issued a permit to affix
17 stamps or cigarette tax meter impressions, he or she shall make
18 application to the Tax Commissioner on a form provided by the Tax
19 Commissioner to engage in such activity and, if approval is given
20 by the Tax Commissioner, ~~the dealer~~ shall furnish a corporate
21 surety bond, conditioned to faithfully comply with all the
22 requirements of sections 77-2601 to 77-2615 and sections 1 and 2 of
23 this act, in a sum not less than one thousand dollars. Nothing in
24 such sections 77-2601 to 77-2615 shall prevent prevents the Tax
25 Commissioner from affixing the stamps or cigarette tax meter
26 impressions in lieu of the provisions for affixing stamps and
27 cigarette tax meter impressions by wholesalers wholesale dealers as
28 determined by such rules and regulations adopted by the Tax

1 Commissioner.

2 Sec. 5. Section 77-2604, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-2604. Every wholesale dealer and retail dealer who is
5 subject to the provisions of sections 77-2601 to 77-2615, and
6 sections 1 and 2 of this act shall make and file with the Tax
7 Commissioner, on or before the tenth day of each calendar month on
8 blanks furnished by the director, ~~thereof~~, true, correct, and sworn
9 reports, covering ~~for~~ the last preceding calendar month, showing
10 the number of cigarettes purchased, from whom purchased, the
11 specific kinds and brands thereof, and such other matters and in
12 such detail as the director may require.

13 Sec. 6. Section 77-2605, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 77-2605. The books, records, papers, receipts, invoices,
16 and supply of cigarettes of any person, including wholesale ~~and~~
17 dealers, retail dealers, and persons transporting cigarettes,
18 subject to the provisions of sections 77-2601 to 77-2615 and
19 sections 1 and 2 of this act which pertain to the purchase or sale
20 of cigarettes, shall be subject to inspection at any time during
21 ordinary business hours by the Tax Commissioner or his or her
22 representatives.

23 Sec. 7. Section 77-2607, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-2607. Each wholesale dealer may set aside such
26 portion of ~~his~~ such dealer's stock of cigarettes as is not intended
27 to be sold or given away in this state and it will not be necessary
28 to affix ~~the above-mentioned~~ stamps or cigarette tax meter

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

15 Sec. 8. Section 77-2610, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 77-2610. Upon the written request of the original
18 purchaser thereof and upon the return of any unused stamps, the Tax
19 Commissioner shall redeem such stamps. The Tax Commissioner shall
20 prepare a voucher showing the amount of such returned unused stamps
21 and shall cause to be drawn a warrant upon the State Treasurer for
22 such amount in favor of the person returning such unused stamps.
23 The refunds shall be paid from the various funds named in section
24 77-2602 in the same proportions as the proceeds of the tax are
25 allocated. By the terms of sections 77-2601 to 77-2615 and
26 sections 1 and 2 of this act, the Tax Commissioner and the State
27 Treasurer are specifically authorized to adjust all errors in
28 payments for unused stamps.

1 Sec. 9. Section 77-2612, Revised Statutes Supplement,
2 1998, is amended to read:

3 77-2612. The Tax Commissioner is ~~hereby~~ authorized to
4 employ, with the advice and consent of the Governor, a sufficient
5 number of inspectors, clerks, assistants, and agents to enforce the
6 provisions of sections 77-2601 to 77-2615 and sections 1 and 2 of
7 this act, including the collection of all stamp taxes and all
8 revenue from cigarette tax meters. ~~provided for herein.~~ In such
9 enforcement the Tax Commissioner may call to his or her aid the
10 Attorney General, any county attorney, or any sheriff, deputy
11 sheriff, or other peace officer. The compensation of all persons
12 employed ~~hereunder~~ under this section shall be fixed by the
13 Governor and shall be paid from the revenue derived under the
14 provisions of sections 77-2601 to 77-2615 and sections 1 and 2 of
15 this act. The expenses of administering such sections, ~~77-2601 to~~
16 ~~77-2615,~~ including necessary assistants, clerical help, cost of
17 enforcement, cost of stamps, and incidental expenses, when approved
18 by the Tax Commissioner, shall be paid by warrants, issued against
19 the General Fund, but such warrants shall not exceed four percent
20 of the funds collected under such sections, ~~77-2601 to 77-2615,~~
21 such expenses in each instance to be approved by the Tax
22 Commissioner. The Tax Commissioner is ~~hereby~~ authorized to adopt
23 and promulgate rules and regulations which are consistent with the
24 provisions of sections 77-2601 to 77-2615 and sections 1 and 2 of
25 this act and their proper enforcement. Each wholesale dealer shall
26 make application to the Tax Commissioner, upon forms to be
27 furnished by the Tax Commissioner for a permit to use the ~~tax meter~~
28 ~~machines,~~ cigarette tax meters as set forth in section 77-2603, or

1 to purchase such stamps as provided in section 77-2608, or both.
2 Each wholesale dealer shall furnish with such application evidence
3 satisfactory to the Tax Commissioner showing that he or she has
4 obtained a license as a wholesale dealer in accordance with section
5 28-1423. He or she shall accompany the application with a fee of
6 five hundred dollars, to be placed in the General Fund if the
7 permit is granted and otherwise to be returned to the applicant.
8 If the applicant is an individual, the application shall include
9 the applicant's social security number. If the application is
10 approved and the bond referred to in section 77-2603 is given and
11 approved, if such bond is required under such section, ~~77-2603~~, the
12 Tax Commissioner shall issue such license which shall be
13 conspicuously posted in the place of business of such wholesale
14 dealer.

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

17 77-2613. The State Treasurer shall place all sums of
18 money received under sections 77-2601 to 77-2615 and sections 1 and
19 2 of this act as provided in section 77-2602, and from time to
20 time, upon voucher approved by the Tax Commissioner, disburse such
21 sum or sums as may be necessary to administer and carry out the
22 provisions of sections 77-2601 to 77-2615 and sections 1 and 2 of
23 this act relating to the collection of ~~said~~ such tax, subject to
24 the limitations ~~therein~~ provided in such sections.

25 Sec. 11. Section 77-2614, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 77-2614. Any person (1) who, with intent to defraud the
28 state, ~~shall make, alter, forge or counterfeit~~ makes, alters,

1 forges, or counterfeits any license, permit, stamp, or cigarette
 2 tax meter impression provided for in sections 77-2601 to 77-2615
 3 and sections 1 and 2 of this act, (2) who has in his or her ~~or who~~
 4 ~~shall have in his~~ possession any forged, counterfeited, spurious,
 5 or altered license, permit, stamp, or cigarette tax meter
 6 impression, with intent to use the same, knowing or having
 7 reasonable grounds to believe the same to be such, (3) who has in
 8 his or her ~~or shall have in his~~ possession one or more cigarette
 9 stamps or cigarette tax meter impressions which he or she knows
 10 have been removed from the pieces or packages of cigarettes to
 11 which they were affixed, or (4) who affixes to any piece or package
 12 of cigarettes a stamp or cigarette tax meter impression which he or
 13 she knows has been removed from any other piece or package of
 14 cigarettes shall be deemed guilty of a Class IV felony.

15 Sec. 12. Section 77-2615, Reissue Revised Statutes of
 16 Nebraska, is amended to read:

17 77-2615. Any person who ~~shall violate~~ violates any of
 18 the provisions of sections 77-2601 to 77-2615 and sections 1 and 2
 19 of this act, or any rule or regulation lawfully made in accordance
 20 ~~therewith with such sections~~, for which a specific penalty is not
 21 otherwise provided or who, ~~shall~~, except as permitted by sections
 22 77-2601 to 77-2615, ~~sell, deliver, or accept~~ and sections 1 and 2
 23 of this act, sells, delivers, or accepts, with intent to evade the
 24 provisions of such sections, ~~77-2601 to 77-2615~~, any cigarettes
 25 upon which the tax provided by section 77-2602 has not been paid
 26 shall be deemed guilty of a Class IV felony. ~~Where~~ When any person
 27 is found to have in his or her possession more than ten unstamped
 28 packages of cigarettes, except as permitted under section 77-2607,

1 it shall be prima facie evidence of attempt to evade the provisions
2 of sections 77-2601 to 77-2615 and sections 1 and 2 of this act.

3 Sec. 13. Section 77-2620, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-2620. All cigarettes subject to the tax as imposed by
6 section 77-2602, to which stamps have not been affixed or cigarette
7 tax meter impressions made, as required by sections 77-2601 to
8 77-2615 and sections 1 and 2 of this act, except as permitted by
9 the provisions of section 77-2607, found in any place in this state
10 are declared to be contraband goods and may be seized by the Tax
11 Commissioner, his or her agents or employees, or by any peace
12 officer of this state, when directed by the Tax Commissioner to do
13 so, without a warrant. The Tax Commissioner may, upon satisfactory
14 proof, direct the return of any confiscated cigarettes when he or
15 she has ~~shall have~~ reason to believe that the owner thereof has not
16 willfully or intentionally evaded any tax imposed under section
17 77-2602. The Tax Commissioner may, in the absence of proof of good
18 faith, confiscate any unstamped cigarettes or cigarettes without
19 cigarette tax meter impressions found in the possession of any
20 person, except as permitted by the provisions of section 77-2607,
21 and may within a reasonable time thereafter, by a public notice of
22 at least fifteen days before the day of sale, sell such confiscated
23 cigarettes at public sale and pay the proceeds into the state
24 treasury, and the State Treasurer shall credit the same as provided
25 in section 77-2602. Any purchaser of such cigarettes shall be
26 required to purchase and affix the stamps or make the cigarette tax
27 meter impressions, as required by sections 77-2601 to 77-2615 and
28 sections 1 and 2 of this act. The seizure and sale of any

1 cigarettes under the provisions of this section shall not relieve
2 any person from a fine, imprisonment, or other penalty for
3 violation of the provisions of sections 77-2601 to 77-2615 and
4 sections 1 and 2 of this act. The Tax Commissioner, his or her
5 agents or agents, employees, and any peace officer of this state,
6 when directed so to do, shall not in any way be responsible in any
7 court for the seizure or the confiscation of any unstamped packages
8 of cigarettes or cigarettes without cigarette tax meter
9 impressions.

10 Sec. 14. Original sections 77-2601, 77-2603, 77-2604,
11 77-2605, 77-2607, 77-2610, 77-2613, 77-2614, 77-2615, and 77-2620,
12 Reissue Revised Statutes of Nebraska, and section 77-2612, Revised
13 Statutes Supplement, 1998, are repealed.