

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 580**

FINAL READING

Introduced by Preister, 5

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to tobacco; to amend sections 69-2706,  
2 69-2707, 69-2708, and 69-2709, Reissue Revised Statutes  
3 of Nebraska; to change provisions relating to tobacco  
4 product manufacturers; to harmonize provisions; and to  
5 repeal the original sections.

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

1           Section 1. Section 69-2706, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           69-2706 (1)(a) Every tobacco product manufacturer whose  
4 cigarettes are sold in this state, whether directly or through a  
5 distributor, retailer, or similar intermediary or intermediaries,  
6 shall execute and deliver on a form prescribed by the Tax  
7 Commissioner a certification to the Tax Commissioner and the  
8 Attorney General no later than the thirtieth day of April  
9 each year, certifying under penalty of perjury that, as of the  
10 date of such certification, such tobacco product manufacturer  
11 either is a participating manufacturer or is in full compliance  
12 with subdivision (2) of section 69-2703, including all quarterly  
13 installment payments required by ~~such rules and regulations as may~~  
14 ~~be adopted and promulgated by the Tax Commissioner.~~ subsection (4)  
15 of section 69-2708.

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

22           (c) A nonparticipating manufacturer shall include in its  
23 certification (i) a list of all of its brand families and the  
24 number of units sold for each brand family that were sold in the  
25 state during the preceding calendar year and (ii) a list of all of

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

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

13 (i) That such nonparticipating manufacturer is registered  
14 to do business in the state or has appointed an agent for service  
15 of process and provided notice thereof as required by section  
16 69-2707;

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

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

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

17           (v) That such nonparticipating manufacturer consents to  
18 be sued in the district courts of the State of Nebraska for  
19 purposes of the state (A) enforcing any provision of sections  
20 69-2703 to 69-2710 and any rules and regulations adopted and  
21 promulgated thereunder or (B) bringing a released claim as defined  
22 in section 69-2702.

23           (e) A tobacco product manufacturer shall not include a  
24 brand family in its certification unless (i) in the case of a  
25 participating manufacturer, the participating manufacturer affirms

1 that the brand family is to be deemed to be its cigarettes for  
2 purposes of calculating its payments under the Master Settlement  
3 Agreement for the relevant year in the volume and shares determined  
4 pursuant to the Master Settlement Agreement and (ii) in the case of  
5 a nonparticipating manufacturer, the nonparticipating manufacturer  
6 affirms that the brand family is to be deemed to be its cigarettes  
7 for purposes of subdivision (2) of section 69-2703. Nothing in  
8 this section shall be construed as limiting or otherwise affecting  
9 the state's right to maintain that a brand family constitutes  
10 cigarettes of a different tobacco product manufacturer for purposes  
11 of calculating payments under the Master Settlement Agreement or  
12 for purposes of section 69-2703.

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

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

24 (a) The Tax Commissioner shall not include or retain in  
25 such directory the name or brand families of any tobacco product

1 manufacturer that has failed to provide the required certification  
2 or whose certification the commissioner determines is not in  
3 compliance with subdivisions (1)(c) and (d) of this section unless  
4 the Tax Commissioner has determined that such violation has been  
5 cured to his or her satisfaction;

6 (b) Neither a tobacco product manufacturer nor brand  
7 family shall be included or retained in the directory if the  
8 Attorney General recommends and notifies the Tax Commissioner who  
9 concludes, in the case of a nonparticipating manufacturer, that (i)  
10 any escrow payment required pursuant to subdivision (2) of section  
11 69-2703 or subsection (4) of section 69-2708 for any period for  
12 any brand family, whether or not listed by such nonparticipating  
13 manufacturer, has not been fully paid into a qualified escrow  
14 fund governed by a qualified escrow agreement that has been  
15 approved by the Attorney General or (ii) any outstanding final  
16 judgment, including interest thereon, for violations of section  
17 69-2703 has not been fully satisfied for such brand family and such  
18 manufacturer;

19 (c) The Tax Commissioner shall update the directory no  
20 later than May 15 of each year to reflect certifications made on  
21 or before April 30 as required in subsection (1) of this section.  
22 The Tax Commissioner shall continuously update the directory as  
23 necessary in order to correct mistakes and to add or remove a  
24 tobacco product manufacturer or brand family to keep the directory  
25 in conformity with the requirements of sections 69-2704 to 69-2710;

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

17           (e) Every stamping agent shall provide and update as  
18 necessary an electronic mail address to the Tax Commissioner for  
19 the purpose of receiving any notifications as may be required by  
20 sections 69-2704 to 69-2710.

21           (3) The failure of the Tax Commissioner to provide notice  
22 of any intended removal from the directory as required under  
23 subdivision (2)(d) of this section or the failure of a stamping  
24 agent to receive such notice shall not relieve the stamping agent  
25 of its obligations under sections 69-2704 to 69-2710.

1           ~~(3)~~ (4) It shall be unlawful for any person (a) to affix  
2 a Nebraska stamp to a package or other container of cigarettes  
3 of a tobacco product manufacturer or brand family not included in  
4 the directory or (b) to sell, offer, or possess for sale in this  
5 state cigarettes of a tobacco product manufacturer or brand family  
6 ~~intended for sale~~ in this state not included in the directory.

7           Sec. 2. Section 69-2707, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

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

24           (2) The nonparticipating manufacturer shall provide  
25 notice to the Tax Commissioner and Attorney General thirty calendar

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

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

18 Sec. 3. Section 69-2708, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 69-2708 (1) Not later than twenty calendar days after  
21 the end of each calendar quarter, and more frequently if so  
22 directed by the Tax Commissioner, each stamping agent shall submit  
23 such information as the Tax Commissioner requires to facilitate  
24 compliance with sections 69-2704 to 69-2710, including, but not  
25 limited to, a list by brand family of the total number of

1 cigarettes or, in the case of roll-your-own, the equivalent stick  
2 count for which the stamping agent affixed stamps during the  
3 previous calendar quarter or otherwise paid the tax due for such  
4 cigarettes. The stamping agent shall maintain, and make available  
5 to the Tax Commissioner, all invoices and documentation of sales  
6 of all nonparticipating manufacturer cigarettes and any other  
7 information relied upon in reporting to the Tax Commissioner for a  
8 period of five years.

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

16 (3) In addition to the information required to be  
17 submitted pursuant to subsection (1) of this section, the Tax  
18 Commissioner or Attorney General may require a stamping agent,  
19 distributor, or tobacco product manufacturer to submit any  
20 additional information, including, but not limited to, samples of  
21 the packaging or labeling of each brand family, as is necessary  
22 to enable the Tax Commissioner or Attorney General to determine  
23 whether a tobacco product manufacturer is in compliance with  
24 sections 69-2704 to 69-2710.

25 (4) To promote compliance with sections 69-2704 to

1 69-2707, a tobacco product manufacturer subject to the requirements  
2 of subdivision (1)(c) of section 69-2706 shall make the escrow  
3 deposits required by section 69-2703 in quarterly installments  
4 during the year in which the sales covered by such deposits  
5 are made: ~~if~~ (a) ~~it is the first year~~ Through the end of the  
6 calendar year following the year the tobacco product manufacturer  
7 is listed in the directory established pursuant to section 69-2706;  
8 ~~7~~ (b) if the tobacco product manufacturer is removed from, then  
9 subsequently relisted in, the directory, then for all periods  
10 following the relisting through the end of the calendar year  
11 following the year the tobacco product manufacturer is relisted in  
12 the directory; (c) if the tobacco product manufacturer has failed  
13 to make a complete and timely escrow deposit for any calendar year  
14 as required by section 69-2703, or for any quarter as required in  
15 this section; or ~~(e)~~ (d) if the tobacco product manufacturer has  
16 failed to pay any judgment, including any civil penalty ordered  
17 under section 69-2703 or 69-2709. The Tax Commissioner may require  
18 production of information sufficient to enable the Tax Commissioner  
19 to determine the adequacy of the amount of the installment  
20 deposit. The Tax Commissioner may adopt and promulgate rules and  
21 regulations implementing how tobacco product manufacturers subject  
22 to the requirements of subdivision (1)(c) of section 69-2706 make  
23 quarterly payments.

24           Sec. 4. Section 69-2709, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           69-2709 (1) In addition to or in lieu of any other civil  
2 or criminal remedy provided by law, upon a determination that a  
3 stamping agent has violated subsection ~~(3)~~ (4) of section 69-2706  
4 or any rule or regulation adopted and promulgated pursuant thereto,  
5 the Tax Commissioner may revoke or suspend the license of any  
6 stamping agent in the manner provided by section 77-2615.01. For  
7 each violation hereof, the Tax Commissioner may also impose a civil  
8 penalty in an amount not to exceed the greater of five hundred  
9 percent of the retail value of the cigarettes or five thousand  
10 dollars upon a determination of violation of subsection ~~(3)~~ (4) of  
11 section 69-2706 or any rules or regulations adopted and promulgated  
12 pursuant thereto. Such penalty shall be imposed in the manner  
13 provided by section 77-2615.01.

14           (2) Any cigarettes that have been sold, offered for sale,  
15 or possessed for sale in this state in violation of subsection  
16 ~~(3)~~ (4) of section 69-2706 shall be deemed contraband under  
17 section 77-2620 and such cigarettes shall be subject to seizure  
18 and forfeiture as provided in section 77-2620, except that all  
19 such cigarettes so seized and forfeited shall be destroyed and not  
20 resold. The stamping agent shall notify its customers for a brand  
21 family with regard to any notice of removal of a tobacco product  
22 manufacturer or a brand family from the directory and give its  
23 customers a seven-day period for the return of cigarettes that  
24 become contraband.

25           (3) The Attorney General, on behalf of the Tax

1 Commissioner, may seek an injunction to restrain a threatened  
2 or actual violation of subsection ~~(3)~~ (4) of section 69-2706 or  
3 subsection (1) or (4) of section 69-2708 by a stamping agent and to  
4 compel the stamping agent to comply with any of such subsections.  
5 In any action brought pursuant to this section, the state shall  
6 be entitled to recover the costs of investigation, costs of the  
7 action, and reasonable attorney's fees.

8 (4) It is unlawful for a person to (a) sell or distribute  
9 cigarettes for sale in this state or (b) acquire, hold, own,  
10 possess, transport, import, or cause to be imported cigarettes that  
11 the person knows or should know are intended for distribution or  
12 sale in the state in violation of subsection ~~(3)~~ (4) of section  
13 69-2706. A violation of this section is a Class III misdemeanor.

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

23 Sec. 5. Original sections 69-2706, 69-2707, 69-2708, and  
24 69-2709, Reissue Revised Statutes of Nebraska, are repealed.