

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 590**

Final Reading

(Second)

Introduced by Gloor, 35.

Read first time January 19, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to tobacco; to amend sections 59-1520, 59-1523,  
2 69-502, 69-2702, 69-2703, 69-2705, 69-2706, 69-2707,  
3 69-2708, 69-2709, 69-2710, 69-2711, 71-7606, 77-2601,  
4 77-2602, 77-2602.03, 77-2603, 77-2604, 77-2605, 77-2607,  
5 77-2608, 77-2610, 77-2612, 77-2613, 77-2614, 77-2615,  
6 77-2615.01, 77-2620, and 77-2622, Reissue Revised  
7 Statutes of Nebraska; to provide, change, and eliminate  
8 provisions relating to licenses, disciplinary actions  
9 relating to licenses, the Master Settlement Agreement,  
10 manufacturer certifications, powers and duties, bonds,  
11 cigarette stamps, stamping agents, escrow deposits,  
12 reporting, a directory, and taxation; to define and  
13 redefine terms; to provide additional uses for dedicated  
14 revenue under the Nebraska Health Care Funding Act; to  
15 provide for an agreement with Indian tribes regarding

1 cigarette sales, taxation, and distribution as  
2 prescribed; to provide and change penalties; to harmonize  
3 provisions; to provide operative dates; and to repeal the  
4 original sections.

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

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

3           59-1520 It is unlawful for any person to:

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

10           (a) The filing of ingredients lists pursuant to ~~section 7~~  
11 ~~of the~~ Federal Cigarette Labeling and Advertising Act, 15 U.S.C.  
12 1335a, as such section existed on ~~May 1, 2001;~~ January 1, 2011;

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

17           (c) The rotation of label statements pursuant to ~~section~~  
18 ~~4(e) of the~~ Federal Cigarette Labeling and Advertising Act, 15 U.S.C.  
19 1333(c), as such section existed on ~~May 1, 2001;~~ January 1, 2011;

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

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

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

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

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

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

17           (3) Affix any ~~tax~~ stamps or meter impression required  
18 pursuant to sections 77-2601 to 77-2615 and sections 22, 23, 25, and  
19 27 of this act to the package of any cigarettes that does not comply  
20 with the requirements of subdivision (1) of this section or that is  
21 altered in violation of subdivision (2) of this section; and

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

1 States for sale or distribution in the United States.

2 Sec. 2. Section 59-1523, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 59-1523 (1) The cigarette tax division of the Tax  
5 Commissioner may, after notice and hearing, revoke or suspend for any  
6 violation of section 59-1520 the license or licenses of any person  
7 licensed under ~~the provisions of~~ sections 28-1418 to 28-1429 or  
8 sections 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this  
9 act.

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

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

19 69-502 For purposes of the Reduced Cigarette Ignition  
20 Propensity Act:

21 (1) Agent means any person authorized by the Tax  
22 Commissioner to purchase and affix stamps or cigarette tax meter  
23 impressions on packages of cigarettes under sections 77-2601 to  
24 77-2615 and sections 22, 23, 25, and 27 of this act;

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

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

5                   (4) Manufacturer means:

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

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

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

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

25                   (6) Repeatability means the range of values within which

1 the repeat results of cigarette test trials from a single laboratory  
2 will fall ninety-five percent of the time;

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

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

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

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

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

19 69-2702 For purposes of this section and section 69-2703:

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

23 (2) Affiliate means a person that directly or indirectly  
24 owns or controls, is owned or controlled by, or is under common  
25 ownership or control with, another person. Solely for purposes of

1 this subdivision, the terms owns, is owned, and ownership means  
2 ownership of an equity interest, or the equivalent thereof, of ten  
3 percent or more, and the term person means an individual, a  
4 partnership, a committee, an association, a corporation, or any other  
5 organization or group of persons;

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

8 (4) Cigarette means any product that contains nicotine,  
9 is intended to be burned or heated under ordinary conditions of use,  
10 and consists of or contains (a) any roll of tobacco wrapped in paper  
11 or in any substance not containing tobacco; (b) tobacco, in any form,  
12 that is functional in the product, which, because of its appearance,  
13 the type of tobacco used in the filler, or its packaging and  
14 labeling, is likely to be offered to, or purchased by, consumers as a  
15 cigarette; or (c) any roll of tobacco wrapped in any substance  
16 containing tobacco which, because of its appearance, the type of  
17 tobacco used in the filler, or its packaging and labeling, is likely  
18 to be offered to, or purchased by, consumers as a cigarette described  
19 in subdivision (a) of this subdivision. The term cigarette includes  
20 roll-your-own tobacco (i.e., any tobacco which, because of its  
21 appearance, type, packaging, or labeling is suitable for use and  
22 likely to be offered to, or purchased by, consumers as tobacco for  
23 making cigarettes). For purposes of this definition, nine-hundredths  
24 of an ounce of roll-your-own tobacco shall constitute one individual  
25 cigarette;

1                   (5) Days means calendar days unless specified otherwise;

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

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

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

21                   ~~(5)~~(9) Master Settlement Agreement means the settlement  
22 agreement entered into on November 23, 1998, between the state and  
23 specific United States tobacco product manufacturers and related  
24 documents to such agreement;

25                   ~~(6)~~(10) Qualified escrow fund means an escrow

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

9 ~~(7)~~—(11) Released claims means released claims as that  
10 term is defined in the Master Settlement Agreement;

11 ~~(8)~~—(12) Releasing parties means releasing parties as  
12 that term is defined in the Master Settlement Agreement;

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

16 (a) Manufactures cigarettes anywhere that such  
17 manufacturer intends to be sold in the United States, including  
18 cigarettes intended to be sold in the United States through an  
19 importer (except when such importer is an original participating  
20 manufacturer (as that term is defined in the Master Settlement  
21 Agreement) that will be responsible for the payments under the Master  
22 Settlement Agreement with respect to such cigarettes as a result of  
23 the provisions of subsection II(mm) of the Master Settlement  
24 Agreement and that pays the taxes specified in subsection II(z) of  
25 the Master Settlement Agreement, and provided that the manufacturer

1 of such cigarettes does not market or advertise such cigarettes in  
2 the United States);

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

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

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

12 ~~(10)~~ (14) Units sold means the number of individual  
13 cigarettes sold in the state by the applicable tobacco product  
14 manufacturer, whether directly or through a distributor, retailer, or  
15 similar intermediary or intermediaries, during the year in question,  
16 ~~as measured by excise taxes collected by the state on packs or roll-~~  
17 ~~your own tobacco containers. The Tax Commissioner shall adopt and~~  
18 ~~promulgate such rules and regulations as are necessary to ascertain~~  
19 ~~the amount of state excise tax paid on the cigarettes of such tobacco~~  
20 ~~product manufacturer for each year. in packs required to bear a stamp~~  
21 ~~pursuant to section 77-2603 or section 25 of this act or, in the case~~  
22 ~~of roll-your-own tobacco, on which a tax is due pursuant to section~~  
23 77-4008.

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

1                   69-2703 Any tobacco product manufacturer selling  
2 cigarettes to consumers within the state, whether directly or through  
3 a distributor, retailer, or similar intermediary or intermediaries,  
4 after April 29, 1999, shall do one of the following:

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

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

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

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

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

18                   (iv) For each of the years 2003, 2004, 2005, and 2006: \$.  
19 0167539 per unit sold; and

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

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

1 circumstances:

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

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

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

23 (iv) An Indian tribe may seek release of escrow deposited  
24 pursuant to this section on cigarettes sold on an Indian tribe's  
25 Indian country to its tribal members pursuant to an agreement entered

1 into between the state and the Indian tribe pursuant to section 23 of  
2 this act. Amounts the state collects on a bond under section 9 of  
3 this act shall not be subject to release under this section.

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

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

20 (ii) In the case of a knowing violation, be required  
21 within fifteen days to place such funds into escrow as shall bring  
22 the manufacturer into compliance with this section. The court, upon a  
23 finding of a knowing violation of subdivision (2) of this section,  
24 may impose a civil penalty in an amount not to exceed fifteen percent  
25 of the amount improperly withheld from escrow per day of the

1 violation and in a total amount not to exceed three hundred percent  
2 of the original amount improperly withheld from escrow. Such civil  
3 penalty shall be ~~disposed of~~ remitted to the State Treasurer for  
4 distribution in accordance with Article VII, section 5, of the  
5 Constitution of Nebraska; and

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

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

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

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

19 69-2705 For purposes of sections 69-2704 to ~~69-2710:~~  
20 69-2711 and sections 9, 11, 14, 15, and 16 of this act:

21 (1) Brand family means all styles of cigarettes sold  
22 under the same trademark and differentiated from one another by means  
23 of additional modifiers or descriptors, including, but not limited  
24 to, menthol, lights, kings, and 100s, and includes any brand name,  
25 alone or in conjunction with any other word, trademark, logo, symbol,

1 motto, selling message, or recognizable pattern of colors, or any  
2 other indicia of product identification identical or similar to, or  
3 identifiable with, a previously known brand of cigarettes;

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

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

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

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

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

17 (7) Indian country has the same meaning as in section  
18 69-2702;

19 (8) Indian tribe has the same meaning as in section  
20 69-2702;

21 ~~(3)~~(9) Master Settlement Agreement has the same meaning  
22 as in section 69-2702;

23 ~~(4)~~(10) Nonparticipating manufacturer means any tobacco  
24 product manufacturer that is not a participating manufacturer;

25 (11) Nonparticipating manufacturer cigarettes means

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

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

20 ~~(5)-(13) Participating manufacturer has the same meaning~~  
21 as in section II(jj) of the Master Settlement Agreement; ~~defined in~~  
22 section 69-2702 as such agreement existed on May 30, 2003;

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

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

4           ~~(6)-(16)~~ Qualified escrow fund has the same meaning as in  
5 section 69-2702;

6           (17) Retailer includes retail dealers as defined in  
7 section 77-2601 or anyone who is licensed under sections 28-1420 to  
8 28-1422;

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

12           (19) Shortfall amount means the difference between (a)  
13 the full amount of the deposit required to be made by a  
14 nonparticipating manufacturer for a calendar quarter under section  
15 69-2703 and (b) the sum of (i) any amounts precollected by a stamping  
16 agent and deposited into escrow for that calendar quarter on behalf  
17 of the nonparticipating manufacturer under section 11 of this act,  
18 (ii) the amount deposited into escrow by the nonparticipating  
19 manufacturer for that calendar quarter under section 69-2703, (iii)  
20 any amounts deposited into escrow for that calendar quarter under  
21 subdivision (2)(d) of section 69-2703 by an importer on such  
22 nonparticipating manufacturer's cigarettes, and (iv) any amounts  
23 collected by the state for that calendar quarter under the bond  
24 posted by the nonparticipating manufacturer under section 9 of this  
25 act. The shortfall amount, if any, for a nonparticipating

1 manufacturer for a calendar quarter shall be calculated by the  
 2 Attorney General within fifteen days following the date on which the  
 3 state determines the amount it will collect on the bond posted by the  
 4 nonparticipating manufacturer as provided in section 9 of this act;

5 ~~(7)~~-(20) Stamping agent means a person that is authorized  
 6 to affix ~~tax~~-stamps to packages or other containers of cigarettes  
 7 under section 77-2603 or section 25 of this act or any person that is  
 8 required to pay the tobacco tax imposed pursuant to section 77-4008  
 9 on roll-your-own cigarettes;

10 ~~(8)~~-(21) Tax Commissioner means the Tax Commissioner of  
 11 the State of Nebraska;

12 ~~(9)~~-(22) Tobacco product manufacturer has the same  
 13 meaning as in section 69-2702; ~~and~~

14 ~~(10)~~-(23) Units sold has the same meaning as in section  
 15 69-2702; an -

16 (24) Unstamped cigarettes means any cigarettes that are  
 17 not contained in a package bearing a stamp required under section  
 18 77-2603 or section 25 of this act.

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

21 69-2706 (1)(a) Every tobacco product manufacturer whose  
 22 cigarettes are sold in this state, whether directly or through a  
 23 distributor, retailer, or similar intermediary or intermediaries,  
 24 shall execute and deliver on a form prescribed by the Tax  
 25 Commissioner a certification to the Tax Commissioner and the Attorney

1 General no later than the thirtieth day of April each year,  
2 certifying under penalty of perjury that, as of the date of such  
3 certification, such tobacco product manufacturer either is a  
4 participating manufacturer in compliance with subdivision (1) of  
5 section 69-2703 or is a nonparticipating manufacturer in full  
6 compliance with subdivision (2) of section 69-2703. ~~, including all~~  
7 ~~quarterly installment payments required by subsection (4) of section~~  
8 ~~69-2708.~~

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

15 (c) A nonparticipating manufacturer shall include in its  
16 certification (i) a list of all of its brand families and the number  
17 of units sold for each brand family that were sold in the state  
18 during the preceding calendar year and (ii) a list of all of its  
19 brand families that have been sold in the state at any time during  
20 the current calendar year (A) indicating by an asterisk any brand  
21 family sold in the state during the preceding or current calendar  
22 year that is no longer being sold in the state as of the date of such  
23 certification and (B) identifying by name and address any other  
24 manufacturer of such brand families in the preceding calendar year.  
25 The nonparticipating manufacturer shall update such list thirty

1 calendar days prior to any addition to or modification of its brand  
2 families by executing and delivering a supplemental certification to  
3 the Tax Commissioner and the Attorney General.

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

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

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

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

19 (iv)(A) The name, address, and telephone number of the  
20 financial institution where the nonparticipating manufacturer has  
21 established such qualified escrow fund required pursuant to  
22 subdivision (2) of section 69-2703 and all rules and regulations  
23 adopted and promulgated pursuant thereto; (B) the account number of  
24 such qualified escrow fund and any subaccount number for the State of  
25 Nebraska; (C) the amount such nonparticipating manufacturer placed in

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

10 (v) That such nonparticipating manufacturer consents to  
11 be sued in the district courts of the State of Nebraska for purposes  
12 of the state (A) enforcing any provision of sections 69-2703 to  
13 ~~69-2710-69-2711~~ and sections 9, 11, 14, 15, and 16 of this act and  
14 any rules and regulations adopted and promulgated thereunder or (B)  
15 bringing a released claim as defined in section 69-2702; and -

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

19 (e) A tobacco product manufacturer shall not include a  
20 brand family in its certification unless (i) in the case of a  
21 participating manufacturer, the participating manufacturer affirms  
22 that the brand family is to be deemed to be its cigarettes for  
23 purposes of calculating its payments under the Master Settlement  
24 Agreement for the relevant year in the volume and shares determined  
25 pursuant to the Master Settlement Agreement and (ii) in the case of a

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

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

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

20 (a) The Tax Commissioner shall not include or retain in  
21 such directory the name or brand families of any tobacco product  
22 manufacturer that has failed to provide the required certification or  
23 whose certification the commissioner determines is not in compliance  
24 with ~~subdivisions (1)(c) and (d)~~ subsection (1) of this section  
25 unless the Tax Commissioner has determined that such violation has

1 been cured to his or her satisfaction;

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

14 (c) As a condition to being listed and having its brand  
15 families listed in the directory, a tobacco product manufacturer  
16 shall also (i) certify annually that such manufacturer or its  
17 importer holds a valid permit under 26 U.S.C. 5713 and provide a copy  
18 of such permit to the Tax Commissioner and the Attorney General, (ii)  
19 upon request of the Tax Commissioner or Attorney General, provide  
20 documentary proof that it is not in violation of subdivision (1) of  
21 section 59-1520, and (iii) certify that it is in compliance with all  
22 reporting and registration requirements of 15 U.S.C. 376 and 376a;

23 ~~(e)~~(d) The Tax Commissioner shall update the directory  
24 no later than May 15 of each year to reflect certifications made on  
25 or before April 30 as required in subsection (1) of this section. The

1 Tax Commissioner shall continuously update the directory as necessary  
2 in order to correct mistakes and to add or remove a tobacco product  
3 manufacturer or brand family to keep the directory in conformity with  
4 the requirements of sections 69-2704 to ~~69-2710~~; 69-2711 and sections  
5 9, 11, 14, 15, and 16 of this act;

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

21 ~~(e)~~-(f) Every stamping agent shall provide and update as  
22 necessary an electronic mail address to the Tax Commissioner for the  
23 purpose of receiving any notifications as may be required by sections  
24 69-2704 to ~~69-2710~~. 69-2711 and sections 9, 11, 14, 15, and 16 of  
25 this act.

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

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

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

19           69-2707 (1) Any nonresident or foreign nonparticipating  
20 manufacturer that has not registered to do business in the state as a  
21 foreign corporation or business entity shall, as a condition  
22 precedent to having its brand families included or retained in the  
23 directory created in subsection (2) of section 69-2706, appoint and  
24 continually engage without interruption the services of an agent in  
25 ~~the United States Nebraska~~ to act as agent for the service of process

1 on whom all process, and any action or proceeding against it  
2 concerning or arising out of the enforcement of sections 69-2703 to  
3 ~~69-2710, 69-2711 and sections 9, 11, 14, 15, and 16 of this act,~~ may  
4 be served in any manner authorized by law. Such service shall  
5 constitute legal and valid service of process on the nonparticipating  
6 manufacturer. The nonparticipating manufacturer shall provide the  
7 name, address, telephone number, and proof of the appointment and  
8 availability of such agent to the Tax Commissioner and Attorney  
9 General.

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

21 (3) Any nonparticipating manufacturer whose products are  
22 sold in this state who has not appointed and engaged the services of  
23 an agent as required by this section shall be deemed to have  
24 appointed the Secretary of State as its agent for service of process.  
25 The appointment of the Secretary of State as agent shall not satisfy

1 the condition precedent required in subsection (1) of this section to  
2 have the nonparticipating manufacturer's brand families included or  
3 retained in the directory.

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

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

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

23           (b) Unless subdivision (c) of this subsection is  
24 applicable, for a nonparticipating manufacturer or its affiliates  
25 which have not been listed on any state's directory for at least

1 three years, the amount of the bond required shall be fifty thousand  
2 dollars; and

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

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

1 during that calendar quarter.

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

4           69-2708 (1) Not later than ~~twenty calendar days after the~~  
5 ~~end of each calendar quarter, and more frequently if so directed by~~  
6 ~~the Tax Commissioner, fifteen days following the end of each month,~~  
7 each stamping agent shall submit, in the manner directed by the Tax  
8 Commissioner, such information as the Tax Commissioner requires to  
9 facilitate compliance with sections 69-2704 to ~~69-2710, 69-2711 and~~  
10 sections 9, 11, 14, 15, and 16 of this act, including, but not  
11 limited to, (a) a list by brand family of the total number of  
12 cigarettes or, in the case of roll-your-own, the equivalent stick  
13 count for which the stamping agent affixed stamps during the previous  
14 ~~calendar quarter~~ month or otherwise paid the ~~tax~~ total due for such  
15 cigarettes, the total number of cigarettes contained in the packages  
16 to which it affixed each respective type of stamp, and by name and  
17 number of cigarettes, the tobacco product manufacturers and brand  
18 families of the packages to which it affixed each respective type of  
19 stamp or similar information for roll-your-own on which tax was paid  
20 and (b) the total number of cigarettes acquired by the stamping agent  
21 during that month for sale in or into the state or for sale from this  
22 state into another state, sold in or into the state by the stamping  
23 agent during that month and held in inventory in the state or for  
24 sale into the state by the stamping agent as of the last business day  
25 of that month, in each case identifying by name and number of

1 cigarettes, (i) the manufacturers of those cigarettes and (ii) the  
2 brand families of those cigarettes. In the case of a stamping agent  
3 that is a retailer, reports under subdivision (1)(a) of this section  
4 do not have to include cigarettes contained in packages that bore a  
5 stamp required under section 77-2603 or section 25 of this act at the  
6 time the stamping agent received them and that the stamping agent  
7 then sold at retail. The stamping agent shall also submit a  
8 certification stating that the information provided to the Tax  
9 Commissioner is complete and accurate. The stamping agent shall  
10 maintain, and make available to the Tax Commissioner, all invoices  
11 and documentation of sales of all nonparticipating manufacturer  
12 cigarettes and any other information relied upon in reporting to the  
13 Tax Commissioner for a period of five years. The Tax Commissioner may  
14 share the information reported under this section with the taxing or  
15 law enforcement authorities of this state or other states. The Tax  
16 Commissioner may also share with a nonparticipating manufacturer  
17 information reported under this section pertaining to such  
18 nonparticipating manufacturer's cigarettes.

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

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

10           (4) ~~To promote compliance with sections 69-2704 to~~  
11 ~~69-2707, a tobacco product manufacturer subject to the requirements~~  
12 ~~of subdivision (1)(c) of section 69-2706 shall make the escrow~~  
13 ~~deposits required by section 69-2703 in quarterly installments during~~  
14 ~~the year in which the sales covered by such deposits are made: (a)~~  
15 ~~Through the end of the calendar year following the year the tobacco~~  
16 ~~product manufacturer is listed in the directory established pursuant~~  
17 ~~to section 69-2706; (b) if the tobacco product manufacturer is~~  
18 ~~removed from, then subsequently relisted in, the directory, then for~~  
19 ~~all periods following the relisting through the end of the calendar~~  
20 ~~year following the year the tobacco product manufacturer is relisted~~  
21 ~~in the directory; (c) if the tobacco product manufacturer has failed~~  
22 ~~to make a complete and timely escrow deposit for any calendar year as~~  
23 ~~required by section 69-2703 or for any quarter as required in this~~  
24 ~~section; or (d) if the tobacco product manufacturer has failed to pay~~  
25 ~~any judgment, including any civil penalty ordered under section~~

1 ~~69-2703 or 69-2709.~~ The Tax Commissioner or the Attorney General may  
2 require production of information sufficient to enable the Tax  
3 Commissioner or Attorney General to determine the adequacy of the  
4 amount of the ~~installment deposit.~~ The Tax Commissioner may adopt and  
5 promulgate rules and regulations implementing how tobacco product  
6 manufacturers subject to the requirements of subdivision (1)(c) of  
7 section 69-2706 make quarterly payments. a quarterly escrow deposit  
8 under subdivision (2) of section 69-2703. The Tax Commissioner may  
9 adopt and promulgate rules and regulations implementing how tobacco  
10 product manufacturers subject to subdivision (2) of section 69-2703  
11 make quarterly payments.

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

17           (2) The liability of a stamping agent for escrow deposits  
18 shall be calculated as follows: If there is a shortfall amount for a  
19 nonparticipating manufacturer for a calendar quarter, each stamping  
20 agent that sold cigarettes of that nonparticipating manufacturer  
21 during the calendar quarter shall deposit into such escrow account as  
22 shall be designated by the state an amount equal to the applicable  
23 shortfall amount multiplied by a fraction, the numerator of which is  
24 the number of cigarettes of that nonparticipating manufacturer sold  
25 in or into the state by the stamping agent during that calendar

1 quarter and the denominator of which is the total number of  
2 cigarettes of that nonparticipating manufacturer sold by all stamping  
3 agents in or into the state during that calendar quarter, except that  
4 any nonparticipating manufacturer cigarettes sold in or into the  
5 state by a stamping agent during the calendar quarter in which the  
6 stamping agent collected and deposited the required escrow deposit  
7 amount on or before the due date for deposits for that quarter under  
8 subdivision (2) of section 69-2703 shall be excluded from both the  
9 numerator and the denominator of the fraction. To the extent a  
10 stamping agent makes payments with respect to a shortfall amount  
11 under this subsection, such stamping agent shall have a claim against  
12 the nonparticipating manufacturer for such amount.

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

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

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

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

23 69-2709 (1) In addition to or in lieu of any other civil  
24 or criminal remedy provided by law, upon a determination that a  
25 stamping agent has violated subsection (4) of section 69-2706 or any

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

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

14 (a) Fails to provide a report required under section  
15 69-2708 or section 14 or 27 of this act;

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

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

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

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

4           (f) Purchases, sells in or into the state, or affixes a  
5 stamp to a package containing cigarettes of a manufacturer or brand  
6 family that is not at the time listed in the directory, or possesses  
7 such cigarettes more than ten days after receiving notice that the  
8 manufacturer or brand family is not in the directory, unless such  
9 stamping agent possesses a directory license under section 77-2603 or  
10 unless expressly permitted under sections 69-2701 to 69-2711 and  
11 sections 9, 11, 14, 15, and 16 of this act or sections 77-2601 to  
12 77-2622 and sections 22, 23, 25, and 27 of this act; or

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

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

21           (4) In the case of a knowing or intentional violation  
22 under subdivision (2)(a), (b), (c), or (d) of this section, or of any  
23 violation described in subdivision (2)(e) or (f) of this section, the  
24 stamping agent shall for a first violation be subject to a civil  
25 penalty of up to one thousand dollars and be guilty of a Class IV

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

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

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

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

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

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

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

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

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

13           ~~(2)-(8)~~ Any cigarettes that have been sold, offered for  
14 sale, or possessed for sale in this state in violation of subsection  
15 (4) of section 69-2706 shall be deemed contraband under section  
16 77-2620 and such cigarettes shall be subject to seizure and  
17 forfeiture as provided in section 77-2620, except that all such  
18 cigarettes so seized and forfeited shall be destroyed and not resold.  
19 The stamping agent shall notify its customers for a brand family with  
20 regard to any notice of removal of a tobacco product manufacturer or  
21 a brand family from the directory and give its customers a seven-day  
22 period for the return of cigarettes that become contraband.

23           ~~(3)-(9)~~ The Attorney General, on behalf of the Tax  
24 Commissioner, may seek an injunction to restrain a threatened or  
25 actual violation of subsection (4) of section 69-2706 or ~~subsection~~

1 ~~(1) or (4) of section 69-2708~~ by a stamping agent and to compel the  
2 stamping agent to comply with ~~any of such subsections.~~ subsection (4)  
3 of section 69-2706 or section 69-2708. In any action brought pursuant  
4 to this section, the state shall be entitled to recover the costs of  
5 investigation, costs of the action, and reasonable attorney's fees.  
6 This subsection shall not apply to a stamping agent purchasing  
7 cigarettes which are not in violation of subsection (4) of section  
8 69-2706 or section 69-2708.

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

15 ~~(5)-(11)~~ If a court determines that a person has violated  
16 any portion of sections 69-2704 to ~~69-2710, 69-2711 and sections 9,~~  
17 11, 14, 15, and 16 of this act, the court shall order the payment of  
18 any profits, gains, gross receipts, or other benefits from the  
19 violation to be remitted to the State Treasurer for distribution in  
20 accordance with Article VII, section 5, of the Constitution of  
21 Nebraska. Unless otherwise expressly provided, the remedies or  
22 penalties provided by sections 69-2704 to ~~69-2710 69-2711 and~~  
23 sections 9, 11, 14, 15, and 16 of this act are cumulative to each  
24 other and to the remedies or penalties available under all applicable  
25 laws of this state.

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

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

11           (14) A nonparticipating manufacturer whose total  
12 nationwide reported sales on which federal excise tax is paid exceed  
13 the sum of its nationwide reports under 15 U.S.C. 375 et seq. and any  
14 intrastate sales reports under 15 U.S.C. 375 et seq. by more than  
15 five percent of its total sales or one million cigarettes, whichever  
16 is less, shall be subject to removal from the directory unless it  
17 cures or satisfactorily explains the discrepancy within ten days  
18 after receipt of notice of the discrepancy from the Attorney General  
19 pursuant to section 11 of this act.

20           (15) Any person that is not a stamping agent or tobacco  
21 product manufacturer that fails to file a complete and accurate  
22 report required under section 69-2708 or 77-2604 or section 14 or 27  
23 of this act shall be entitled to cure the failure within ten days  
24 after receipt of notice of the discrepancy from the Attorney General  
25 pursuant to section 11 of this act. If the person fails to fully cure

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

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

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

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

24 69-2710 (1) Before any tobacco product manufacturer may  
25 be removed from the directory, the Tax Commissioner shall provide the

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

14 (2) If the Tax Commissioner determines that a tobacco  
15 product manufacturer shall not be included in the directory, such  
16 manufacturer may request a contested case before the Tax Commissioner  
17 under the Administrative Procedure Act. The Tax Commissioner shall  
18 notify the tobacco product manufacturer in writing of the  
19 determination not to include it in the directory. A request for  
20 hearing shall be made within thirty calendar days after the date of  
21 the determination that the manufacturer shall not be included in the  
22 directory and shall contain the evidence supporting the  
23 manufacturer's compliance with sections 69-2703 to ~~69-2710-69-2711~~  
24 and sections 9, 11, 14, 15, and 16 of this act. The hearing shall be  
25 held within sixty days after the request. At the hearing, the Tax

1 Commissioner shall determine whether the tobacco product manufacturer  
2 is in compliance with sections 69-2703 to ~~69-2710~~ 69-2711 and  
3 sections 9, 11, 14, 15, and 16 of this act and whether the  
4 manufacturer should be listed in the directory. A final decision  
5 shall be rendered within thirty days after the hearing. Any decision  
6 of the Tax Commissioner may be appealed. The appeal shall be in  
7 accordance with the Administrative Procedure Act.

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

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

18 Sec. 14. (1) Any person that during a month acquired,  
19 purchased, sold, possessed, transferred, transported, or caused to be  
20 transported in or into this state cigarettes of a tobacco product  
21 manufacturer or brand family that was not in the directory at the  
22 time shall, within fifteen days following the end of that month, file  
23 a report on a form and in the manner prescribed by the Tax  
24 Commissioner and certify to the state that the report is complete and  
25 accurate. The report shall contain, in addition to any further

1 information that the Tax Commissioner may reasonably require to  
2 assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711  
3 and sections 9, 11, 14, 15, and 16 of this act and sections 77-2601  
4 to 77-2622 and sections 22, 23, 25, and 27 of this act and the  
5 Tobacco Products Tax Act, the following information:

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

15 (b) In the case of acquisition, purchase, or possession,  
16 the details of the person's subsequent sale or transfer of those  
17 cigarettes, identifying by name and number of cigarettes (i) the  
18 brand families of those cigarettes, (ii) the date of the sale or  
19 transfer, (iii) the name and address of the recipient, (iv) the  
20 number of stamps of each other state that the person affixed to the  
21 packages containing those cigarettes during that month, (v) the total  
22 number of cigarettes contained in the packages to which it affixed  
23 each respective other state's stamp, (vi) the manufacturers and brand  
24 families of the packages to which it affixed each respective other  
25 state's stamp, and (vii) a certification that it reported each sale

1 or transfer to the taxing authority of the other state by fifteen  
2 days following the end of the month in which the sale or transfer was  
3 made and attaching a copy of all such reports. If the subsequent sale  
4 or transfer is from this state into another state in packages not  
5 bearing a stamp of the other state, the report shall also contain the  
6 information described in subdivision (2)(c) of section 27 of this  
7 act.

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

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

1 omission in question or reinstatement of its license by the other  
2 state.

3 (2) A tobacco product manufacturer and its brand families  
4 may be removed from the directory if it is removed from the directory  
5 of another state based on acts or omissions that would, if done in  
6 this state, be grounds for removal from the directory under section  
7 69-2706, 69-2707, or 69-2710 or subsection (6) of section 69-2709 or  
8 section 9 of this act, unless the tobacco product manufacturer  
9 demonstrates that its removal from the other state's directory was  
10 effected without due process, that it fully cured such violation and  
11 provided notice of such cure to the Department of Revenue within  
12 thirty days after receipt of notice of the violation, or that it  
13 secured a temporary injunction against removal from the directory in  
14 the district court of Lancaster County. For purposes of a temporary  
15 injunction sought pursuant to this subsection, loss of the ability to  
16 sell tobacco products as a result of removal from the directory shall  
17 constitute irreparable harm. If, after thirty days, the tobacco  
18 product manufacturer remains in noncompliance and has not obtained a  
19 temporary injunction pursuant to this subsection, the tobacco product  
20 manufacturer shall be removed from the directory. A manufacturer that  
21 is removed from the directory under this subsection shall be eligible  
22 for reinstatement upon the earlier of the date on which it cures the  
23 violation or is reinstated to the directory in the other state.

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

1           Sec. 16. The Tax Commissioner may adopt and promulgate  
2 rules and regulations necessary to effect the purposes of sections  
3 69-2703 to 69-2711 and sections 9, 11, 14, 15, and 16 of this act.

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

6           69-2711 If a court of competent jurisdiction finds that  
7 the provisions of sections 69-2704 to ~~69-2710-69-2711~~ and sections 9,  
8 11, 14, 15, and 16 of this act and of sections 69-2702 and 69-2703  
9 conflict and cannot be harmonized, then the provisions of sections  
10 69-2702 and 69-2703 shall control. If sections 69-2704 to ~~69-2710~~  
11 69-2711 and sections 9, 11, 14, 15, and 16 of this act or any part of  
12 any such sections causes sections 69-2702 and 69-2703 to no longer  
13 constitute a Qualifying or Model Statute, as those terms are defined  
14 in the Master Settlement Agreement, then that portion of sections  
15 69-2704 to ~~69-2710-69-2711~~ and sections 9, 11, 14, 15, and 16 of this  
16 act shall not be valid.

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

19           71-7606 (1) The purpose of the Nebraska Health Care  
20 Funding Act is to provide for the use of dedicated revenue for  
21 health-care-related expenditures and administration and enforcement  
22 of the Master Settlement Agreement as defined in section 69-2702.

23           (2) Any funds appropriated or distributed under the act  
24 shall not be considered ongoing entitlements or obligations on the  
25 part of the State of Nebraska and shall not be used to replace

1 existing funding for existing programs.

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

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

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

14 77-2601 For purposes of sections 77-2601 to 77-2615 and  
15 sections 22, 23, 25, and 27 of this act:

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

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

24 (3) Retail dealer includes every person other than a  
25 wholesale dealer engaged in the business of selling cigarettes in

1 this state irrespective of quantity, amount, or number of sales  
2 thereof;

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

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

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

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

21 (8) Stamping agent has the same meaning as in section  
22 69-2705; and

23 (9) Indian country means (a) all land in this state  
24 within the limits of any Indian reservation under the jurisdiction of  
25 the United States, notwithstanding the issuance of any patent,

1 including rights-of-way running through the reservation, (b) all  
2 dependent Indian communities within the borders of this state, and  
3 (c) all Indian allotments in this state, the Indian titles to which  
4 have not been extinguished, including rights-of-way running through  
5 such allotments.

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

8           77-2602 (1) Every ~~person~~ stamping agent engaged in  
9 distributing or selling cigarettes at wholesale in this state shall  
10 pay to the Tax Commissioner of this state a special privilege tax.  
11 This shall be in addition to all other taxes. It shall be paid prior  
12 to or at the time of the sale, gift, or delivery to the retail dealer  
13 in the several amounts as follows: On each package of cigarettes  
14 containing not more than twenty cigarettes, sixty-four cents per  
15 package; and on packages containing more than twenty cigarettes, the  
16 same tax as provided on packages containing not more than twenty  
17 cigarettes for the first twenty cigarettes in each package and a tax  
18 of one-twentieth of the tax on the first twenty cigarettes on each  
19 cigarette in excess of twenty cigarettes in each package.

20           (2) Beginning October 1, 2004, the State Treasurer shall  
21 place the equivalent of forty-nine cents of such tax in the General  
22 Fund. The State Treasurer shall reduce the amount placed in the  
23 General Fund under this subsection by the amount prescribed in  
24 subdivision (3)(d) of this section. For purposes of this section, the  
25 equivalent of a specified number of cents of the tax shall mean that

1 portion of the proceeds of the tax equal to the specified number  
2 divided by the tax rate per package of cigarettes containing not more  
3 than twenty cigarettes.

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

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

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

22 (c) Third, beginning October 1, 2002, and continuing  
23 until all the purposes of the Deferred Building Renewal Act have been  
24 fulfilled, the State Treasurer shall place the equivalent of seven  
25 cents of such tax in the Building Renewal Allocation Fund. The

1 distribution under this subdivision shall not be less than the amount  
2 distributed under this subdivision for FY1997-98. Any money needed to  
3 increase the amount distributed under this subdivision to the  
4 FY1997-98 amount shall reduce the distribution to the General Fund;

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

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

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

25 (g) Seventh, beginning July 1, 2001, and continuing until

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

8 (h) Eighth, beginning July 1, 2008, and continuing until  
9 June 30, 2009, the State Treasurer shall place the equivalent of two  
10 million fifty thousand dollars of such tax in the Nebraska Public  
11 Safety Communication System Cash Fund. Beginning July 1, 2009, and  
12 continuing until June 30, 2016, the State Treasurer shall place the  
13 equivalent of two million five hundred seventy thousand dollars of  
14 such tax in the Nebraska Public Safety Communication System Cash  
15 Fund. Beginning July 1, 2016, and every fiscal year thereafter, the  
16 State Treasurer shall place the equivalent of five million seventy  
17 thousand dollars of such tax in the Nebraska Public Safety  
18 Communication System Cash Fund. If necessary, the State Treasurer  
19 shall reduce the distribution of tax proceeds to the General Fund  
20 pursuant to subsection (2) of this section by such amount required to  
21 fulfill the distribution pursuant to this subdivision.

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

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

1 programs or projects specified in subdivisions (a) through (i) of  
2 this subsection.

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

5 77-2602.03 The increase in the tax shall apply to all  
6 unused stamps, meter impressions, and packages of stamped cigarettes  
7 owned by ~~cigarette wholesalers~~ stamping agents at 12:01 a.m. on the  
8 day the increase becomes operative. On the date any change in the tax  
9 takes effect, each ~~cigarette wholesaler~~ stamping agent shall take an  
10 inventory of all unused stamps, meter impressions, and packages of  
11 stamped cigarettes owned by the cigarette wholesaler at 12:01 a.m.  
12 The additional tax shall be remitted with the return for the last  
13 month preceding the date any change in the tax takes effect. The Tax  
14 Commissioner shall credit to each ~~wholesaler~~ stamping agent an amount  
15 equal to the additional tax on two weeks of such ~~wholesaler's~~  
16 stamping agent's average purchases of ~~tax~~ stamps.

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

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

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

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

1 law.

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

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

25 (5) The Tax Commissioner and an Indian tribe may agree

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

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

24                   (a) Its duration;

25                   (b) Its purpose;

1           (c) Provisions for administering, collecting, and  
2 enforcing the agreement and for the mutual waiver of sovereign  
3 immunity objections with respect to such provisions;

4           (d) Remittance of taxes and escrow collected;

5           (e) The division of the proceeds of the tax and escrow  
6 between the parties;

7           (f) The method to be employed in accomplishing the  
8 partial or complete termination of the agreement;

9           (g) A dispute resolution procedure;

10          (h) Adequate reporting and auditing provisions; and

11          (i) Any other necessary and proper matters.

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

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

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

1 pursuant to section 11 of this act.

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

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

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

12 77-2603 (1) The tax, as levied in section 77-2602, shall  
13 be paid and ~~the~~ stamps or cigarette tax meter impressions shall be  
14 affixed or printed with a cigarette tax meter by the person having  
15 possession and ownership of such cigarettes after the same shall have  
16 come to rest in this state and intended to be sold or given away in  
17 this state. Nothing in sections 77-2601 to 77-2615 and sections 22,  
18 23, 25, and 27 of this act shall be construed to require a ~~wholesale~~  
19 dealer-stamping agent to fix the retail price or to require any  
20 retailer-retail dealer to sell at any particular price. Subject to  
21 such rules and regulations as the Tax Commissioner shall prescribe,  
22 tax meter machines may be used when approved by the Tax Commissioner  
23 to affix a suitable stamp or impression on each package of cigarettes  
24 and cigarettes with a tax meter impression shall be treated as  
25 stamped cigarettes for purposes of sections 69-2701 to 69-2711 and

1 sections 9, 11, 14, 15, and 16 of this act and sections 77-2601 to  
2 77-2615 and sections 22, 23, 25, and 27 of this act. Before any  
3 wholesale dealer person is issued a permit license to affix stamps or  
4 cigarette tax meter impressions, the wholesale dealer person shall  
5 make application to become licensed as a stamping agent to the Tax  
6 Commissioner on a form provided by the Tax Commissioner to engage in  
7 such activity.

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

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

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

20 (c) In the case of an applicant located outside of the  
21 state, designating an agent for service of process in Nebraska, and  
22 providing notice thereof as required by section 69-2707, in  
23 connection with enforcement of sections 69-2701 to 69-2711 and  
24 sections 9, 11, 14, 15, and 16 of this act and sections 77-2601 to  
25 77-2615 and sections 22, 23, 25, and 27 of this act, and, if approval

1 is given by the Tax Commissioner, the manufacturer, importer, sales  
2 entity affiliate, wholesale dealer, or retail dealer and, if approval  
3 is given by the Tax Commissioner, the dealer shall furnish a  
4 corporate surety bond, conditioned to faithfully comply with all the  
5 requirements of sections 77-2601 to 77-2615 and sections 22, 23, 25,  
6 and 27 of this act, in a sum not less than ~~one~~ ten thousand dollars.  
7 Such bond shall be subject to forfeiture if the stamping agent fails  
8 to pay the shortfall amount under subsection (1) of section 11 of  
9 this act unless the stamping agent is excused from liability under  
10 subsection (3) of section 11 of this act.

11 (3) Nothing in sections 77-2601 to 77-2615 and sections  
12 22, 23, 25, and 27 of this act shall prevent the Tax Commissioner  
13 from affixing the stamps or meter impressions in lieu of the  
14 provisions for affixing stamps and meter impressions by wholesalers  
15 stamping agents as determined by such rules and regulations adopted  
16 by the Tax Commissioner.

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

22 (5) A manufacturer, importer, sales entity affiliate,  
23 wholesale dealer, or retail dealer that engages in the business of  
24 selling cigarettes and that holds a valid stamping agent license  
25 under subsection (1) of this section may apply for a directory

1 license allowing it to purchase or possess in the state cigarettes of  
2 a manufacturer or brand family not at the time of purchase listed in  
3 the directory for sale into another state if permitted under section  
4 69-2706. A directory license shall be issued by the Tax Commissioner  
5 to an applicant upon the applicant's (a) demonstrating that it holds  
6 a valid license under subsection (1) of this section and (b)  
7 providing a certification by an officer thereof on a form prescribed  
8 by the Tax Commissioner that any cigarettes of a manufacturer or  
9 brand family not listed in the directory will be purchased or  
10 possessed solely for sale or transfer into another state as permitted  
11 by section 69-2706. The directory license shall remain in effect for  
12 a period of one year.

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

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

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

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

3           77-2604 (1) Every stamping agent, wholesale dealer, and  
4 retail dealer who is subject to sections 77-2601 to 77-2622 and  
5 sections 22, 23, 25, and 27 of this act shall make and file with the  
6 Tax Commissioner, on or before the ~~tenth~~ fifteenth day of each  
7 calendar month on blanks furnished by the Tax Commissioner, true,  
8 correct, and sworn reports covering, for the last preceding calendar  
9 month, the number of cigarettes purchased, from whom purchased, the  
10 specific kinds and brands thereof, the manufacturer, if known, and  
11 such other matters and in such detail as the Tax Commissioner may  
12 require.

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

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

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

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

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

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

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

9           (2) The report shall contain the following information:

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

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

21           (c) If the person sold cigarettes during that month from  
22 this state into another state in packages not bearing a stamp of the  
23 other state, (i) the total number of cigarettes contained in such  
24 packages, identifying by name and number of cigarettes, the  
25 manufacturers of those cigarettes, the brand families of those

1 cigarettes, and the name and address of each recipient of those  
2 cigarettes, and (ii) the person's basis for belief that such state  
3 permits the sale of the cigarettes to consumers in a package not  
4 bearing a stamp, and the amount of excise, use, or similar tax  
5 imposed on the cigarettes paid by the person to such state on the  
6 cigarettes. Manufacturers and importers need include the information  
7 described in subdivision (2)(c)(i) of this section only as to  
8 cigarettes not sold to a person authorized by the law of the other  
9 state to affix the stamp required by the other state.

10           (3) In the case of a manufacturer or importer, the report  
11 shall include cigarettes sold from this state into another state  
12 through its sales entity affiliate. A sales entity affiliate shall  
13 file a separate report under this section only to the extent that it  
14 sold cigarettes from this state into another state not separately  
15 reported under this section by its affiliated manufacturer or  
16 importer.

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

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

22           77-2605 The books, records, papers, receipts, invoices,  
23 and supply of cigarettes of any person, including wholesale and  
24 retail dealers, stamping agents, and persons transporting cigarettes,  
25 subject to the provisions of sections 77-2601 to 77-2615 and sections

1 22, 23, 25, and 27 of this act which pertain to the purchase or sale  
2 of cigarettes shall be subject to inspection at any time during  
3 ordinary business hours by the Tax Commissioner or his or her  
4 representatives.

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

7           77-2607 Each ~~wholesale dealer stamping agent~~ may set  
8 aside such portion of ~~his~~ the stamping agent's stock of cigarettes as  
9 is not intended to be sold or given away in this state and it will  
10 not be necessary to affix the ~~above-mentioned stamps or tax meter~~  
11 impressions thereon; ~~Provided,~~ required under section 77-2606, except  
12 that if ~~said~~ such stock is not disposed of and out of the possession  
13 of the ~~said wholesale dealer stamping agent~~ within thirty days of the  
14 date of receipt thereof, the ~~said~~ cigarettes, packages, or pieces,  
15 ~~must~~ shall immediately be stamped as required by ~~the provisions of~~  
16 sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of this  
17 act. Each ~~wholesale dealer stamping agent~~ shall immediately mark in  
18 ink on each unopened box, carton, or other container of such  
19 cigarettes, received and the date of receipt and shall affix ~~his~~ the  
20 stamping agent's signature thereto. Within forty-eight hours after  
21 such box, carton, or other container is opened, ~~he must~~ the stamping  
22 agent shall immediately affix such stamps or tax impressions to each  
23 package ~~therein~~ and cancel the stamps affixed thereto. ~~in the manner~~  
24 ~~herein designated.~~

25           Sec. 30. Section 77-2608, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-2608 The Tax Commissioner shall prepare and have  
3 suitable stamps for use on each kind of piece or package of  
4 cigarettes, except when cigarette tax meter impressions are affixed.  
5 Requisition for the preparation of such stamps shall be made through  
6 the materiel division of the Department of Administrative Services as  
7 other state supplies are requisitioned, and the Tax Commissioner and  
8 his or her bondsperson shall be liable for the value of all such  
9 stamps delivered to him or her. The Auditor of Public Accounts shall  
10 audit annually or as often as the auditor deems advisable the records  
11 of the Tax Commissioner with respect to the money received from the  
12 sale of stamps and as revenue from tax meter impressions for the  
13 purpose of determining the accuracy and correctness of the same. The  
14 Tax Commissioner shall sell or distribute the stamps only to licensed  
15 ~~wholesale dealers, stamping agents, as defined provided in section~~  
16 ~~77-2601, section 77-2603 or section 25 of this act, and he or she the~~  
17 stamping agent shall keep an accurate record of all stamps coming  
18 into and leaving ~~his or her hands. the stamping agent's possession.~~  
19 Such stamps shall be sold and accounted for at the face value  
20 thereof, except that the Tax Commissioner may, by rule and regulation  
21 certified to the State Treasurer, authorize the sale thereof to  
22 ~~wholesale dealers stamping agents~~ in this state or outside of this  
23 state at a discount of one and eighty-five hundredths percent of such  
24 face value of the tax as a commission for affixing and canceling such  
25 stamps., ~~except that for stamps sold beginning October 1, 2002,~~

1 ~~through September 30, 2004, the authorized commission for affixing~~  
2 ~~and canceling such stamps shall be one and seven tenths percent of~~  
3 ~~the face value of the tax. Any wholesale dealer stamping agent using~~  
4 a tax meter machine shall be entitled to the same discount as allowed  
5 a ~~wholesale dealer stamping agent~~ for affixing and canceling the  
6 stamps. The money received by the Tax Commissioner from the sale of  
7 the stamps and as revenue from such tax meter impressions shall be  
8 deposited by him or her daily with the State Treasurer who shall  
9 credit such money as provided in section 77-2602. Upon proof by the  
10 Tax Commissioner that he or she can affix such stamps or meter  
11 impressions, warehouse and distribute such cigarettes, and collect  
12 such revenue at a cost less than any discount allowed to ~~wholesale~~  
13 ~~dealers stamping agents~~ pursuant to this section, he or she may then  
14 proceed to affix the stamps himself or herself after giving the  
15 ~~wholesale dealers stamping agents~~ sixty days' notice and purchasing  
16 all equipment used by them for the purpose of affixing such stamps or  
17 meter impressions at a fair market value.

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

20           77-2610 Upon the written request of the original  
21 purchaser thereof and upon the return of any unused stamps, the Tax  
22 Commissioner shall redeem such stamps. The Tax Commissioner shall  
23 prepare a voucher showing the amount of such returned unused stamps  
24 and shall cause to be drawn a warrant upon the State Treasurer for  
25 such amount in favor of the person returning such unused stamps. The

1 refunds shall be paid from the various funds named in section 77-2602  
2 in the same proportions as the proceeds of the tax are allocated. By  
3 the terms of sections 77-2601 to 77-2615 and sections 22, 23, 25, and  
4 27 of this act, the Tax Commissioner and the State Treasurer are  
5 specifically authorized to adjust all errors in payments for unused  
6 stamps.

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

9           77-2612 The Tax Commissioner may employ, with the advice  
10 and consent of the Governor, a sufficient number of inspectors,  
11 clerks, assistants, and agents to enforce ~~the provisions of sections~~  
12 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act,  
13 including the collection of all stamp taxes and all revenue from  
14 cigarette tax meters. In such enforcement, the Tax Commissioner may  
15 call to his or her aid the Attorney General, any county attorney, any  
16 sheriff, any deputy sheriff, or any other peace officer. The  
17 compensation of all persons employed shall be fixed by the Governor  
18 and shall be paid from the revenue derived under such sections.  
19 ~~77-2601 to 77-2622.~~ The expenses of administering such sections,  
20 ~~77-2601 to 77-2622,~~ including necessary assistants, clerical help,  
21 cost of enforcement, cost of stamps, and incidental expenses, when  
22 approved by the Tax Commissioner, shall be paid by warrants, issued  
23 against the General Fund, but such warrants shall not exceed four  
24 percent of the funds collected under such sections, ~~77-2601 to~~  
25 ~~77-2622,~~ such expenses in each instance to be approved by the Tax

1 Commissioner.

2           The Tax Commissioner may adopt and promulgate rules and  
3 regulations which are consistent with ~~the provisions of sections~~  
4 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act and  
5 their proper enforcement.

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

25           Sec. 33. Section 77-2613, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-2613 The State Treasurer shall place all sums of money  
3 received under sections 77-2601 to 77-2615 and sections 22, 23, 25,  
4 and 27 of this act as provided in section 77-2602, and from time to  
5 time, upon voucher approved by the Tax Commissioner, disburse such  
6 sum or sums as may be necessary to administer and carry out the  
7 provisions of sections 77-2601 to 77-2615 and sections 22, 23, 25,  
8 and 27 of this act relating to the collection of ~~said~~the tax,  
9 subject to the limitations ~~therein~~provided in such sections.

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

12           77-2614 Any person who, with intent to defraud the state,  
13 shall make, alter, forge, or counterfeit any license, permit, stamp,  
14 or cigarette tax meter impression provided for in sections 77-2601 to  
15 77-2615 and sections 22, 23, 25, and 27 of this act, or who shall  
16 have in his or her possession any forged, counterfeited, spurious, or  
17 altered license, permit, stamp, or cigarette tax meter impression,  
18 with intent to use the same, knowing or having reasonable grounds to  
19 believe the same to be such, or shall have in his or her possession  
20 one or more cigarette stamps or cigarette tax meter impressions which  
21 he or she knows have been removed from the pieces or packages of  
22 cigarettes to which they were affixed, or who affixes to any piece or  
23 package of cigarettes a stamp or cigarette tax meter impression which  
24 he or she knows has been removed from any other piece or package of  
25 cigarettes shall be deemed guilty of a Class IV felony.

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

3                   77-2615 Any person who ~~shall violate any of the~~  
4 ~~provisions of~~ violates sections 77-2601 to 77-2615 and sections 22,  
5 23, 25, and 27 of this act, or any rule or regulation ~~lawfully made~~  
6 adopted and promulgated in accordance therewith, for which a specific  
7 penalty is not otherwise provided or who shall, except as permitted  
8 by sections 77-2601 to 77-2615 and sections 22, 23, 25, and 27 of  
9 this act, sell, deliver, or accept, with intent to evade the  
10 provisions of such sections, ~~77-2601 to 77-2615,~~ any cigarettes upon  
11 which the tax provided by section 77-2602 has not been paid or who  
12 affixes a stamp permitted under section 77-2603 or section 25 of this  
13 act to a package of cigarettes of a tobacco product manufacturer or  
14 brand family not included in the directory pursuant to section  
15 69-2706 or who sells, offers, or possesses for sale in this state  
16 cigarettes of a tobacco product manufacturer or brand family not  
17 included in the directory shall be deemed guilty of a Class IV  
18 felony. ~~Where~~ If any person is found to have in his or her possession  
19 more than ten unstamped packages of cigarettes, except as permitted  
20 under section 77-2607, it shall be prima facie evidence of attempt to  
21 evade ~~the provisions of~~ sections 77-2601 to 77-2615 and sections 22,  
22 23, 25, and 27 of this act.

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

25                   77-2615.01 (1) In addition to ~~the provisions of~~ sections

1 77-2615 and 77-2622, for any violation of sections 77-2601 to 77-2622  
2 and sections 22, 23, 25, and 27 of this act or the rules and  
3 regulations adopted and promulgated under such sections, the Tax  
4 Commissioner may:

5 (a) After notice and hearing, suspend or revoke the  
6 licenses of any person licensed under sections 28-1420 to 28-1429 or  
7 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act.

8 Notice of hearing shall be given as provided in the Administrative  
9 Procedure Act; and

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

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

18 ~~(3)-(2)~~ No person whose license has been suspended or  
19 revoked shall sell cigarettes or permit cigarettes to be sold during  
20 the period of suspension or revocation on the premises occupied by  
21 him or her. No disciplinary proceeding or action shall be barred or  
22 abated by the expiration, transfer, surrender, continuance, renewal,  
23 or extension of any license issued under sections 28-1420 to 28-1429  
24 or 77-2601 to 77-2622 and sections 22, 23, 25, and 27 of this act.

25 ~~(4)-(3)~~ Any person aggrieved by any decision, order, or

1 finding of the Tax Commissioner may appeal the decision, order, or  
2 finding, and the appeal shall be in accordance with the  
3 Administrative Procedure Act.

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

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

14 77-2620 All cigarettes subject to the tax as imposed by  
15 section 77-2602, to which stamps have not been affixed or tax  
16 impressions made, as required by sections 77-2601 to 77-2615 and  
17 sections 22, 23, 25, and 27 of this act, except as permitted by the  
18 provisions of section 77-2607, when found in any place in this state  
19 are declared to be contraband goods and may be seized by the Tax  
20 Commissioner, by the Tax Commissioner's agents or employees, or by  
21 any peace officer of this state, when directed by the Tax  
22 Commissioner to do so, without a warrant. The Tax Commissioner may,  
23 upon satisfactory proof, direct the return of any confiscated  
24 cigarettes when he or she has reason to believe that the owner  
25 thereof has not willfully or intentionally evaded any tax imposed

1 under section 77-2602. The Tax Commissioner may, in the absence of  
2 proof of good faith, confiscate any unstamped cigarettes or  
3 cigarettes without tax impressions found in the possession of any  
4 person, except as permitted by section 77-2607. Any cigarettes  
5 forfeited to the state under this section shall be destroyed or used  
6 for law enforcement purposes and then destroyed. ~~, and may within a~~  
7 ~~reasonable time thereafter, by a public notice of at least fifteen~~  
8 ~~days before the day of sale, sell such confiscated cigarettes at~~  
9 ~~public sale and pay the proceeds into the state treasury. The State~~  
10 ~~Treasurer shall credit the proceeds as provided in section 77-2602.~~  
11 ~~Any purchaser of such cigarettes shall be required to purchase and~~  
12 ~~affix the stamps or make the tax impressions, as required by sections~~  
13 ~~77-2601 to 77-2615. The seizure and sale of any cigarettes under this~~  
14 ~~section shall not relieve any person from a fine, imprisonment, or~~  
15 ~~other penalty for violation of sections 77-2601 to 77-2615. The Tax~~  
16 ~~Commissioner, his or her agents and employees, and any peace officer~~  
17 ~~of this state, when directed so to do, shall not in any way be~~  
18 ~~responsible in any court for the seizure or the confiscation of any~~  
19 ~~unstamped packages of cigarettes or cigarettes without tax~~  
20 ~~impressions.~~

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

23           77-2622 Failure to comply with ~~the provisions of~~ section  
24 77-2621 shall be cause for revocation of the permit issued under ~~the~~  
25 ~~provisions of~~ section 77-2621 and forfeiture of the bond posted

1 pursuant to section 77-2621.

2           Sec. 39. Sections 23 and 39 of this act become operative  
3 three calendar months after the adjournment of this legislative  
4 session. The other sections of this act become operative on January  
5 1, 2013.

6           Sec. 40. Original sections 59-1520, 59-1523, 69-502,  
7 69-2702, 69-2703, 69-2705, 69-2706, 69-2707, 69-2708, 69-2709,  
8 69-2710, 69-2711, 71-7606, 77-2601, 77-2602, 77-2602.03, 77-2603,  
9 77-2604, 77-2605, 77-2607, 77-2608, 77-2610, 77-2612, 77-2613,  
10 77-2614, 77-2615, 77-2615.01, 77-2620, and 77-2622, Reissue Revised  
11 Statutes of Nebraska, are repealed.