

AMENDMENTS TO LB397

Introduced by Cavanaugh, 6.

1           1. Strike the original sections and insert the following new  
2 sections:

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

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

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

16           28-1418.01 For purposes of sections 28-1418 to 28-1429.03:

17           (1) Electronic smoking device means any device that can be used to  
18 deliver aerosolized or vaporized nicotine to the person inhaling from the  
19 device, including, but not limited to, an e-cigarette, e-cigar, e-pipe,  
20 vape pen, or e-hookah. Electronic smoking device includes any component,  
21 part, or accessory of such a device, whether or not sold separately, and  
22 includes any substance intended to be aerosolized or vaporized during the  
23 use of the device. Electronic smoking device does not include drugs,  
24 devices, or combination products authorized for sale by the United States  
25 Food and Drug Administration, as those terms are defined in the Federal  
26 Food, Drug, and Cosmetic Act;

27           ~~(1) Alternative nicotine product means any noncombustible product~~

1 ~~containing nicotine that is intended for human consumption, whether~~  
2 ~~chewed, absorbed, dissolved, or ingested by any other means. Alternative~~  
3 ~~nicotine product does not include any vapor product, cigarette, cigar, or~~  
4 ~~other tobacco product, or any product regulated as a drug or device by~~  
5 ~~the United States Food and Drug Administration under Chapter V of the~~  
6 ~~federal Food, Drug, and Cosmetic Act;~~

7 (2) Self-service display means a retail display that contains a  
8 tobacco product, ~~a tobacco derived product, a vapor product, or an~~  
9 ~~alternative nicotine product~~ and is located in an area openly accessible  
10 to a retailer's customers and from which such customers can readily  
11 access the product without the assistance of a salesperson. Self-service  
12 display does not include a display case that holds tobacco products,  
13 ~~vapor products, or alternative nicotine products behind locked doors;~~

14 (3) Tobacco product means any product that is made from or derived  
15 from tobacco, or that contains nicotine, and that is intended for human  
16 consumption or is likely to be consumed, whether smoked, heated, chewed,  
17 absorbed, dissolved, inhaled, or ingested by any other means, including,  
18 but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco,  
19 snuff, or snus. Tobacco product also means electronic smoking devices and  
20 any component or accessory used in the consumption of a tobacco product,  
21 such as filters, rolling papers, pipes, and liquids used in electronic  
22 smoking devices, whether or not they contain nicotine. Tobacco product  
23 does not include drugs, devices, or combination products authorized for  
24 sale by the United States Food and Drug Administration, as those terms  
25 are defined in the Federal Food, Drug, and Cosmetic Act; and

26 (4) ~~(3)~~ Tobacco specialty store means a retail store that (a)  
27 derives at least seventy-five percent of its revenue from tobacco  
28 products, ~~tobacco derived products, vapor products, or alternative~~  
29 nicotine products and (b) does not permit minors under the age of  
30 eighteen years to enter the premises unless accompanied by a parent or  
31 legal guardian. ~~;~~ and

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

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

17           28-1419 Whoever shall sell, give, or furnish, in any way, any  
18 tobacco product ~~in any form whatever, or any cigarettes, cigarette paper,~~  
19 ~~vapor products, or alternative nicotine products,~~ to any minor under  
20 eighteen years of age, is guilty of a Class III misdemeanor for each  
21 offense.

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

24           28-1420 It shall be unlawful for any person, partnership, limited  
25 liability company, or corporation to sell, keep for sale, or give away in  
26 course of trade, any tobacco product ~~eigars, tobacco, cigarettes, or~~  
27 ~~cigarette material~~ to anyone without first obtaining a license as  
28 provided in sections 28-1421 and 28-1422. It shall also be unlawful for  
29 any wholesaler to sell or deliver any tobacco product ~~eigars, tobacco,~~  
30 ~~cigarettes, or cigarette material~~ to any person, partnership, limited  
31 liability company, or corporation who, at the time of such sale or

1 delivery, is not the recipient of a valid tobacco license for the current  
2 year to retail the same as provided in such sections. It shall also be  
3 unlawful for any person, partnership, limited liability company, or  
4 corporation to purchase or receive, for purposes of resale, any tobacco  
5 product ~~eigars, tobacco, cigarettes, or cigarette material~~ if such  
6 person, partnership, limited liability company, or corporation is not the  
7 recipient of a valid tobacco license to retail such tobacco products at  
8 the time the same are purchased or received. Whoever shall be found  
9 guilty of violating this section shall be guilty of a Class III  
10 misdemeanor for each offense.

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

13 28-1421 Licenses for the sale of tobacco products ~~eigars, tobacco,~~  
14 ~~cigarettes, and cigarette material~~ to persons over the age of eighteen  
15 years shall be issued to individuals, partnerships, limited liability  
16 companies, and corporations by the clerk or finance director of any city  
17 or village and by the county clerk of any county upon application duly  
18 made as provided in section 28-1422. The sale of cigarettes or cigarette  
19 materials that contain perfumes or drugs in any form is prohibited and is  
20 not licensed by the provisions of this section. ~~Only cigarettes and~~  
21 ~~cigarette material containing pure white paper and pure tobacco shall be~~  
22 ~~licensed.~~

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

25 28-1423 The term for which such license shall run shall be from the  
26 date of filing such application and paying such license fee to and  
27 including December 31 of the calendar year in which application for such  
28 license is made, and the license fee for any person, partnership, limited  
29 liability company, or corporation selling at retail shall be one hundred  
30 ~~twenty-five~~ dollars ~~in cities of the metropolitan class, fifteen dollars~~  
31 ~~in cities of the primary and first classes, and ten dollars in cities of~~

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

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

28       28-1424 The license~~,~~ provided for in sections 28-1421 and 28-1422  
29 shall, when issued, shall authorize the sale of tobacco products cigars~~,~~  
30 ~~tobacco, cigarettes, and cigarette material~~ by the licensee and  
31 employees~~,~~ to persons over the age of eighteen years~~,~~ at the place of

1 business described in such license for the term therein authorized,  
2 unless the same be forfeited as provided in section 28-1425.

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

5 28-1425 Any licensee who shall sell, give, or furnish in any way to  
6 any person under the age of eighteen years, or who shall willingly allow  
7 to be taken from his or her place of business by any person under the age  
8 of eighteen years, any tobacco products ~~any cigars, tobacco, cigarettes,~~  
9 ~~cigarette material, vapor products, or alternative nicotine products~~ is  
10 guilty of a Class III misdemeanor. Any officer, director, or manager  
11 having charge or control, either separately or jointly with others, of  
12 the business of any corporation which violates sections 28-1419  
13 ~~28-1418.01~~, 28-1420 to 28-1429, and 28-1429.03, if he or she has  
14 knowledge of such violation, shall be subject to the penalties provided  
15 in this section. In addition to the penalties provided in this section,  
16 such licensee shall be subject to the additional penalty of a revocation  
17 and forfeiture of his, her, their, or its license, at the discretion of  
18 the court before whom the complaint for violation of such sections may be  
19 heard. If such license is revoked and forfeited, all rights under such  
20 license shall at once cease and terminate.

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

23 28-1427 Any person under the age of eighteen years who obtains  
24 tobacco products ~~shall obtain cigars, tobacco, cigarettes, cigarette~~  
25 ~~material, vapor products, or alternative nicotine products from a~~  
26 ~~licensee~~ by representing that he or she is of the age of eighteen years  
27 or over is guilty of a Class V misdemeanor.

28 Sec. 10. Section 28-1429.01, Reissue Revised Statutes of Nebraska,  
29 is amended to read:

30 28-1429.01 The Legislature finds that the incumbent health risks  
31 associated with smoking tobacco products have been scientifically proven.

1 The Legislature further finds that the growing number of minors who start  
2 using tobacco products ~~smoking~~ is staggering and even more abhorrent are  
3 the ages at which such children begin this deadly habit. The Legislature  
4 has established an age restriction on the use of tobacco products by  
5 minors. To ensure that the use of tobacco products among minors is  
6 discouraged to the maximum extent possible, it is the intent of the  
7 Legislature to ban the use of vending machines and similar devices to  
8 dispense tobacco products in facilities, buildings, or areas which are  
9 open to the general public within Nebraska.

10 Sec. 11. Section 28-1429.02, Reissue Revised Statutes of Nebraska,  
11 is amended to read:

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

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

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

1 provisions of this section.

2 Sec. 12. Section 28-1429.03, Reissue Revised Statutes of Nebraska,  
3 is amended to read:

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

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

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



1 assignment of rights executed pursuant to this section shall be in  
2 writing, shall have received prior approval issued in writing by the  
3 Attorney General, shall be signed by the tobacco product manufacturer or  
4 a duly authorized representative of the tobacco product manufacturer  
5 making the assignment, and shall become effective upon delivery of the  
6 assignment to the Attorney General and the financial institution where  
7 the qualified escrow fund is maintained.

8 (2) Notwithstanding subdivision (2)(b) of section 69-2703, any  
9 escrow amounts assigned to the State of Nebraska pursuant to subsection  
10 (1) of this section shall be withdrawn by the state upon request by the  
11 State Treasurer and approval by the Attorney General. Any amounts  
12 withdrawn pursuant to this subsection shall be remitted to the State  
13 Treasurer for distribution in accordance with Article VII, section 5, of  
14 the Constitution of Nebraska, and shall be calculated on a dollar-for-  
15 dollar basis as a credit against any judgment or settlement described in  
16 subdivision (2)(b) of section 69-2703 which may be obtained against the  
17 tobacco product manufacturer who has assigned the amounts in the subject  
18 qualified escrow fund. Nothing in this section shall be construed to  
19 relieve a tobacco product manufacturer from any past, current, or future  
20 obligations the manufacturer may have pursuant to sections 69-2701 to  
21 69-2711 and section 13 of this act.

22 Sec. 14. Section 68-915, Revised Statutes Cumulative Supplement,  
23 2016, as amended by section 3, Initiative Law 2018, No. 427, is amended  
24 to read:

25 68-915 The following persons shall be eligible for medical  
26 assistance:

27 (1) Dependent children as defined in section 43-504;

28 (2) Aged, blind, and disabled persons as defined in sections 68-1002  
29 to 68-1005;

30 (3) Children under nineteen years of age who are eligible under  
31 section 1905(a)(i) of the federal Social Security Act;

1 (4) Persons who are presumptively eligible as allowed under sections  
2 1920 and 1920B of the federal Social Security Act;

3 (5) Children under nineteen years of age with a family income equal  
4 to or less than two hundred fifty percent of the Office of Management and  
5 Budget income poverty guideline, as allowed under Title XIX and Title XXI  
6 of the federal Social Security Act, without regard to resources, and  
7 pregnant women with a family income equal to or less than one hundred  
8 eighty-five percent of the Office of Management and Budget income poverty  
9 guideline, as allowed under Title XIX and Title XXI of the federal Social  
10 Security Act, without regard to resources. Children described in this  
11 subdivision and subdivision (6) of this section shall remain eligible for  
12 six consecutive months from the date of initial eligibility prior to  
13 redetermination of eligibility. The department may review eligibility  
14 monthly thereafter pursuant to rules and regulations adopted and  
15 promulgated by the department. The department may determine upon such  
16 review that a child is ineligible for medical assistance if such child no  
17 longer meets eligibility standards established by the department;

18 (6) For purposes of Title XIX of the federal Social Security Act as  
19 provided in subdivision (5) of this section, children with a family  
20 income as follows:

21 (a) Equal to or less than one hundred fifty percent of the Office of  
22 Management and Budget income poverty guideline with eligible children one  
23 year of age or younger;

24 (b) Equal to or less than one hundred thirty-three percent of the  
25 Office of Management and Budget income poverty guideline with eligible  
26 children over one year of age and under six years of age; or

27 (c) Equal to or less than one hundred percent of the Office of  
28 Management and Budget income poverty guideline with eligible children six  
29 years of age or older and less than nineteen years of age;

30 (7) Persons who are medically needy caretaker relatives as allowed  
31 under 42 U.S.C. 1396d(a)(ii);

1 (8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), disabled persons  
2 as defined in section 68-1005 with a family income of less than two  
3 hundred fifty percent of the Office of Management and Budget income  
4 poverty guideline and who, but for earnings in excess of the limit  
5 established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be  
6 receiving federal Supplemental Security Income. The department shall  
7 apply for a waiver to disregard any unearned income that is contingent  
8 upon a trial work period in applying the Supplemental Security Income  
9 standard. Such disabled persons shall be subject to payment of premiums  
10 as a percentage of family income beginning at not less than two hundred  
11 percent of the Office of Management and Budget income poverty guideline.  
12 Such premiums shall be graduated based on family income and shall not be  
13 less than two percent or more than ten percent of family income;

14 (9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

15 (a) Have been screened for breast and cervical cancer under the  
16 Centers for Disease Control and Prevention breast and cervical cancer  
17 early detection program established under Title XV of the federal Public  
18 Health Service Act, 42 U.S.C. 300k et seq., in accordance with the  
19 requirements of section 1504 of such act, 42 U.S.C. 300n, and who need  
20 treatment for breast or cervical cancer, including precancerous and  
21 cancerous conditions of the breast or cervix;

22 (b) Are not otherwise covered under creditable coverage as defined  
23 in section 2701(c) of the federal Public Health Service Act, 42 U.S.C.  
24 300gg(c);

25 (c) Have not attained sixty-five years of age; and

26 (d) Are not eligible for medical assistance under any mandatory  
27 categorically needy eligibility group;

28 (10) Persons eligible for services described in subsection (3) of  
29 section 68-972; and

30 (11) Persons eligible pursuant to section 2 of this act.

31 Except as provided in section 68-972, eligibility shall be

1 determined under this section using an income budgetary methodology that  
2 determines children's eligibility at no greater than two hundred percent  
3 of the Office of Management and Budget income poverty guideline and adult  
4 eligibility using adult income standards no greater than the applicable  
5 categorical eligibility standards established pursuant to state or  
6 federal law. The department shall determine eligibility under this  
7 section pursuant to such income budgetary methodology and subdivision (1)  
8 (q) of section 68-1713.

9 Sec. 15. Section 69-2705, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 69-2705 For purposes of sections 69-2704 to 69-2711:

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

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

21 (3) Cigarette inputs means any machinery or other component parts  
22 typically used in the manufacture of cigarettes, including, without  
23 limitation, tobacco whether processed or unprocessed, cigarette papers  
24 and tubes, cigarette filters or any component parts intended for use in  
25 the making of cigarette filters, and any machinery typically used in the  
26 making of cigarettes;

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

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

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

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

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

4 (9) Master Settlement Agreement has the same meaning as in section  
5 69-2702;

6 (10) Nonparticipating manufacturer means any tobacco product  
7 manufacturer that is not a participating manufacturer;

8 (11) Nonparticipating manufacturer cigarettes means cigarettes (a)  
9 of a brand family that is not included in the certification of a  
10 participating manufacturer under subsection (1) of section 69-2706, (b)  
11 that are subject to the escrow requirement under subdivision (2) of  
12 section 69-2703 because the participating manufacturer in whose  
13 certification the brand family is included is not generally performing  
14 its financial obligations under the Master Settlement Agreement, or (c)  
15 of a brand family of a participating manufacturer that is not otherwise  
16 listed on the directory under subsection (2) of section 69-2706;

17 (12) Package means any pack or other container on which a state  
18 stamp or tribal stamp could be applied consistent with and as required by  
19 sections 69-2701 to 69-2711 and section 13 of this act and sections  
20 77-2601 to 77-2622 that contains one or more individual cigarettes for  
21 sale. Nothing in such sections shall alter any other applicable  
22 requirement with respect to the minimum number of cigarettes that may be  
23 contained in a pack or other container of cigarettes. References to  
24 package do not include a container of multiple packages;

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

27 (14) Person means any natural person, trustee, company, partnership,  
28 corporation, or other legal entity, including any Indian tribe or  
29 instrumentality thereof;

30 (15) Purchase means any acquisition in any manner or by any means  
31 for any consideration. The term includes transporting or receiving

1 product in connection with a purchase;

2 (16) Qualified escrow fund has the same meaning as in section  
3 69-2702;

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

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

9 (19) Shortfall amount means the difference between (a) the full  
10 amount of the deposit required to be made by a nonparticipating  
11 manufacturer for a calendar quarter under section 69-2703 and (b) the sum  
12 of (i) any amounts precollected by a stamping agent and deposited into  
13 escrow for that calendar quarter on behalf of the nonparticipating  
14 manufacturer under section 69-2708.01, (ii) the amount deposited into  
15 escrow by the nonparticipating manufacturer for that calendar quarter  
16 under section 69-2703, (iii) any amounts deposited into escrow for that  
17 calendar quarter under subdivision (2)(d) of section 69-2703 by an  
18 importer on such nonparticipating manufacturer's cigarettes, and (iv) any  
19 amounts collected by the state for that calendar quarter under the bond  
20 posted by the nonparticipating manufacturer under section 69-2707.01. The  
21 shortfall amount, if any, for a nonparticipating manufacturer for a  
22 calendar quarter shall be calculated by the Attorney General within  
23 fifteen days following the date on which the state determines the amount  
24 it will collect on the bond posted by the nonparticipating manufacturer  
25 as provided in section 69-2707.01;

26 (20) Stamping agent means a person that is authorized to affix  
27 stamps to packages or other containers of cigarettes under section  
28 77-2603 or 77-2603.01 or any person that is required to pay the tobacco  
29 tax imposed pursuant to section 77-4008 on roll-your-own cigarettes;

30 (21) Tax Commissioner means the Tax Commissioner of the State of  
31 Nebraska;

1 (22) Tobacco product manufacturer has the same meaning as in section  
2 69-2702;

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

4 (24) Unstamped cigarettes means any cigarettes that are not  
5 contained in a package bearing a stamp required under section 77-2603 or  
6 77-2603.01.

7 Sec. 16. Section 69-2706, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 69-2706 (1)(a) Every tobacco product manufacturer whose cigarettes  
10 are sold in this state, whether directly or through a distributor,  
11 retailer, or similar intermediary or intermediaries, shall execute and  
12 deliver on a form prescribed by the Tax Commissioner a certification to  
13 the Tax Commissioner and the Attorney General no later than the thirtieth  
14 day of April each year, certifying under penalty of perjury that, as of  
15 the date of such certification, such tobacco product manufacturer either  
16 is a participating manufacturer in compliance with subdivision (1) of  
17 section 69-2703 or is a nonparticipating manufacturer in full compliance  
18 with subdivision (2) of section 69-2703.

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

24 (c) A nonparticipating manufacturer shall include in its  
25 certification (i) a list of all of its brand families and the number of  
26 units sold for each brand family that were sold in the state during the  
27 preceding calendar year and (ii) a list of all of its brand families that  
28 have been sold in the state at any time during the current calendar year  
29 (A) indicating by an asterisk any brand family sold in the state during  
30 the preceding or current calendar year that is no longer being sold in  
31 the state as of the date of such certification and (B) identifying by

1 name and address any other manufacturer of such brand families in the  
2 preceding calendar year. The nonparticipating manufacturer shall update  
3 such list thirty calendar days prior to any addition to or modification  
4 of its brand families by executing and delivering a supplemental  
5 certification to the Tax Commissioner and the Attorney General.

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

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

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

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

18 (iv)(A) The name, address, and telephone number of the financial  
19 institution where the nonparticipating manufacturer has established such  
20 qualified escrow fund required pursuant to subdivision (2) of section  
21 69-2703 and all rules and regulations adopted and promulgated pursuant  
22 thereto; (B) the account number of such qualified escrow fund and any  
23 subaccount number for the State of Nebraska; (C) the amount such  
24 nonparticipating manufacturer placed in such fund for cigarettes sold in  
25 the state during the preceding calendar year, the dates and amount of  
26 each such deposit, and such evidence or verification as may be deemed  
27 necessary by the Attorney General to confirm the foregoing; and (D) the  
28 amounts and dates of any withdrawal or transfer of funds the  
29 nonparticipating manufacturer made at any time from such fund or from any  
30 other qualified escrow fund into which it ever made escrow payments  
31 pursuant to subdivision (2) of section 69-2703 and all rules and



1 regulations adopted and promulgated pursuant thereto;

2 (v) That such nonparticipating manufacturer consents to be sued in  
3 the district courts of the State of Nebraska for purposes of the state  
4 (A) enforcing any provision of sections 69-2703 to 69-2711 and section 13  
5 of this act and any rules and regulations adopted and promulgated  
6 thereunder or (B) bringing a released claim as defined in section  
7 69-2702; and

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

11 (e) A tobacco product manufacturer shall not include a brand family  
12 in its certification unless (i) in the case of a participating  
13 manufacturer, the participating manufacturer affirms that the brand  
14 family is to be deemed to be its cigarettes for purposes of calculating  
15 its payments under the Master Settlement Agreement for the relevant year  
16 in the volume and shares determined pursuant to the Master Settlement  
17 Agreement and (ii) in the case of a nonparticipating manufacturer, the  
18 nonparticipating manufacturer affirms that the brand family is to be  
19 deemed to be its cigarettes for purposes of subdivision (2) of section  
20 69-2703. Nothing in this section shall be construed as limiting or  
21 otherwise affecting the state's right to maintain that a brand family  
22 constitutes cigarettes of a different tobacco product manufacturer for  
23 purposes of calculating payments under the Master Settlement Agreement or  
24 for purposes of section 69-2703.

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

29 (2) The Tax Commissioner shall develop, maintain, and make available  
30 for public inspection or publish on its web site a directory listing all  
31 tobacco product manufacturers that have provided current and accurate

1 certifications conforming to the requirements of subsection (1) of this  
2 section and all brand families that are listed in such certifications,  
3 and:

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

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

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

30 (d) The Tax Commissioner shall update the directory no later than  
31 May 15 of each year to reflect certifications made on or before April 30

1 as required in subsection (1) of this section. The Tax Commissioner shall  
2 continuously update the directory as necessary in order to correct  
3 mistakes and to add or remove a tobacco product manufacturer or brand  
4 family to keep the directory in conformity with the requirements of  
5 sections 69-2704 to 69-2711;

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

21 (f) Every stamping agent shall provide and update as necessary an  
22 electronic mail address to the Tax Commissioner for the purpose of  
23 receiving any notifications as may be required by sections 69-2704 to  
24 69-2711.

25 (3) The failure of the Tax Commissioner to provide notice of any  
26 intended removal from the directory as required under subdivision (2)(e)  
27 of this section or the failure of a stamping agent to receive such notice  
28 shall not relieve the stamping agent of its obligations under sections  
29 69-2704 to 69-2711.

30 (4) It shall be unlawful for any person (a) to affix a Nebraska  
31 stamp pursuant to section 77-2603 to a package or other container of

1 cigarettes of a tobacco product manufacturer or brand family not included  
2 in the directory, (b) to affix a tribal stamp to a package or other  
3 container of cigarettes of a tobacco product manufacturer or brand family  
4 not included in the directory except as authorized by an agreement  
5 pursuant to section 77-2602.06, or (c) to sell, offer, or possess for  
6 sale in this state cigarettes of a tobacco product manufacturer or brand  
7 family in this state not included in the directory.

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

10 69-2707 (1) Any nonresident or foreign nonparticipating manufacturer  
11 that has not registered to do business in the state as a foreign  
12 corporation or business entity shall, as a condition precedent to having  
13 its brand families included or retained in the directory created in  
14 subsection (2) of section 69-2706, appoint and continually engage without  
15 interruption the services of an agent in Nebraska to act as agent for the  
16 service of process on whom all process, and any action or proceeding  
17 against it concerning or arising out of the enforcement of sections  
18 69-2703 to 69-2711 and section 13 of this act, may be served in any  
19 manner authorized by law. Such service shall constitute legal and valid  
20 service of process on the nonparticipating manufacturer. The  
21 nonparticipating manufacturer shall provide the name, address, telephone  
22 number, and proof of the appointment and availability of such agent to  
23 the Tax Commissioner and Attorney General.

24 (2) The nonparticipating manufacturer shall provide notice to the  
25 Tax Commissioner and Attorney General thirty calendar days prior to  
26 termination of the authority of an agent and shall further provide proof  
27 to the satisfaction of the Attorney General of the appointment of a new  
28 agent no less than five calendar days prior to the termination of an  
29 existing agent appointment. In the event an agent terminates an agency  
30 appointment, the nonparticipating manufacturer shall notify the Tax  
31 Commissioner and Attorney General of the termination within five calendar

1 days and shall include proof to the satisfaction of the Attorney General  
2 of the appointment of a new agent.

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

10 Sec. 18. Section 69-2707.01, Reissue Revised Statutes of Nebraska,  
11 is amended to read:

12 69-2707.01 (1) All nonparticipating manufacturers subject to the  
13 certification requirements of section 69-2706, or whose sales are  
14 authorized pursuant to an agreement under section 77-2602.06, shall post  
15 a bond, or its cash equivalent, for the benefit of the state, which is  
16 subject to execution under subsection (6) (3) of this section. The bond  
17 shall be posted by corporate surety located within the United States.  
18 The , or the cash equivalent of the bond shall be posted by the  
19 nonparticipating manufacturer in an account approved by the Attorney  
20 General state. The bond or its cash equivalent shall be posted and  
21 evidence of such posting shall be provided to the Tax Commissioner at  
22 least ten days in advance of each calendar quarter as a condition to the  
23 nonparticipating manufacturer and its brand families being included in  
24 the directory for that quarter.

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

27 (a) One hundred thousand dollars;

28 (b) The greatest required escrow amount due from the  
29 nonparticipating manufacturer, or its predecessors, successors,  
30 affiliates, importers, or stamping agents, as such terms may be defined  
31 and liabilities may be established within sections 69-2701 to 69-2711 and

1 section 13 of this act, for any of the preceding twenty calendar  
2 quarters; or

3 (c) The greatest required annual total of quarterly escrow amounts  
4 due from the nonparticipating manufacturer, or its predecessors,  
5 successors, affiliates, importers, or stamping agents, as such terms may  
6 be defined and liabilities may be established within sections 69-2701 to  
7 69-2711 and section 13 of this act, for any of the preceding five  
8 calendar years, if the Attorney General deems the nonparticipating  
9 manufacturer to pose an elevated risk for noncompliance.

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

12 (a) The nonparticipating manufacturer or its brands or brand  
13 families, or any predecessor, successor, affiliate, or importer or any of  
14 their brands or brand families, has failed to deposit fully the amount  
15 due on an escrow obligation with respect to any state at any time during  
16 the calendar year or within the preceding five calendar years unless  
17 either:

18 (i) The nonparticipating manufacturer did not underdeposit knowingly  
19 or recklessly and promptly cured the underdeposit within one hundred  
20 eighty days of notice of the underdeposit; or

21 (ii) The underdeposit or lack of deposit is the subject of a good  
22 faith dispute as documented to the satisfaction of the Attorney General  
23 and the underdeposit is cured within one hundred eighty days of entry of  
24 a final order establishing the amount of the required escrow deposit;

25 (b) Any state has removed the nonparticipating manufacturer or its  
26 brands or brand families, or any predecessor, successor, affiliate, or  
27 importer or any of their brands or brand families, from the state's  
28 tobacco directory for noncompliance with the state's escrow deposit or  
29 tobacco tax laws at any time during the calendar year or within the  
30 preceding five calendar years;

31 (c) Any state has litigation pending against, or an unsatisfied

1 final judgment against, the nonparticipating manufacturer or its brands  
2 or brand families, or any predecessor, successor, affiliate, or importer  
3 or any of their brands or brand families, for escrow or for penalties,  
4 fees, costs, refunds, or attorney's fees related to noncompliance with  
5 state escrow laws;

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

9 (e) A state or federal court determines that the nonparticipating  
10 manufacturer, or any predecessor, successor, or affiliate, has violated  
11 any tobacco tax or tobacco control law or engaged in unfair business  
12 practices or unfair competition;

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

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

21 (h) The nonparticipating manufacturer fails to submit or complete  
22 any required forms, documents, certification, or notices, in a timely  
23 manner or to the satisfaction of the Attorney General or Tax  
24 Commissioner.

25 (4) A nonparticipating manufacturer shall post the bond or its cash  
26 equivalent and shall provide evidence of such posting to the Attorney  
27 General and Tax Commissioner both annually, as required by section  
28 69-2706, and at least ten days in advance of each calendar quarter as a  
29 condition to the nonparticipating manufacturer and its brands or brand  
30 families being included in the directory.

31 (a) Unless subdivision (c) of this subsection is applicable, for a

1 ~~nonparticipating manufacturer or its affiliates which have been listed on~~  
2 ~~any state's directory for at least three years or for any~~  
3 ~~nonparticipating manufacturer whose sales are authorized pursuant to an~~  
4 ~~agreement under section 77-2602.06, the amount of the bond required shall~~  
5 ~~be twenty five thousand dollars;~~

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

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

21 (6) (3) If a nonparticipating manufacturer that posted a bond  
22 pursuant to this section has failed to make, or have made on its behalf  
23 by an entity with joint and several liability, escrow deposits equal to  
24 the full amount owed for a quarter within fifteen days following the due  
25 date for the quarter under section 69-2703, the state may execute upon  
26 the bond, first to recover delinquent escrow, which amount shall be  
27 deposited into a qualified escrow account under section 69-2703, and then  
28 to recover civil penalties and costs authorized under such section.  
29 Escrow obligations above the amount collected on the bond remain due from  
30 that nonparticipating manufacturer and, as provided in subdivision (2)(d)  
31 of section 69-2703 and section 69-2708.01, from the importers and



1 stamping agents that sold its cigarettes during that calendar quarter.

2 Sec. 19. Section 69-2709, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 69-2709 (1) In addition to or in lieu of any other civil or criminal  
5 remedy provided by law, upon a determination that a stamping agent has  
6 violated subsection (4) of section 69-2706 or any rule or regulation  
7 adopted and promulgated pursuant thereto, the Tax Commissioner may revoke  
8 or suspend the license of any stamping agent in the manner provided by  
9 section 77-2615.01. For each violation of subsection (4) of section  
10 69-2706 or the rules and regulations, the Tax Commissioner may also  
11 impose a civil penalty in an amount not to exceed the greater of five  
12 hundred percent of the retail value of the cigarettes or five thousand  
13 dollars upon a determination of violation of subsection (4) of section  
14 69-2706 or any rules or regulations adopted and promulgated pursuant  
15 thereto. Such penalty shall be imposed in the manner provided by section  
16 77-2615.01.

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

19 (a) Fails to provide a report required under section 69-2708,  
20 69-2710.01, or 77-2604.01;

21 (b) Files an incomplete or inaccurate report required under section  
22 69-2708, 69-2710.01, or 77-2604.01 or files an inaccurate certification  
23 required under section 69-2708, subsection (2) of section 77-2603, or  
24 section 69-2710.01;

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

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

31 (e) Sells unstamped cigarettes in, into, or from the state or

1 possesses unstamped cigarettes in the state except as provided in section  
2 77-2607;

3 (f) Purchases, sells in or into the state, or affixes a stamp to a  
4 package containing cigarettes of a manufacturer or brand family that is  
5 not at the time listed in the directory, or possesses such cigarettes  
6 more than ten days after receiving notice that the manufacturer or brand  
7 family is not in the directory, unless such stamping agent possesses a  
8 directory license under section 77-2603 or unless expressly permitted  
9 under sections 69-2701 to 69-2711 and section 13 of this act or sections  
10 77-2601 to 77-2622; or

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

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

19 (4) In the case of a knowing or intentional violation under  
20 subdivision (2)(a), (b), (c), or (d) of this section, or of any violation  
21 described in subdivision (2)(e) or (f) of this section, the stamping  
22 agent shall for a first violation be subject to a civil penalty of up to  
23 one thousand dollars and be guilty of a Class IV misdemeanor and for a  
24 second or subsequent violation be subject to a civil penalty of up to  
25 five thousand dollars per violation and be guilty of a Class II  
26 misdemeanor. In the case of violations described in subdivision (2)(d),  
27 (e), or (f) of this section, each sale constitutes a separate offense.

28 (5) The Tax Commissioner shall promptly remove any stamping agent  
29 whose license is terminated from the list required by subsection (4) of  
30 section 77-2603 and shall publish a notice of the termination on the Tax  
31 Commissioner's web site and send notice of the termination to all

1 stamping agents and to all persons listed in the directory. Beginning ten  
2 days following the publication and sending of such notice, no person may  
3 sell cigarettes to, or purchase cigarettes from, the stamping agent whose  
4 license has been terminated.

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

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

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

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

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

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

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

27 (8) Any cigarettes that have been sold, offered for sale, or  
28 possessed for sale in this state in violation of subsection (4) of  
29 section 69-2706 shall be deemed contraband under section 77-2620 and such  
30 cigarettes shall be subject to seizure and forfeiture as provided in  
31 section 77-2620, except that all such cigarettes so seized and forfeited

1 shall be destroyed and not resold. The stamping agent shall notify its  
2 customers for a brand family with regard to any notice of removal of a  
3 tobacco product manufacturer or a brand family from the directory and  
4 give its customers a seven-day period for the return of cigarettes that  
5 become contraband.

6 (9) The Attorney General, on behalf of the Tax Commissioner, may  
7 seek an injunction to restrain a threatened or actual violation of  
8 subsection (4) of section 69-2706 or section 69-2708 by a stamping agent  
9 and to compel the stamping agent to comply with subsection (4) of section  
10 69-2706 or section 69-2708. In any action brought pursuant to this  
11 section, the state shall be entitled to recover the costs of  
12 investigation, costs of the action, and reasonable attorney's fees. This  
13 subsection shall not apply to a stamping agent purchasing cigarettes  
14 which are not in violation of subsection (4) of section 69-2706 or  
15 section 69-2708.

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

22 (11) If a court determines that a person has violated any portion of  
23 sections 69-2704 to 69-2711, the court shall order the payment of any  
24 profits, gains, gross receipts, or other benefits from the violation to  
25 be remitted to the State Treasurer for distribution in accordance with  
26 Article VII, section 5, of the Constitution of Nebraska. Unless otherwise  
27 expressly provided, the remedies or penalties provided by sections  
28 69-2704 to 69-2711 are cumulative to each other and to the remedies or  
29 penalties available under all applicable laws of this state.

30 (12) It is unlawful for any manufacturer, importer, or stamping  
31 agent to knowingly submit any false information required pursuant to

1 sections 69-2703 to 69-2711 and section 13 of this act. A violation of  
2 this subsection is a Class IV felony. Knowing submission of false  
3 information shall also be grounds for removal of a tobacco product  
4 manufacturer from the directory.

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

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

17 (15) Any person that is not a stamping agent or tobacco product  
18 manufacturer that fails to file a complete and accurate report required  
19 under section 69-2708, 69-2710.01, 77-2604, or 77-2604.01 shall be  
20 entitled to cure the failure within ten days after receipt of notice of  
21 the discrepancy from the Attorney General pursuant to section 69-2708.01.  
22 If the person fails to fully cure the failure within such period, it  
23 shall be subject to a civil penalty of up to one thousand dollars per  
24 violation and shall be ineligible to hold any license of the state  
25 regarding cigarette sales until the date specified by subsection (7) of  
26 this section for violations of subdivision (2)(a) of this section.

27 (16) A directory license shall be subject to termination if the  
28 licensee acts inconsistently with its certification under subsection (2)  
29 of section 77-2603 or violates sections 69-2701 to 69-2711 and section 13  
30 of this act.

31 (17) Any person that knowingly or intentionally purchases or sells

1 cigarettes in violation of subsection (5) of this section or section  
2 69-2710.01 or that knowingly or intentionally sells cigarettes in or into  
3 the state in a package that bears a stamp required under section 77-2603  
4 or 77-2603.01 that is not the correct stamp and provides for a lower  
5 level of tax than the correct stamp shall for a first violation be  
6 subject to a civil penalty of up to one thousand dollars and be guilty of  
7 a Class IV misdemeanor and for a second or subsequent violation be  
8 subject to a civil penalty of up to five thousand dollars per violation  
9 and be guilty of a Class II misdemeanor. Each sale constitutes a separate  
10 violation.

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

13 69-2710 (1) Before any tobacco product manufacturer may be removed  
14 from the directory, the Tax Commissioner shall provide the tobacco  
15 product manufacturer thirty days' notice of the intended action and shall  
16 post the notice in the directory. The tobacco product manufacturer shall  
17 have thirty days to come into compliance with sections 69-2703 to 69-2711  
18 and section 13 of this act or, in the alternative, secure a temporary  
19 injunction against removal in the district court of Lancaster County. For  
20 purposes of the temporary injunction sought pursuant to this subsection,  
21 loss of the ability to sell tobacco products as a result of removal from  
22 the directory shall constitute irreparable harm. If after thirty days the  
23 tobacco product manufacturer remains in noncompliance and has not  
24 obtained a temporary injunction pursuant to this subsection, the tobacco  
25 product manufacturer shall be removed from the directory.

26 (2) If the Tax Commissioner determines that a tobacco product  
27 manufacturer shall not be included in the directory, such manufacturer  
28 may request a contested case before the Tax Commissioner under the  
29 Administrative Procedure Act. The Tax Commissioner shall notify the  
30 tobacco product manufacturer in writing of the determination not to  
31 include it in the directory. A request for hearing shall be made within

1 thirty calendar days after the date of the determination that the  
2 manufacturer shall not be included in the directory and shall contain the  
3 evidence supporting the manufacturer's compliance with sections 69-2703  
4 to 69-2711 and section 13 of this act. The hearing shall be held within  
5 sixty days after the request. At the hearing, the Tax Commissioner shall  
6 determine whether the tobacco product manufacturer is in compliance with  
7 sections 69-2703 to 69-2711 and section 13 of this act and whether the  
8 manufacturer should be listed in the directory. A final decision shall be  
9 rendered within thirty days after the hearing. Any decision of the Tax  
10 Commissioner may be appealed. The appeal shall be in accordance with the  
11 Administrative Procedure Act.

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

14 69-2710.01 (1) Any person that during a month acquired, purchased,  
15 sold, possessed, transferred, transported, or caused to be transported in  
16 or into this state cigarettes of a tobacco product manufacturer or brand  
17 family that was not in the directory at the time shall, within fifteen  
18 days following the end of that month, file a report in the manner  
19 prescribed by the Tax Commissioner and certify to the state that the  
20 report is complete and accurate. The report shall contain, in addition to  
21 any further information that the Tax Commissioner may reasonably require  
22 to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711  
23 and section 13 of this act and sections 77-2601 to 77-2622 and the  
24 Tobacco Products Tax Act, the following information:

25 (a) The total number of those cigarettes, in each case identifying  
26 by name and number of cigarettes (i) the manufacturers of those  
27 cigarettes, (ii) the brand families of those cigarettes, (iii) in the  
28 case of a sale or transfer, the name and address of the recipient of  
29 those cigarettes, (iv) in the case of an acquisition or purchase, the  
30 name and address of the seller or sender of those cigarettes, and (v) the  
31 other states in whose directory the manufacturer and brand family of

1 those cigarettes were listed at the time and whose stamps the person is  
2 authorized to affix; and

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

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

22 Sec. 22. Section 69-2710.03, Reissue Revised Statutes of Nebraska,  
23 is amended to read:

24 69-2710.03 The Tax Commissioner may adopt and promulgate rules and  
25 regulations necessary to effect the purposes of sections 69-2703 to  
26 69-2711 and section 13 of this act.

27 Sec. 23. Section 71-7611, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 71-7611 (1) The Nebraska Health Care Cash Fund is created. The State  
30 Treasurer shall transfer (a) sixty million three hundred thousand dollars  
31 on or before July 15, 2014, (b) sixty million three hundred fifty



1 thousand dollars on or before July 15, 2015, (c) sixty million three  
2 hundred fifty thousand dollars on or before July 15, 2016, (d) sixty  
3 million seven hundred thousand dollars on or before July 15, 2017, (e)  
4 five hundred thousand dollars on or before May 15, 2018, (f) sixty-one  
5 million six hundred thousand dollars on or before July 15, 2018, (g)  
6 sixty-one million three hundred fifty thousand dollars on or before July  
7 15, 2019, and (h) sixty million four hundred fifty thousand dollars on or  
8 before every July 15 thereafter from the Nebraska Medicaid  
9 Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust  
10 Fund to the Nebraska Health Care Cash Fund, except that such amount shall  
11 be reduced by the amount of the unobligated balance in the Nebraska  
12 Health Care Cash Fund at the time the transfer is made. The state  
13 investment officer shall advise the State Treasurer on the amounts to be  
14 transferred first from the Nebraska Medicaid Intergovernmental Trust Fund  
15 until the fund balance is depleted and from the Nebraska Tobacco  
16 Settlement Trust Fund thereafter in order to sustain such transfers in  
17 perpetuity. The state investment officer shall report electronically to  
18 the Legislature on or before October 1 of every even-numbered year on the  
19 sustainability of such transfers. The Nebraska Health Care Cash Fund  
20 shall also include money received pursuant to section 77-2602. Except as  
21 otherwise provided by law, no more than the amounts specified in this  
22 subsection may be appropriated or transferred from the Nebraska Health  
23 Care Cash Fund in any fiscal year.

24 The State Treasurer shall transfer ten million dollars from the  
25 Nebraska Medicaid Intergovernmental Trust Fund to the General Fund on  
26 June 28, 2018, and June 28, 2019.

27 It is the intent of the Legislature that no additional programs are  
28 funded through the Nebraska Health Care Cash Fund until funding for all  
29 programs with an appropriation from the fund during FY2012-13 are  
30 restored to their FY2012-13 levels.

31 (2) Any money in the Nebraska Health Care Cash Fund available for

1 investment shall be invested by the state investment officer pursuant to  
2 the Nebraska Capital Expansion Act and the Nebraska State Funds  
3 Investment Act.

4 (3) The University of Nebraska and postsecondary educational  
5 institutions having colleges of medicine in Nebraska and their affiliated  
6 research hospitals in Nebraska, as a condition of receiving any funds  
7 appropriated or transferred from the Nebraska Health Care Cash Fund,  
8 shall not discriminate against any person on the basis of sexual  
9 orientation.

10 (4) The State Treasurer shall transfer fifty thousand dollars on or  
11 before July 15, 2016, from the Nebraska Health Care Cash Fund to the  
12 Board of Regents of the University of Nebraska for the University of  
13 Nebraska Medical Center. It is the intent of the Legislature that these  
14 funds be used by the College of Public Health for workforce training.

15 (5) It is the intent of the Legislature that the cost of the staff  
16 and operating costs necessary to carry out the changes made by Laws 2018,  
17 LB439, and not covered by fees or federal funds shall be funded from the  
18 Nebraska Health Care Cash Fund for fiscal years 2018-19 and 2019-20.

19 (6)(a) Beginning with fiscal year 2020-21, and every fiscal year  
20 thereafter, one dollar of the one dollar and sixty-four cents special  
21 privilege tax under subsection (1) of section 77-2602 shall be  
22 distributed as follows:

- 23 (i) Thirty-six percent to the Property Tax Credit Cash Fund;  
24 (ii) Thirty-five percent for medicaid expansion;  
25 (iii) Fifteen percent to the University of Nebraska Medical Center  
26 and the Creighton University Medical Center for cancer research;  
27 (iv) Five percent for the Tobacco Prevention and Control Program;  
28 (v) Five percent for addiction treatment services; and  
29 (vi) Four percent to the Nebraska Health Care Cash Fund.

30 Sec. 24. Section 77-2601, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           77-2601 For purposes of sections 77-2601 to 77-2615:

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

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

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

13          (4) Tax Commissioner means the Tax Commissioner of the State of  
14 Nebraska;

15          (5) Cigarette means any product that contains nicotine, is intended  
16 to be burned or heated under ordinary conditions of use, and consists of  
17 or contains (a) any roll of tobacco wrapped in paper or in any substance  
18 not containing tobacco; (b) tobacco, in any form, that is functional in  
19 the product, which, because of its appearance, the type of tobacco used  
20 in the filler, or its packaging and labeling, is likely to be offered to,  
21 or purchased by, consumers as a cigarette; or (c) any roll of tobacco  
22 wrapped in any substance containing tobacco which, because of its  
23 appearance, the type of tobacco used in the filler, or its packaging or  
24 labeling, is likely to be offered to or purchased by consumers as a  
25 cigarette described in subdivision (5)(a) of this section ~~roll for~~  
26 ~~smoking made wholly or in part of tobacco irrespective of size or shape~~  
27 ~~and whether or not such tobacco is flavored, adulterated, or mixed with~~  
28 ~~any other ingredient, the wrapper or cover of which is made of paper or~~  
29 ~~any other material excepting tobacco;~~

30          (6) Consumer means any person, firm, association, partnership,  
31 limited liability company, joint-stock company, syndicate, or corporation

1 not having a license to sell cigarettes;

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

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

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

17 Sec. 25. Section 77-2602, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 77-2602 (1) Every stamping agent engaged in distributing or selling  
20 cigarettes at wholesale in this state shall pay to the Tax Commissioner  
21 of this state a special privilege tax. This shall be in addition to all  
22 other taxes. It shall be paid prior to or at the time of the sale, gift,  
23 or delivery to the retail dealer in the several amounts as follows: On  
24 each package of cigarettes containing not more than twenty cigarettes,  
25 one dollar and sixty-four cents per package; and on packages containing  
26 more than twenty cigarettes, the same tax as provided on packages  
27 containing not more than twenty cigarettes for the first twenty  
28 cigarettes in each package and a tax of one-twentieth of the tax on the  
29 first twenty cigarettes on each cigarette in excess of twenty cigarettes  
30 in each package.

31 (2) Beginning October 1, 2004, the State Treasurer shall place the

1 equivalent of forty-nine cents of such tax in the General Fund. The State  
2 Treasurer shall reduce the amount placed in the General Fund under this  
3 subsection by the amount prescribed in subdivision (3)(d) of this  
4 section. For purposes of this section, the equivalent of a specified  
5 number of cents of the tax shall mean that portion of the proceeds of the  
6 tax equal to the specified number divided by the tax rate per package of  
7 cigarettes containing not more than twenty cigarettes.

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

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

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

25 (c) Third, beginning October 1, 2002, and continuing until all the  
26 purposes of the Deferred Building Renewal Act have been fulfilled, the  
27 State Treasurer shall place the equivalent of seven cents of such tax in  
28 the Building Renewal Allocation Fund. The distribution under this  
29 subdivision shall not be less than the amount distributed under this  
30 subdivision for FY1997-98. Any money needed to increase the amount  
31 distributed under this subdivision to the FY1997-98 amount shall reduce

1 the distribution to the General Fund;

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

8 (e) Fifth, beginning July 1, 2001, and continuing until June 30,  
9 2008, the State Treasurer shall place the equivalent of two cents of such  
10 tax in the Information Technology Infrastructure Fund. The distribution  
11 under this subdivision shall not be less than two million fifty thousand  
12 dollars. Any money needed to increase the amount distributed under this  
13 subdivision to two million fifty thousand dollars shall reduce the  
14 distribution to the General Fund;

15 (f) Sixth, beginning July 1, 2001, and continuing until June 30,  
16 2016, the State Treasurer shall place one million dollars each fiscal  
17 year in the City of the Primary Class Development Fund. If necessary, the  
18 State Treasurer shall reduce the distribution of tax proceeds to the  
19 General Fund pursuant to subsection (2) of this section by such amount  
20 required to fulfill the one million dollars to be distributed pursuant to  
21 this subdivision;

22 (g) Seventh, beginning July 1, 2001, and continuing until June 30,  
23 2016, the State Treasurer shall place one million five hundred thousand  
24 dollars each fiscal year in the City of the Metropolitan Class  
25 Development Fund. If necessary, the State Treasurer shall reduce the  
26 distribution of tax proceeds to the General Fund pursuant to subsection  
27 (2) of this section by such amount required to fulfill the one million  
28 five hundred thousand dollars to be distributed pursuant to this  
29 subdivision;

30 (h) Eighth, beginning July 1, 2008, and continuing until June 30,  
31 2009, the State Treasurer shall place the equivalent of two million fifty

1 thousand dollars of such tax in the Nebraska Public Safety Communication  
2 System Cash Fund. Beginning July 1, 2009, and continuing until June 30,  
3 2016, the State Treasurer shall place the equivalent of two million five  
4 hundred seventy thousand dollars of such tax in the Nebraska Public  
5 Safety Communication System Cash Fund. Beginning July 1, 2016, and every  
6 fiscal year thereafter, the State Treasurer shall place the equivalent of  
7 three million eight hundred twenty thousand dollars of such tax in the  
8 Nebraska Public Safety Communication System Cash Fund. If necessary, the  
9 State Treasurer shall reduce the distribution of tax proceeds to the  
10 General Fund pursuant to subsection (2) of this section by such amount  
11 required to fulfill the distribution pursuant to this subdivision; and

12 (i) Ninth, beginning July 1, ~~2020~~ 2016, and every fiscal year  
13 thereafter, the State Treasurer shall place the equivalent of forty-seven  
14 million four hundred ~~one million two hundred fifty~~ thousand dollars of  
15 such tax in the Nebraska Health Care Cash Fund. In addition, the State  
16 Treasurer shall place the equivalent of thirteen million dollars of such  
17 tax in the Nebraska Health Care Cash Fund to ensure future sustainability  
18 of the fund. If necessary, the State Treasurer shall reduce the  
19 distribution of tax proceeds to the General Fund pursuant to subsection  
20 (2) of this section by such amount required to fulfill the distribution  
21 pursuant to this subdivision.

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

26 (5) The Legislature hereby finds and determines that the projects  
27 funded from the Municipal Infrastructure Redevelopment Fund and the  
28 Building Renewal Allocation Fund are of critical importance to the State  
29 of Nebraska. It is the intent of the Legislature that the allocations and  
30 appropriations made by the Legislature to such funds or, in the case of  
31 allocations for the Municipal Infrastructure Redevelopment Fund, to the

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

20 Sec. 26. Section 77-2603, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 77-2603 (1) The tax, as levied in section 77-2602, shall be paid and  
23 stamps or cigarette tax meter impressions shall be affixed or printed  
24 with a cigarette tax meter by the person having possession and ownership  
25 of such cigarettes after the same shall have come to rest in this state  
26 and intended to be sold or given away in this state. Nothing in sections  
27 77-2601 to 77-2615 shall be construed to require a stamping agent to fix  
28 the retail price or to require any retail dealer to sell at any  
29 particular price. Subject to such rules and regulations as the Tax  
30 Commissioner shall prescribe, tax meter machines may be used when  
31 approved by the Tax Commissioner to affix a suitable stamp or impression



1 on each package of cigarettes and cigarettes with a tax meter impression  
2 shall be treated as stamped cigarettes for purposes of sections 69-2701  
3 to 69-2711 and section 13 of this act and sections 77-2601 to 77-2615.  
4 Before any person is issued a license to affix stamps or cigarette tax  
5 meter impressions, the person shall make application to become licensed  
6 as a stamping agent to the Tax Commissioner on a form provided by the Tax  
7 Commissioner to engage in such activity.

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

13 (a) Meeting all requirements of sections 69-2701 to 69-2711 and  
14 section 13 of this act and sections 77-2601 to 77-2615 and rules and  
15 regulations pursuant to such sections;

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

18 (c) In the case of an applicant located outside of the state,  
19 designating an agent for service of process in Nebraska, and providing  
20 notice thereof as required by section 69-2707, in connection with  
21 enforcement of sections 69-2701 to 69-2711 and section 13 of this act and  
22 sections 77-2601 to 77-2615, and, if approval is given by the Tax  
23 Commissioner, the manufacturer, importer, sales entity affiliate,  
24 wholesale dealer, or retail dealer shall furnish a corporate surety bond,  
25 conditioned to faithfully comply with all the requirements of sections  
26 77-2601 to 77-2615, in a sum not less than ten thousand dollars. Such  
27 bond shall be subject to forfeiture if the stamping agent fails to pay  
28 the shortfall amount under subsection (1) of section 69-2708.01 unless  
29 the stamping agent is excused from liability under subsection (3) of  
30 section 69-2708.01.

31 (3) Nothing in sections 77-2601 to 77-2615 shall prevent the Tax

1 Commissioner from affixing the stamps or meter impressions in lieu of the  
2 provisions for affixing stamps and meter impressions by stamping agents  
3 as determined by such rules and regulations adopted by the Tax  
4 Commissioner.

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

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

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

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

31 Sec. 27. Section 77-4001, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 77-4001 Sections 77-4001 to 77-4025 and section 29 of this act shall  
3 be known and may be cited as the Tobacco Products Tax Act.

4 Sec. 28. Section 77-4007, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 77-4007 (1) Tobacco product means:

7 (a) Any product that is made from or derived from tobacco, or that  
8 contains nicotine, that is intended for human consumption or is likely to  
9 be consumed, whether smoked, heated, chewed, absorbed, dissolved,  
10 inhaled, or ingested by any other means, including, but not limited to, a  
11 cigar, pipe tobacco, chewing tobacco, snuff, or snus; and

12 (b) Electronic smoking devices and any component or accessory used  
13 in the consumption of a tobacco product, such as filters, rolling papers,  
14 pipes, and substances used in electronic smoking devices, whether or not  
15 they contain nicotine.

16 (2) Tobacco product does not include:

17 (a) Cigarettes as defined in section 77-2601; or

18 (b) Drugs, devices, or combination products authorized for sale by  
19 the federal Food and Drug Administration, as those terms are defined in  
20 the Federal Food, Drug and Cosmetic Act.

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

30 Sec. 29. (1) Electronic smoking device means any device that can be  
31 used to deliver aerosolized or vaporized nicotine to the person inhaling

1 from the device, including, but not limited to, an e-cigarette, e-cigar,  
2 e-pipe, vape pen, or e-hookah. Electronic smoking device includes any  
3 component, part, or accessory of such a device, whether or not sold  
4 separately, and includes any substance intended to be aerosolized or  
5 vaporized during the use of the device.

6 (2) Electronic smoking device does not include:

7 (a) Any battery or battery charger when sold separately; or

8 (b) Drugs, devices, or combination products authorized for sale by  
9 the federal Food and Drug Administration, as those terms are defined in  
10 the Federal Food, Drug and Cosmetic Act.

11 Sec. 30. Section 77-4008, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 77-4008 (1)(a) A tax is hereby imposed upon the first owner of  
14 tobacco products to be sold in this state.

15 (b) The tax on snuff shall be sixty-five percent of (i) the purchase  
16 price of such tobacco products paid by the first owner or (ii) the price  
17 at which a first owner who made, manufactured, or fabricated the tobacco  
18 products sells the items to others, except for any snuff whose applicable  
19 tax per one and two-tenths ounces net weight of product is less than the  
20 cigarette tax as provided in section 77-2602, the tax on snuff shall be  
21 the same as the cigarette tax provided in section 77-2602 ~~forty-four~~  
22 ~~cents per ounce and a proportionate tax at the like rate on all~~  
23 ~~fractional parts of an ounce.~~ Such tax shall be computed based on the net  
24 weight as listed by the manufacturer.

25 (c) The tax on tobacco products other than snuff shall be sixty-five  
26 ~~twenty~~ percent of (i) the purchase price of such tobacco products paid by  
27 the first owner or (ii) the price at which a first owner who made,  
28 manufactured, or fabricated the tobacco product sells the items to  
29 others.

30 (d) The tax on tobacco products shall be in addition to all other  
31 taxes.

1           (2) Whenever any person who is licensed under section 77-4009  
2 purchases tobacco products from another person licensed under section  
3 77-4009, the seller shall be liable for the payment of the tax.

4           (3) Amounts collected pursuant to this section shall be used and  
5 distributed pursuant to section 77-4025.

6           Sec. 31. Original sections 28-1418, 28-1418.01, 28-1419, 28-1420,  
7 28-1421, 28-1423, 28-1424, 28-1425, 28-1427, 28-1429.01, 28-1429.02,  
8 28-1429.03, 69-2705, 69-2706, 69-2707, 69-2707.01, 69-2709, 69-2710,  
9 69-2710.01, 69-2710.03, 71-7611, 77-2601, 77-2602, 77-2603, 77-4001,  
10 77-4007, and 77-4008, Reissue Revised Statutes of Nebraska, and section  
11 68-915, Revised Statutes Cumulative Supplement, 2016, as amended by  
12 section 3, Initiative Law 2018, No. 427, are repealed.