

ENGROSSED LEGISLATIVE BILL 9

Introduced by Hughes, 24.

A BILL FOR AN ACT relating to tobacco and related products; to amend sections 77-2604, 77-2612, 77-2615.01, and 77-4015, Reissue Revised Statutes of Nebraska, and sections 28-1418.01, 59-1523, 69-2705, 69-2709, 69-2710.01, 77-4001, 77-4002, 77-4003.01, 77-4007, and 77-4008, Revised Statutes Cumulative Supplement, 2024; to define and redefine terms relating to nicotine and nicotine analogues; to provide for regulation of alternative nicotine products and electronic nicotine delivery systems containing nicotine analogues; to change provisions relating to notices of deficiency determinations for certain cigarette taxes and under the Tobacco Products Tax Act; to provide for taxation of alternative nicotine products, sanctions, and administrative penalties under the Tobacco Products Tax Act, to declare tobacco products involved in violations of the act to be contraband and provide for their forfeiture, seizure, and disposal; to provide for immunity; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 28-1418.01, Revised Statutes Cumulative Supplement, 2024, is amended to read:

28-1418.01 For purposes of sections 28-1418 to 28-1429.07:

(1) Alternative nicotine product means any noncombustible product containing nicotine or a nicotine analogue that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any electronic nicotine delivery system, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

(2) Cigarette means any product that contains nicotine, is intended to be

burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (b) tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette, or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (2)(a) of this section;

(3) Delivery sale means to sell, give, or furnish products (a) by mail or delivery service, (b) through the Internet or a computer network, (c) by telephone, or (d) through any other electronic method;

(4)(a) Electronic nicotine delivery system means any product or device containing nicotine, a nicotine analogue, tobacco, or tobacco derivatives that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to simulate smoking by delivering the nicotine, nicotine analogue, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form to a person inhaling from the product or device.

(b) Electronic nicotine delivery system includes, but is not limited to, the following:

(i) Any substance containing nicotine, a nicotine analogue, tobacco, or tobacco derivatives, whether sold separately or sold in combination with a product or device that is intended to deliver to a person nicotine, nicotine analogue, tobacco, or tobacco derivatives in vapor, fog, mist, gas, or aerosol form;

(ii) Any product or device marketed, manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or similar products, names, descriptors, or devices; and

(iii) Any component, part, or accessory of such a product or device that

is used during operation of the product or device when sold in combination with any substance containing nicotine, a nicotine analogue, tobacco, or tobacco derivatives.

(c) Electronic nicotine delivery system does not include the following:

(i) An alternative nicotine product, cigarette, cigar, or other tobacco product, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(ii) Any component, part, or accessory of such a product or device that is used during operation of the product or device when not sold in combination with any substance containing nicotine, a nicotine analogue, tobacco, or tobacco derivatives;

(5) Nicotine analogue means a substance that has:

(a) A chemical structure substantially similar to nicotine; or

(b) An effect on the central nervous system that is substantially similar to, or greater than, the effect on the central nervous system of nicotine;

(6) Self-service display means a retail display that contains a tobacco product, a tobacco-derived product, an electronic nicotine delivery system, or an alternative nicotine product and is located in an area openly accessible to a retailer's customers and from which such customers can readily access the product without the assistance of a salesperson. Self-service display does not include a display case that holds tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products behind locked doors; and

(7) Tobacco specialty store means a retail store that (a) derives at least seventy-five percent of its revenue from tobacco products, tobacco-derived products, electronic nicotine delivery systems, or alternative nicotine products and (b) does not permit persons under the age of twenty-one years to enter the premises unless accompanied by a parent or legal guardian.

Sec. 2. Section 59-1523, Revised Statutes Cumulative Supplement, 2024, is amended to read:

59-1523 (1) The cigarette tax division of the Tax Commissioner may, after notice and hearing, revoke or suspend for any violation of section 59-1520 the:

(a) License or licenses of any person licensed under sections 28-1418 to 28-1429.07 or sections 77-2601 to 77-2622 and section 6 of this act; or

(b) License or certification of any person licensed or certified under the Tobacco Products Tax Act.

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

Sec. 3. Section 69-2705, Revised Statutes Cumulative Supplement, 2024, is amended to read:

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

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

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

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

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

(5) Directory means the directory compiled by the Tax Commissioner under section 69-2706 or, in the case of references to another state's directory, the

directory compiled under the similar law in that other state;

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

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

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

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

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

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

(12) Package means any pack or other container on which a state stamp or tribal stamp could be applied consistent with and as required by sections 69-2701 to 69-2711 and 77-2601 to 77-2622 and section 6 of this act that contains one or more individual cigarettes for sale. Nothing in such sections shall alter any other applicable requirement with respect to the minimum number of cigarettes that may be contained in a pack or other container of cigarettes. References to package do not include a container of multiple packages;

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

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

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

connection with a purchase;

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

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

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

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

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

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

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

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

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

Sec. 4. Section 69-2709, Revised Statutes Cumulative Supplement, 2024, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(6) If a stamping agent whose license has been terminated is a tobacco

product manufacturer, the tobacco product manufacturer and its brand families shall be removed from the directory.

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

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

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

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

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

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

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

(9) The Attorney General, on behalf of the Tax Commissioner, may seek an

injunction to restrain a threatened or actual violation of subsection (4) of section 69-2706 or section 69-2708 by a stamping agent and to compel the stamping agent to comply with subsection (4) of section 69-2706 or section 69-2708. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees. This subsection shall not apply to a stamping agent purchasing cigarettes which are not in violation of subsection (4) of section 69-2706 or section 69-2708.

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

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

(12) It is unlawful for any manufacturer, importer, or stamping agent to knowingly submit any false information required pursuant to sections 69-2703 to 69-2711. A violation of this subsection is a Class IV felony. Knowing submission of false information shall also be grounds for removal of a tobacco product manufacturer from the directory.

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

(14) A nonparticipating manufacturer whose total nationwide reported sales on which federal excise tax is paid exceed the sum of its nationwide reports

under 15 U.S.C. 375 et seq. and any intrastate sales reports under 15 U.S.C. 375 et seq. by more than five percent of its total sales or one million cigarettes, whichever is less, shall be subject to removal from the directory unless it cures or satisfactorily explains the discrepancy within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01.

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

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

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

Sec. 5. Section 69-2710.01, Revised Statutes Cumulative Supplement, 2024, is amended to read:

69-2710.01 (1) Any person that during a month acquired, purchased, sold, possessed, transferred, transported, or caused to be transported in or into this state cigarettes of a tobacco product manufacturer or brand family that was not in the directory at the time shall, within fifteen days following the end of that month, file a report in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate. The report shall contain, in addition to any further information that the Tax Commissioner may reasonably require to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711 and 77-2601 to 77-2622 and section 6 of this act and the Tobacco Products Tax Act, the following information:

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

(b) In the case of acquisition, purchase, or possession, the details of the person's subsequent sale or transfer of those cigarettes, identifying by name and number of cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer, (iii) the name and address of the recipient, (iv) the number of stamps of each other state that the person affixed to the packages containing those cigarettes during that month, (v) the total number of cigarettes contained in the packages to which it affixed each respective other state's stamp, (vi) the manufacturers and brand families of the packages to which it affixed each respective other state's stamp, and (vii) a certification that it reported each sale or transfer to the taxing authority of the other state by fifteen days following the end of the month in which the sale or transfer was made and attaching a copy of all such reports. If the subsequent sale or transfer is from this state into another state in packages not bearing

a stamp of the other state, the report shall also contain the information described in subdivision (2)(c) of section 77-2604.01.

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

Sec. 6. (1) As soon as practicable after any return is filed, the Tax Commissioner shall examine the return. If the commissioner, in his or her judgment, finds that the return is incorrect and any amount of tax due from a stamping agent, wholesale dealer, or retail dealer who is subject to sections 77-2601 to 77-2622 and this section is unpaid, the commissioner shall notify such person of the deficiency. Such notice shall be delivered by mail or personal service.

(2) Except as provided in subsection (3) of this section, a notice of a deficiency determination shall be personally served or mailed within three years after the later of:

(a) The last day of the calendar month following the period for which the amount is proposed to be determined; or

(b) The date the return was filed.

(3) In the case of a person failing to make a return, filing a false or fraudulent return with the intent to evade sections 77-2601 to 77-2622 and this section, or omitting from a return an amount properly includable therein which is in excess of twenty-five percent of the amount of tax stated in the return, a notice of a deficiency determination shall be personally served within six years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(4) When, before the expiration of the time prescribed in this section for the mailing of a notice of a deficiency determination, both the Tax Commissioner and the person to be sent the notice have consented in writing to its mailing after such time, the notice of the deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The agreed-upon period may be extended by subsequent agreement, in writing, made before the expiration of the period previously agreed upon.

Sec. 7. Section 77-2604, Reissue Revised Statutes of Nebraska, is amended to read:

77-2604 (1) Every stamping agent, wholesale dealer, and retail dealer who is subject to sections 77-2601 to 77-2622 and section 6 of this act shall make and file with the Tax Commissioner, on or before the fifteenth day of each calendar month in the manner prescribed by the Tax Commissioner, true, correct, and sworn reports covering, for the last preceding calendar month, the number of cigarettes purchased, from whom purchased, the specific kinds and brands thereof, the manufacturer, if known, and such other matters and in such detail as the Tax Commissioner may require.

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

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

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

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

(e) Each manufacturer and importer that sells cigarettes in or into the

state shall either (i) submit its federal excise tax returns and all monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau Form 5210.5 and all adjustments, changes, and amendments to such reports to the Tax Commissioner no later than sixty days after the close of the quarter in which the returns were filed or (ii) submit to the United States Treasury a request or consent under section 6103(c) of the Internal Revenue Code of 1986 as defined in section 49-801.01 authorizing the federal Alcohol and Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, the United States Customs Service to disclose the manufacturer's or importer's federal returns to the Tax Commissioner as of sixty days after the close of the quarter in which the returns were filed.

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

77-2612 The Tax Commissioner may employ, with the advice and consent of the Governor, a sufficient number of inspectors, clerks, assistants, and agents to enforce sections 77-2601 to 77-2622 and section 6 of this act, including the collection of all stamp taxes and all revenue from cigarette tax meters. In such enforcement, the Tax Commissioner may call to his or her aid the Attorney General, any county attorney, any sheriff, any deputy sheriff, or any other peace officer. The compensation of all persons employed shall be fixed by the Governor and shall be paid from the revenue derived under such sections. The expenses of administering such sections, including necessary assistants, clerical help, cost of enforcement, cost of stamps, and incidental expenses, when approved by the Tax Commissioner, shall be paid by warrants, issued against the General Fund, but such warrants shall not exceed four percent of the funds collected under such sections, such expenses in each instance to be approved by the Tax Commissioner.

The Tax Commissioner may adopt and promulgate rules and regulations which are consistent with sections 77-2601 to 77-2622 and section 6 of this act and their proper enforcement.

Each stamping agent shall annually apply to the Tax Commissioner, upon

forms to be furnished by the Tax Commissioner, for a license to use the tax meter machines, as set forth in section 77-2603, or to purchase such stamps as provided in section 77-2608, or both. The license shall expire on December 31 each year. Each wholesale dealer applying for a stamping agent license shall furnish with such application evidence satisfactory to the Tax Commissioner showing that the wholesale dealer has obtained a license as a wholesale dealer in accordance with section 28-1423. The applicant shall accompany the application with a fee of five hundred dollars to be placed in the General Fund if the license is granted and otherwise to be returned to the applicant. If the applicant is an individual, the application shall include the applicant's social security number. If the application is approved and the bond referred to in section 77-2603 is given and approved, if such bond is required under section 77-2603, the Tax Commissioner shall issue such license which shall be conspicuously posted in the place of business of such stamping agent.

Sec. 9. Section 77-2615.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-2615.01 (1) In addition to sections 77-2615 and 77-2622, for any violation of sections 77-2601 to 77-2622 and section 6 of this act or the rules and regulations adopted and promulgated under such sections, the Tax Commissioner may:

(a) After notice and hearing, suspend or revoke the licenses of any person licensed under sections 28-1420 to 28-1429 or 77-2601 to 77-2622 and section 6 of this act. Notice of hearing shall be given as provided in the Administrative Procedure Act; and

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

(2) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of suspension or revocation on the premises occupied by him or her. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under sections 28-1420

to 28-1429 or 77-2601 to 77-2622 and section 6 of this act.

(3) Any person aggrieved by any decision, order, or finding of the Tax Commissioner may appeal the decision, order, or finding, and the appeal shall be in accordance with the Administrative Procedure Act.

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

Sec. 10. Section 77-4001, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-4001 Sections 77-4001 to 77-4025 and sections 12, 14, 17, and 19 of this act shall be known and may be cited as the Tobacco Products Tax Act.

Sec. 11. Section 77-4002, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-4002 For purposes of the Tobacco Products Tax Act, unless the context otherwise requires, the definitions found in sections 77-4003 to 77-4007 and sections 12 and 14 of this act shall be used.

Sec. 12. Alternative nicotine product has the same meaning as in section 28-1418.01.

Sec. 13. Section 77-4003.01, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-4003.01 Consumable material means any liquid solution or other material containing nicotine or a nicotine analogue that is depleted as an electronic nicotine delivery system is used.

Sec. 14. Nicotine analogue has the same meaning as in section 28-1418.01.

Sec. 15. Section 77-4007, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-4007 (1) Tobacco products means (a) cigars, (b) cheroots, (c) stogies,

(d) periques, (e) granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, (f) snuff, (g) snuff flour, (h) cavendish, (i) plug and twist tobacco, (j) fine cut and other chewing tobacco, (k) shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, (l) other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise or both for chewing and smoking, (m) any alternative nicotine product, and (n) electronic nicotine delivery systems.

(2) Tobacco products does not include cigarettes as defined in section 77-2601.

Sec. 16. Section 77-4008, Revised Statutes Cumulative Supplement, 2024, is amended to read:

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

(b) The tax on snuff shall be forty-four cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce. Such tax shall be computed based on the net weight as listed by the manufacturer.

(c) The tax on an electronic nicotine delivery system containing three milliliters or less of consumable material shall be five cents per milliliter of consumable material and a proportionate tax at the like rate on all fractional parts of a milliliter.

(d) The tax on an electronic nicotine delivery system containing more than three milliliters of consumable material shall be ten percent of (i) the purchase price of such electronic nicotine delivery system paid by the first owner or (ii) the price at which the first owner who made, manufactured, or fabricated the electronic nicotine delivery system sells the item to others.

(e) For electronic nicotine delivery systems in the possession of retail dealers for which tax has not been paid, the tax under this subsection shall be imposed at the earliest time the retail dealer: (i) Brings or causes to be brought into the state any electronic nicotine delivery system for sale; (ii) makes, manufactures, or fabricates any electronic nicotine delivery system in this state for sale in this state; or (iii) sells any electronic nicotine

delivery system to consumers within this state.

(f) The tax on alternative nicotine products shall be twenty percent of (i) the purchase price of such products paid by the first owner or (ii) the price at which a first owner who made, manufactured, or fabricated the product sells the items to others.

(g) The tax on tobacco products not otherwise provided for in this section shall be twenty percent of (i) the purchase price of such tobacco products paid by the first owner or (ii) the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others.

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

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

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

Sec. 17. (1) For any violation of the Tobacco Products Tax Act or the rules and regulations adopted and promulgated under the act, the Tax Commissioner may, in addition to any other penalty or sanction:

(a) After notice and hearing, suspend or revoke the licenses of any person licensed under sections 28-1420 to 28-1429. Notice of hearing shall be given as provided in the Administrative Procedure Act; and

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

(2) No person whose license has been suspended or revoked shall sell tobacco products or permit tobacco products to be sold during the period of suspension or revocation on the premises occupied by such person. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the Tobacco Products Tax Act or sections 28-1420 to 28-1429.

(3) Any person aggrieved by any decision, order, or finding of the Tax Commissioner may appeal the decision, order, or finding, and the appeal shall

be in accordance with the Administrative Procedure Act.

Sec. 18. Section 77-4015, Reissue Revised Statutes of Nebraska, is amended to read:

77-4015 (1) As soon as practicable after any return is filed, the Tax Commissioner shall examine the return. If the Tax Commissioner, in his or her judgment, finds that the return is incorrect and any amount of tax due from the licensee is unpaid, he or she shall notify the licensee of the deficiency. Such notice shall be delivered by mail or personal service.

(2) Except as provided in subsection (3) of this section, a notice of a deficiency determination shall be personally served or mailed within three years after the later of:

(a) The last day of the calendar month following the period for which the amount is proposed to be determined; or

(b) The date the return was filed.

(3) In the case of a person failing to make a return, filing a false or fraudulent return with the intent to evade the Tobacco Products Tax Act, or omitting from a return an amount properly includable therein which is in excess of twenty-five percent of the amount of tax stated in the return, a notice of a deficiency determination shall be personally served within six years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(4) When, before the expiration of the time prescribed in this section for the mailing of a notice of a deficiency determination, both the Tax Commissioner and the person to be sent the notice have consented in writing to its mailing after such time, the notice of the deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The agreed-upon period may be extended by subsequent agreement, in writing, made before the expiration of the period previously agreed upon.

Sec. 19. (1) Any tobacco products that have been sold, offered for sale, or possessed for sale in this state in violation of the Tobacco Products Tax Act are declared to be contraband goods and may be seized by the Tax

Commissioner, by the commissioner's agents or employees, or by any peace officer of this state, when directed by the commissioner to do so, without a warrant.

(2) The Tax Commissioner may, upon satisfactory proof, direct the return of any confiscated tobacco products when the commissioner has reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed under section 77-4008.

(3) Any tobacco products forfeited to the state under this section shall be destroyed or used for law enforcement purposes and then destroyed. The cost of such seizure, forfeiture, and destruction shall be borne by the person from whom the products are seized.

(4) The Tax Commissioner, agents and employees of the commissioner, and any peace officer of this state, when acting pursuant to this section, shall not in any way be responsible in any court for the seizure or the confiscation of any tobacco products.

Sec. 20. This act becomes operative on January 1, 2026.

Sec. 21. Original sections 77-2604, 77-2612, 77-2615.01, and 77-4015, Reissue Revised Statutes of Nebraska, and sections 28-1418.01, 59-1523, 69-2705, 69-2709, 69-2710.01, 77-4001, 77-4002, 77-4003.01, 77-4007, and 77-4008, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 9 was passed by the One Hundred Ninth Legislature of Nebraska at its First Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR