

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 9

FINAL READING

Introduced by Hughes, 24.

Read first time January 09, 2025

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco and related products; to amend
2 sections 77-2604, 77-2612, 77-2615.01, and 77-4015, Reissue Revised
3 Statutes of Nebraska, and sections 28-1418.01, 59-1523, 69-2705,
4 69-2709, 69-2710.01, 77-4001, 77-4002, 77-4003.01, 77-4007, and
5 77-4008, Revised Statutes Cumulative Supplement, 2024; to define and
6 redefine terms relating to nicotine and nicotine analogues; to
7 provide for regulation of alternative nicotine products and
8 electronic nicotine delivery systems containing nicotine analogues;
9 to change provisions relating to notices of deficiency
10 determinations for certain cigarette taxes and under the Tobacco
11 Products Tax Act; to provide for taxation of alternative nicotine
12 products, sanctions, and administrative penalties under the Tobacco
13 Products Tax Act, to declare tobacco products involved in violations
14 of the act to be contraband and provide for their forfeiture,
15 seizure, and disposal; to provide for immunity; to harmonize
16 provisions; to provide an operative date; and to repeal the original
17 sections.

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

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

3 28-1418.01 For purposes of sections 28-1418 to 28-1429.07:

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

12 (2) Cigarette means any product that contains nicotine, is intended
13 to be burned or heated under ordinary conditions of use, and consists of
14 or contains (a) any roll of tobacco wrapped in paper or in any substance
15 not containing tobacco, (b) tobacco, in any form, that is functional in
16 the product which, because of its appearance, the type of tobacco used in
17 the filler, or its packaging and labeling, is likely to be offered to, or
18 purchased by, consumers as a cigarette, or (c) any roll of tobacco
19 wrapped in any substance containing tobacco which, because of its
20 appearance, the type of tobacco used in the filler, or its packaging and
21 labeling, is likely to be offered to, or purchased by, consumers as a
22 cigarette described in subdivision (2)(a) of this section;

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

26 (4)(a) Electronic nicotine delivery system means any product or
27 device containing nicotine, a nicotine analogue, tobacco, or tobacco
28 derivatives that employs a heating element, power source, electronic
29 circuit, or other electronic, chemical, or mechanical means, regardless
30 of shape or size, to simulate smoking by delivering the nicotine,
31 nicotine analogue, tobacco, or tobacco derivatives in vapor, fog, mist,

1 gas, or aerosol form to a person inhaling from the product or device.

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

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

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

13 (iii) Any component, part, or accessory of such a product or device
14 that is used during operation of the product or device when sold in
15 combination with any substance containing nicotine, a nicotine analogue,
16 tobacco, or tobacco derivatives.

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

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

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

27 (5) Nicotine analogue means a substance that has:

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

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

1 (6) ~~(5)~~ Self-service display means a retail display that contains a
2 tobacco product, a tobacco-derived product, an electronic nicotine
3 delivery system, or an alternative nicotine product and is located in an
4 area openly accessible to a retailer's customers and from which such
5 customers can readily access the product without the assistance of a
6 salesperson. Self-service display does not include a display case that
7 holds tobacco products, tobacco-derived products, electronic nicotine
8 delivery systems, or alternative nicotine products behind locked doors;
9 and

10 (7) ~~(6)~~ Tobacco specialty store means a retail store that (a)
11 derives at least seventy-five percent of its revenue from tobacco
12 products, tobacco-derived products, electronic nicotine delivery systems,
13 or alternative nicotine products and (b) does not permit persons under
14 the age of twenty-one years to enter the premises unless accompanied by a
15 parent or legal guardian.

16 **Sec. 2.** Section 59-1523, Revised Statutes Cumulative Supplement,
17 2024, is amended to read:

18 59-1523 (1) The cigarette tax division of the Tax Commissioner may,
19 after notice and hearing, revoke or suspend for any violation of section
20 59-1520 the:

21 (a) License or licenses of any person licensed under sections
22 28-1418 to 28-1429.07 or sections 77-2601 to 77-2622 and section 6 of
23 this act; or

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

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

1 **Sec. 3.** Section 69-2705, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 69-2705 For purposes of sections 69-2704 to 69-2711:

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

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

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

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

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

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

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

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

27 (9) Master Settlement Agreement has the same meaning as in section
28 69-2702;

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

31 (11) Nonparticipating manufacturer cigarettes means cigarettes (a)

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

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

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

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

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

25 (16) Qualified escrow fund has the same meaning as in section
26 69-2702;

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

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

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

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

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

24 (22) Tobacco product manufacturer has the same meaning as in section
25 69-2702;

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

27 (24) Unstamped cigarettes means any cigarettes that are not
28 contained in a package bearing a stamp required under section 77-2603 or
29 77-2603.01.

30 **Sec. 4.** Section 69-2709, Revised Statutes Cumulative Supplement,
31 2024, is amended to read:

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

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

16 (a) Fails to provide a report required under section 69-2708,
17 69-2710.01, or 77-2604.01;

18 (b) Files an incomplete or inaccurate report required under section
19 69-2708, 69-2710.01, or 77-2604.01 or files an inaccurate certification
20 required under section 69-2708, subsection (2) of section 77-2603, or
21 section 69-2710.01;

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

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

28 (e) Sells unstamped cigarettes in, into, or from the state or
29 possesses unstamped cigarettes in the state except as provided in section
30 77-2607;

31 (f) Purchases, sells in or into the state, or affixes a stamp to a

1 package containing cigarettes of a manufacturer or brand family that is
2 not at the time listed in the directory, or possesses such cigarettes
3 more than ten days after receiving notice that the manufacturer or brand
4 family is not in the directory, unless such stamping agent possesses a
5 directory license under section 77-2603 or unless expressly permitted
6 under sections 69-2701 to 69-2711 or sections 77-2601 to 77-2622 and
7 section 6 of this act; or

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

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

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

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

1 license has been terminated.

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

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

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

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

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

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

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

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

1 give its customers a seven-day period for the return of cigarettes that
2 become contraband.

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

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

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

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

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

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

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

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

26 (17) Any person that knowingly or intentionally purchases or sells
27 cigarettes in violation of subsection (5) of this section or section
28 69-2710.01 or that knowingly or intentionally sells cigarettes in or into
29 the state in a package that bears a stamp required under section 77-2603
30 or 77-2603.01 that is not the correct stamp and provides for a lower
31 level of tax than the correct stamp shall for a first violation be

1 subject to a civil penalty of up to one thousand dollars and be guilty of
2 a Class IV misdemeanor and for a second or subsequent violation be
3 subject to a civil penalty of up to five thousand dollars per violation
4 and be guilty of a Class II misdemeanor. Each sale constitutes a separate
5 violation.

6 **Sec. 5.** Section 69-2710.01, Revised Statutes Cumulative Supplement,
7 2024, is amended to read:

8 69-2710.01 (1) Any person that during a month acquired, purchased,
9 sold, possessed, transferred, transported, or caused to be transported in
10 or into this state cigarettes of a tobacco product manufacturer or brand
11 family that was not in the directory at the time shall, within fifteen
12 days following the end of that month, file a report in the manner
13 prescribed by the Tax Commissioner and certify to the state that the
14 report is complete and accurate. The report shall contain, in addition to
15 any further information that the Tax Commissioner may reasonably require
16 to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711
17 and 77-2601 to 77-2622 and section 6 of this act and the Tobacco Products
18 Tax Act, the following information:

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

28 (b) In the case of acquisition, purchase, or possession, the details
29 of the person's subsequent sale or transfer of those cigarettes,
30 identifying by name and number of cigarettes (i) the brand families of
31 those cigarettes, (ii) the date of the sale or transfer, (iii) the name

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

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

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

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

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

28 (b) The date the return was filed.

29 (3) In the case of a person failing to make a return, filing a false
30 or fraudulent return with the intent to evade sections 77-2601 to 77-2622
31 and this section, or omitting from a return an amount properly includable

1 therein which is in excess of twenty-five percent of the amount of tax
2 stated in the return, a notice of a deficiency determination shall be
3 personally served within six years after the last day of the calendar
4 month following the period for which the amount is proposed to be
5 determined.

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

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

16 77-2604 (1) Every stamping agent, wholesale dealer, and retail
17 dealer who is subject to sections 77-2601 to 77-2622 and section 6 of
18 this act shall make and file with the Tax Commissioner, on or before the
19 fifteenth day of each calendar month in the manner prescribed by the Tax
20 Commissioner, true, correct, and sworn reports covering, for the last
21 preceding calendar month, the number of cigarettes purchased, from whom
22 purchased, the specific kinds and brands thereof, the manufacturer, if
23 known, and such other matters and in such detail as the Tax Commissioner
24 may require.

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

29 (b) The report shall contain the following information: The total
30 number of cigarettes sold by that manufacturer or importer in or into the
31 state during that month and identifying by name and number of cigarettes,

1 (i) the manufacturers of those cigarettes, (ii) the brand families of
2 those cigarettes, and (iii) the purchasers of those cigarettes. A
3 manufacturer's or importer's report shall include cigarettes sold in or
4 into the state through its sales entity affiliate.

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

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

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

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

29 77-2612 The Tax Commissioner may employ, with the advice and consent
30 of the Governor, a sufficient number of inspectors, clerks, assistants,
31 and agents to enforce sections 77-2601 to 77-2622 and section 6 of this

1 act, including the collection of all stamp taxes and all revenue from
2 cigarette tax meters. In such enforcement, the Tax Commissioner may call
3 to his or her aid the Attorney General, any county attorney, any sheriff,
4 any deputy sheriff, or any other peace officer. The compensation of all
5 persons employed shall be fixed by the Governor and shall be paid from
6 the revenue derived under such sections. The expenses of administering
7 such sections, including necessary assistants, clerical help, cost of
8 enforcement, cost of stamps, and incidental expenses, when approved by
9 the Tax Commissioner, shall be paid by warrants, issued against the
10 General Fund, but such warrants shall not exceed four percent of the
11 funds collected under such sections, such expenses in each instance to be
12 approved by the Tax Commissioner.

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

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

1 agent.

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

4 77-2615.01 (1) In addition to sections 77-2615 and 77-2622, for any
5 violation of sections 77-2601 to 77-2622 and section 6 of this act or the
6 rules and regulations adopted and promulgated under such sections, the
7 Tax Commissioner may:

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

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

14 (2) No person whose license has been suspended or revoked shall sell
15 cigarettes or permit cigarettes to be sold during the period of
16 suspension or revocation on the premises occupied by him or her. No
17 disciplinary proceeding or action shall be barred or abated by the
18 expiration, transfer, surrender, continuance, renewal, or extension of
19 any license issued under sections 28-1420 to 28-1429 or 77-2601 to
20 77-2622 and section 6 of this act.

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

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

31 **Sec. 10.** Section 77-4001, Revised Statutes Cumulative Supplement,

1 2024, is amended to read:

2 77-4001 Sections 77-4001 to 77-4025 and sections 12, 14, 17, and 19
3 of this act shall be known and may be cited as the Tobacco Products Tax
4 Act.

5 **Sec. 11.** Section 77-4002, Revised Statutes Cumulative Supplement,
6 2024, is amended to read:

7 77-4002 For purposes of the Tobacco Products Tax Act, unless the
8 context otherwise requires, the definitions found in sections 77-4003 to
9 77-4007 and sections 12 and 14 of this act shall be used.

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

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

14 77-4003.01 Consumable material means any liquid solution or other
15 material containing nicotine or a nicotine analogue that is depleted as
16 an electronic nicotine delivery system is used.

17 **Sec. 14.** Nicotine analogue has the same meaning as in section
18 28-1418.01.

19 **Sec. 15.** Section 77-4007, Revised Statutes Cumulative Supplement,
20 2024, is amended to read:

21 77-4007 (1) Tobacco products means (a) shall mean (1) cigars, (b)
22 (2) cheroots, (c) (3) stogies, (d) (4) periques, (e) (5) granulated, plug
23 cut, crimp cut, ready rubbed, and other smoking tobacco, (f) (6) snuff,
24 (g) (7) snuff flour, (h) (8) cavendish, (i) (9) plug and twist tobacco,
25 (j) (10) fine cut and other chewing tobacco, (k) (11) shorts, refuse
26 scraps, clippings, cuttings, and sweepings of tobacco, (l) (12) other
27 kinds and forms of tobacco, prepared in such manner as to be suitable for
28 chewing or smoking in a pipe or otherwise or both for chewing and
29 smoking, (m) any alternative nicotine product, and (n) (13) electronic
30 nicotine delivery systems.

31 (2) Tobacco ,—except that tobacco products does not include shall

1 ~~not mean~~ cigarettes as defined in section 77-2601.

2 **Sec. 16.** Section 77-4008, Revised Statutes Cumulative Supplement,
3 2024, is amended to read:

4 77-4008 (1)(a) A tax is hereby imposed upon the first owner of
5 tobacco products to be sold in this state.

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

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

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

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

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

1 (g) ~~(f)~~ The tax on tobacco products not otherwise provided for in
2 this section other than snuff and electronic nicotine delivery systems
3 shall be twenty percent of (i) the purchase price of such tobacco
4 products paid by the first owner or (ii) the price at which a first owner
5 who made, manufactured, or fabricated the tobacco product sells the items
6 to others.

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

9 (2) Whenever any person who is licensed under section 77-4009
10 purchases tobacco products from another person licensed under section
11 77-4009, the seller shall be liable for the payment of the tax.

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

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

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

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

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

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

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

3 77-4015 (1) As soon as practicable after any return is filed, the
4 Tax Commissioner shall examine the return. If the Tax Commissioner, in
5 his or her judgment, finds that the return is incorrect and any amount of
6 tax due from the licensee is unpaid, he or she shall notify the licensee
7 of the deficiency. Such notice shall be delivered by mail or personal
8 service ~~mailed to the licensee.~~

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

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

14 (b) The date the return was filed.

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

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

30 **Sec. 19.** (1) Any tobacco products that have been sold, offered for
31 sale, or possessed for sale in this state in violation of the Tobacco

1 Products Tax Act are declared to be contraband goods and may be seized by
2 the Tax Commissioner, by the commissioner's agents or employees, or by
3 any peace officer of this state, when directed by the commissioner to do
4 so, without a warrant.

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

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

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

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

18 **Sec. 21.** Original sections 77-2604, 77-2612, 77-2615.01, and
19 77-4015, Reissue Revised Statutes of Nebraska, and sections 28-1418.01,
20 59-1523, 69-2705, 69-2709, 69-2710.01, 77-4001, 77-4002, 77-4003.01,
21 77-4007, and 77-4008, Revised Statutes Cumulative Supplement, 2024, are
22 repealed.