

LEGISLATIVE BILL 572

Approved by the Governor May 29, 2003

Introduced by Jensen, 20; Redfield, 12

AN ACT relating to tobacco; to amend sections 69-2702, 77-2601, 77-2603, 77-2608, and 77-2620, Revised Statutes Supplement, 2002; to change provisions relating to enforcement of the Master Settlement Agreement and cigarette tax stamps; to provide and change powers and duties; to provide penalties; to provide for applicability of sections as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. The Legislature finds that violations of sections 69-2702 and 69-2703 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The Legislature finds that enacting procedural enhancements will aid the enforcement of sections 69-2702 and 69-2703 and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.

Sec. 2. For purposes of sections 1 to 7 of this act:

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

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

(5) Participating manufacturer has the same meaning as in section II(jj) of the Master Settlement Agreement defined in section 69-2702 as such agreement existed on the effective date of this act;

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

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

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

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

(10) Units sold has the same meaning as in section 69-2702.

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

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

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

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

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

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as required by section 4 of this act;

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

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

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

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

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

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

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

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

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

continuously update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 1 to 7 of this act;

(d) The Tax Commissioner shall transmit by email or other practicable means to each stamping agent notice of any removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the Tax Commissioner of the removal from the directory of that tobacco product manufacturer or the brand family or for any cigarettes returned to the stamping agent by its customers under subsection (2) of section 6 of this act. The Tax Commissioner shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the stamping agent any refund due; and

(e) Every stamping agent shall provide and update as necessary an electronic mail address to the Tax Commissioner for the purpose of receiving any notifications as may be required by sections 1 to 7 of this act.

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

Sec. 4. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory created in subsection (2) of section 3 of this act, appoint and continually engage without interruption the services of an agent in the United States to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of sections 1 to 7 of this act and section 69-2703, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner and Attorney General.

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

Sec. 5. (1) Not later than twenty calendar days after the end of each calendar quarter, and more frequently if so directed by the Tax Commissioner, each stamping agent shall submit such information as the Tax Commissioner requires to facilitate compliance with sections 1 to 7 of this act, including, but not limited to, a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the Tax Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Tax Commissioner for a period of five years.

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

(3) In addition to the information required to be submitted pursuant to subsection (1) of this section, the Tax Commissioner or Attorney General may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the

Tax Commissioner or Attorney General to determine whether a tobacco product manufacturer is in compliance with sections 1 to 7 of this act.

(4) To promote compliance with sections 1 to 7 of this act, a tobacco product manufacturer subject to the requirements of subdivision (1)(c) of section 3 of this act shall make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made if (a) it is the first year the tobacco product manufacturer is listed in the directory established pursuant to section 3 of this act, (b) the tobacco product manufacturer has failed to make a complete escrow deposit for any calendar year as required by section 69-2703, or (c) the tobacco product manufacturer has failed to pay any judgment, including any civil penalty ordered under section 69-2703 or section 6 of this act. The Tax Commissioner may require production of information sufficient to enable the Tax Commissioner to determine the adequacy of the amount of the installment deposit. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers subject to the requirements of subdivision (1)(c) of section 3 of this act make quarterly payments.

Sec. 6. (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 (3) of section 3 of this act 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 hereof, 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 (3) of section 3 of this act 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) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of subsection (3) of section 3 of this act 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.

(3) The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (3) of section 3 of this act or subsection (1) or (4) of section 5 of this act by a stamping agent and to compel the stamping agent to comply with any of such subsections. 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.

(4) 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 (3) of section 3 of this act. A violation of this section is a Class III misdemeanor.

Sec. 7. (1) Before any tobacco product manufacturer may be removed from the directory, the Tax Commissioner shall provide the tobacco product manufacturer thirty days' notice of the intended action and shall post the notice in the directory. The tobacco product manufacturer shall have thirty days to come into compliance with section 69-2703 and sections 1 to 7 of this act or, in the alternative, secure a temporary injunction against removal in the district court of Lancaster County. For purposes of the temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory shall constitute irreparable harm. If after thirty days the tobacco product manufacturer remains in noncompliance and has not obtained a temporary injunction pursuant to this subsection, the tobacco product manufacturer shall be removed from the directory.

(2) If the Tax Commissioner determines that a tobacco product manufacturer shall not be included in the directory, such manufacturer may request a contested case before the Tax Commissioner under the Administrative Procedure Act. The Tax Commissioner shall notify the tobacco product manufacturer in writing of the determination not to include it in the directory. A request for hearing shall be made within thirty calendar days after the date of the determination that the manufacturer shall not be included in the directory and shall contain the evidence supporting the manufacturer's compliance with section 69-2703 and sections 1 to 7 of this

act. The hearing shall be held within sixty days after the request. At the hearing, the Tax Commissioner shall determine whether the tobacco product manufacturer is in compliance with section 69-2703 and sections 1 to 7 of this act and whether the manufacturer should be listed in the directory. A final decision shall be rendered within thirty days after the hearing. Any decision of the Tax Commissioner may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(3) The first report of stamping agents required by subsection (1) of section 5 of this act shall be due thirty calendar days after the effective date of this act, the certifications by a tobacco product manufacturer described in subsection (1) of section 3 of this act shall be due forty-five calendar days after the effective date of this act, and the directory described in subsection (2) of section 3 of this act shall be published or made available within ninety calendar days after the effective date of this act.

(4) The Tax Commissioner may adopt and promulgate rules and regulations necessary to effect the purposes of sections 1 to 7 of this act.

Sec. 8. Section 69-2702, Revised Statutes Supplement, 2002, is amended to read:

69-2702. For purposes of ~~sections 69-2702 and~~ this section and section 69-2703:

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

(2) Affiliate means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this subdivision, the terms owns, is owned, and ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term person means an individual, partnership, committee, association, corporation, or any other organization or group of persons;

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

(4) 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 ~~clause~~ subdivision (a) of this subdivision. The term cigarette includes roll-your-own tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition, ~~nine hundredths~~ nine-hundredths of an ounce of roll-your-own tobacco shall constitute one individual cigarette;

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

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

(7) Released claims means released claims as that term is defined in the Master Settlement Agreement;

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

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

(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except when such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the

provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

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

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

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

(10) Units sold means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or roll-your-own tobacco containers. ~~bearing the excise tax stamp of the state.~~ The Tax Commissioner shall adopt and promulgate such rules and regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Sec. 9. Section 77-2601, Revised Statutes Supplement, 2002, is amended to read:

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

(1) Person means and includes every individual, firm, association, joint-stock company, partnership, limited liability company, syndicate, and corporation;

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

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

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

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

(6) Consumer means any person, firm, association, partnership, limited liability company, joint-stock company, syndicate, or corporation not having a license to sell cigarettes. ~~+~~ and

~~(7) Tobacco product manufacturer has the same meaning as in section 69-2702.~~

Sec. 10. Section 77-2603, Revised Statutes Supplement, 2002, is amended to read:

77-2603. ~~(1)~~ The tax, as levied in section 77-2602, shall be paid and the stamps or cigarette tax meter impressions shall be affixed or printed with a cigarette tax meter by the person having possession and ownership of such cigarettes after the same shall have come to rest in this state and intended to be sold or given away in this state. Nothing in sections 77-2601 to 77-2615 shall be construed to require a wholesale dealer to fix the retail price or to require any retailer to sell at any particular price. Subject to such rules and regulations as the Tax Commissioner shall prescribe, tax meter machines may be used when approved by the Tax Commissioner to affix a suitable stamp or impression on each package of cigarettes. Before any wholesale dealer is issued a permit to affix stamps or cigarette tax meter impressions, the wholesale dealer shall make application to the Tax Commissioner on a form provided by the Tax Commissioner to engage in such activity and, if approval is given by the Tax Commissioner, the dealer shall furnish a corporate surety bond, conditioned to faithfully comply with all the requirements of sections 77-2601 to 77-2615, in a sum not less than one thousand dollars. Nothing in sections 77-2601 to 77-2615 shall prevent the Tax Commissioner from affixing the stamps or meter impressions in lieu of the provisions for affixing stamps and meter impressions by wholesalers as determined by such rules and regulations adopted by the Tax Commissioner.

~~(2) A tobacco product manufacturer whose cigarettes are sold for consumption in Nebraska shall annually certify, under penalty of perjury, that as of the date of such certification, such tobacco product manufacturer: (a) Is a participating manufacturer as defined in subdivision (1) of section 69-2703, or (b) is in full compliance with subdivision (2) of section 69-2703, including having made all payments required to be made for the current and all prior years. Such certification shall be executed and delivered to the Tax~~

Commissioner, the Attorney General, and any wholesale dealer who affixes the stamps or meter impressions required by this section to cigarettes of such tobacco product manufacturer. The certification shall be delivered after the start of each calendar year and no later than April 30 of each year, except that for the year 2002, the certifications shall be delivered no later than August 30. The certification shall be accompanied by a list of each cigarette brand of such tobacco product manufacturer sold for consumption in Nebraska. A wholesale dealer shall retain such certifications for at least five years. The Tax Commissioner shall prescribe the form of the certification required to be filed pursuant to this subsection.

(3) A wholesale dealer shall not affix, or cause to be affixed, a stamp or meter impression required by this section to a package of cigarettes if: (a) The tobacco product manufacturer of such cigarettes has not provided such wholesale dealer with the certification required by this section, or (b) the Tax Commissioner, after consultation with the Attorney General, has notified the wholesale dealer that such tobacco product manufacturer is in violation of section 69-2703 or has filed a false certification under this section and such wholesale dealer has not been notified by the Tax Commissioner that such violation has ceased.

Sec. 11. Section 77-2608, Revised Statutes Supplement, 2002, is amended to read:

77-2608. The Tax Commissioner shall prepare and have suitable stamps for use on each kind of piece or package of cigarettes, except when cigarette tax meter impressions are affixed. Requisition for the preparation of such stamps shall be made through the materiel division of the Department of Administrative Services as other state supplies are requisitioned, and the Tax Commissioner and his or her bondsperson shall be liable for the value of all such stamps delivered to him or her. The Auditor of Public Accounts shall audit annually or as often as the auditor deems advisable the records of the Tax Commissioner with respect to the money received from the sale of stamps and as revenue from tax meter impressions for the purpose of determining the accuracy and correctness of the same. The Tax Commissioner shall sell the stamps only to licensed wholesale dealers, as defined in section 77-2601, and he or she shall keep an accurate record of all stamps coming into and leaving his or her hands. Such stamps shall be sold and accounted for at the face value thereof, except that the Tax Commissioner may, by rule and regulation certified to the State Treasurer, authorize the sale thereof to wholesale dealers in this state or outside of this state at a discount of ~~three and four-tenths~~ one and eighty-five hundredths percent of such face value of the tax as a commission for affixing and canceling such stamps, except that for stamps sold beginning October 1, 2002, through September 30, 2004, the authorized commission for affixing and canceling such stamps shall be one and seven-tenths percent of the face value of the tax. Any wholesale dealer using a tax meter machine shall be entitled to the same discount as allowed a wholesale dealer for affixing and canceling the stamps. The money received by the Tax Commissioner from the sale of the stamps and as revenue from such tax meter impressions shall be deposited by him or her daily with the State Treasurer who shall credit such money as provided in section 77-2602. Upon proof by the Tax Commissioner that he or she can affix such stamps or meter impressions, warehouse and distribute such cigarettes, and collect such revenue at a cost less than any discount allowed to wholesale dealers pursuant to this section, he or she may then proceed to affix the stamps himself or herself after giving the wholesale dealers sixty days' notice and purchasing all equipment used by them for the purpose of affixing such stamps or meter impressions at a fair market value.

Sec. 12. Section 77-2620, Revised Statutes Supplement, 2002, is amended to read:

77-2620. All cigarettes subject to the tax as imposed by section 77-2602, to which stamps have not been affixed or tax impressions made, as required by sections 77-2601 to 77-2615, except as permitted by the provisions of section 77-2607, ~~or which have been stamped or metered in violation of subsection (3) of section 77-2603,~~ when found in any place in this state are declared to be contraband goods and may be seized by the Tax Commissioner, by the Tax Commissioner's agents or employees, or by any peace officer of this state, when directed by the Tax Commissioner to do so, without a warrant. The Tax Commissioner may, upon satisfactory proof, direct the return of any confiscated cigarettes when he or she has reason to believe that the owner thereof has not willfully or intentionally evaded ~~any duty imposed under subsection (3) of section 77-2603~~ or any tax imposed under section 77-2602. The Tax Commissioner may, in the absence of proof of good faith, confiscate any unstamped cigarettes or cigarettes without tax impressions found in the possession of any person, except as permitted by section 77-2607, and may

within a reasonable time thereafter, by a public notice of at least fifteen days before the day of sale, sell such confiscated cigarettes at public sale and pay the proceeds into the state treasury. The State Treasurer shall credit the proceeds as provided in section 77-2602. Any purchaser of such cigarettes shall be required to purchase and affix the stamps or make the tax impressions, as required by sections 77-2601 to 77-2615. ~~The Tax Commissioner may, in the absence of proof of good faith, confiscate any cigarettes which were stamped or metered in violation of subsection (3) of section 77-2603 and shall destroy such cigarettes.~~ The seizure, and sale, ~~or~~ destruction of any cigarettes under this section shall not relieve any person from a fine, imprisonment, or other penalty for violation of sections 77-2601 to 77-2615. The Tax Commissioner, his or her agents and employees, and any peace officer of this state, when directed so to do, shall not in any way be responsible in any court for the seizure, or the confiscation, ~~or~~ destruction of any unstamped packages of cigarettes, or cigarettes without tax impressions. ~~or~~ ~~cigarettes stamped or metered in violation of subsection (3) of section 77-2603.~~

Sec. 13. If a court of competent jurisdiction finds that the provisions of sections 1 to 7 of this act and of sections 69-2702 and 69-2703 conflict and cannot be harmonized, then the provisions of sections 69-2702 and 69-2703 shall control. If sections 1 to 7 of this act or any part of any such sections causes sections 69-2702 and 69-2703 to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of sections 1 to 7 of this act shall not be valid.

Sec. 14. Original sections 69-2702, 77-2601, 77-2603, 77-2608, and 77-2620, Revised Statutes Supplement, 2002, are repealed.

Sec. 15. Since an emergency exists, this act takes effect when passed and approved according to law.