

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 511

Introduced by Lindstrom, 18.

Read first time January 19, 2021

Committee:

1 A BILL FOR AN ACT relating to tobacco; to amend sections 69-2705,
2 77-2601, and 77-2603, Revised Statutes Cumulative Supplement, 2020;
3 to change provisions relating to cigarette tax stamps; to provide
4 for the use of hologram, barcode, or quick response code tax stamps;
5 to define terms; to harmonize provisions; and to repeal the original
6 sections.

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

1 Section 1. Section 69-2705, Revised Statutes Cumulative Supplement,
2 2020, 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 that contains one or
12 more individual cigarettes for sale. Nothing in such sections shall alter
13 any other applicable requirement with respect to the minimum number of
14 cigarettes that may be contained in a pack or other container of
15 cigarettes. References to package do not include a container of multiple
16 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) Stamp has the same meaning as in section 77-2601;

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

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

25 (23) {22} Tobacco product manufacturer has the same meaning as in
26 section 69-2702;

27 (24) {23} Units sold has the same meaning as in section 69-2702; and

28 (25) {24} Unstamped cigarettes means any cigarettes that are not
29 contained in a package bearing a stamp required under section 77-2603 or
30 77-2603.01.

31 Sec. 2. Section 77-2601, Revised Statutes Cumulative Supplement,

1 2020, is amended to read:

2 77-2601 For purposes of sections 77-2601 to 77-2615:

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

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

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

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

16 (5) Cigarette means any product that contains nicotine, is intended
17 to be burned or heated under ordinary conditions of use, and consists of
18 or contains (a) any roll of tobacco wrapped in paper or in any substance
19 not containing tobacco; (b) tobacco, in any form, that is functional in
20 the product, which, because of its appearance, the type of tobacco used
21 in the filler, or its packaging and labeling, is likely to be offered to,
22 or purchased by, consumers as a cigarette; or (c) any roll of tobacco
23 wrapped in any substance containing tobacco which, because of its
24 appearance, the type of tobacco used in the filler, or its packaging and
25 labeling, is likely to be offered to, or purchased by, consumers as a
26 cigarette described in subdivision (5)(a) of this section;

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

30 (7) Sales entity affiliate means an entity that (a) sells cigarettes
31 that it acquires directly from a manufacturer or importer and (b) is

1 affiliated with that manufacturer or importer. Entities are affiliated
2 with each other if one directly, or indirectly through one or more
3 intermediaries, controls or is controlled by or is under common control
4 with the other. Unless provided otherwise, manufacturer or importer
5 includes any sales entity affiliate of that manufacturer or importer;

6 (8) Stamp means a distinctive character, indication, mark, label, or
7 print, including a hologram, barcode, or quick response code, attached or
8 affixed to an individual package of cigarettes by mechanical device or
9 other means authorized by the Tax Commissioner to indicate that the tax
10 imposed under section 77-2602 has been paid;

11 (9) ~~(8)~~ Stamping agent has the same meaning as in section 69-2705;
12 and

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

20 Sec. 3. Section 77-2603, Revised Statutes Cumulative Supplement,
21 2020, is amended to read:

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

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

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

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

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

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

29 (3) Nothing in sections 77-2601 to 77-2615 shall prevent the Tax
30 Commissioner from affixing the stamps or meter impressions in lieu of the
31 provisions for affixing stamps and meter impressions by stamping agents

1 as determined by such rules and regulations adopted by the Tax
2 Commissioner.

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

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

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

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

29 Sec. 4. Original sections 69-2705, 77-2601, and 77-2603, Revised
30 Statutes Cumulative Supplement, 2020, are repealed.