

ENROLLED HOUSE
BILL NO. 2403

By: Vaughn of the House

and

Robinson of the Senate

An Act relating to tobacco products; specifying consequences of noncompliance with certain agreements or escrow requirements; providing certain notice requirements; requiring destruction of certain cigarettes and tobacco products; authorizing seizure and forfeiture of certain property; providing procedure for seizures and forfeiture; providing certain exceptions; specifying circumstances under which cigarette or tobacco product wholesaler, distributor or retail licenses may be revoked; providing penalty for certain licensees that are in possession of certain contraband; providing procedures concerning certain belated compliance; and providing for codification.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 360 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. On the first business day of June 2003, and on the first business day of each June thereafter, the Attorney General shall provide the Oklahoma Tax Commission with the names of tobacco product manufacturers which have failed to comply with the provisions of Sections 600.21 through 600.23 of Title 37 of the Oklahoma Statutes either by not complying with the escrow provisions of those sections or by not becoming a participating manufacturer as defined in Section 600.23 of Title 37 of the Oklahoma Statutes. Within twenty (20) business days of receiving the information from the Attorney General, the Oklahoma Tax Commission shall post on its website and provide to all cigarette or tobacco product distributors and wholesalers licensed by the Oklahoma Tax Commission pursuant to Section 304 or Section 415 of Title 68 of the Oklahoma Statutes the names and brands of all tobacco product manufacturers which are not participating manufacturers as defined in Section 600.23 of Title 37 of the Oklahoma Statutes and have failed to comply with the escrow requirements of Section 600.21 through Section 600.23 of Title 37 of the Oklahoma Statutes. Prior to July 1 of each year, the Attorney General shall cause to be published in a newspaper of general circulation within Oklahoma, Tulsa, Comanche, Muskogee, Pittsburgh and Woodward Counties, a notice of the names and brand names of all tobacco product manufacturers which have failed to comply with the provisions of Sections 600.21 through 600.23 of Title 37 of the Oklahoma Statutes either by not complying with the escrow provisions

of those sections or by not becoming a participating manufacturer as defined in Section 600.23 of Title 37 of the Oklahoma Statutes. The Attorney General also shall send a press release containing the information to a newspaper of general circulation in all other counties.

B. Within twenty (20) business days after receiving the notification from the Oklahoma Tax Commission required by subsection A of this section, all cigarette or tobacco product distributors and wholesalers who are licensed by the Oklahoma Tax Commission shall destroy the brand of cigarette or tobacco products covered by the notice or return the brand of cigarette or tobacco products to the manufacturer. The Oklahoma Tax Commission may allow a credit for the tax on the returned cigarette or tobacco products except for those licensees who are either part of the operation of the noncomplying manufacturer, owned in whole or in part by the noncomplying manufacturer or affiliated with the noncomplying manufacturer.

C. 1. No person may affix, or cause to be affixed, any type of tax stamps issued by the Oklahoma Tax Commission to individual packages of cigarettes if the name of the tobacco product manufacturer that makes or sells such cigarettes or the brand of such cigarettes is on the list disseminated by the Oklahoma Tax Commission in accordance with subsection A of this section.

2. Cigarettes stamped in violation of paragraph 1 of this subsection shall be considered contraband and may be seized by any authorized agent of the Oklahoma Tax Commission, or any sheriff, deputy sheriff, constable, or other peace officer within the state, without process. The seized cigarettes shall be forfeited to the State of Oklahoma, and a proper proceeding shall be filed in a court of competent jurisdiction in the county of seizure in order to maintain the seizure and prosecute the forfeiture. The prosecution of the forfeiture of the cigarettes shall be done in the same manner as a forfeiture proceeding pursuant to paragraph 2 of subsection E of Section 305 of Title 68 of the Oklahoma Statutes and paragraph 6 of this subsection, except that any cigarettes forfeited in accordance with this subsection shall be destroyed.

3. Twenty (20) days after the publication notice required in subsection A of this section, any cigarettes or tobacco products which are included in the notice required by subsection A of this section, regardless of whether they are still manufactured by a noncomplying manufacturer or a subsequent manufacturer, and are in the control of any cigarette or tobacco product distributor, wholesaler, or retailer licensed by the Oklahoma Tax Commission, or any person or entity in this state shall be considered contraband and subject to seizure and forfeiture, along with any vehicle used to transport the contraband cigarettes or tobacco products or any building in or premises on which the contraband cigarettes or tobacco products are located regardless of whether the cigarettes or tobacco products are possessed or being transported for sale, barter, consumption, or for any other purpose. Such contraband, vehicles, and property may be seized by any authorized agent of the Oklahoma Tax Commission, or any sheriff, deputy sheriff, constable, or other peace officer within this state, without process. From the time of the seizure, the contraband, vehicles, or property shall be forfeited to the State of Oklahoma, and a proper proceeding shall be filed in a court of competent jurisdiction in the county of seizure,

to maintain such seizure and prosecute the forfeiture as provided in this section.

4. Cigarettes or tobacco product distributors and wholesalers licensed by the Oklahoma Tax Commission pursuant to Section 304 or 415 of Title 68 of the Oklahoma Statutes who also distribute cigarettes in a state bordering Oklahoma may store in their Oklahoma warehouse cigarettes made contraband under this section if, and only if, they have the tax stamp of another state affixed to each package of cigarettes.

5. Cigarettes or roll-your-own tobacco products made contraband pursuant to this section, without being subject to seizure or forfeiture, may be transported in, into, or through the state either:

- a. on a commercial carrier with a proper bill of lading with an out-of-state destination,
- b. when the tax stamp of another state is affixed to each pack of cigarettes or tobacco product transported, or
- c. on a commercial carrier with a proper bill of lading to a tobacco product distributor or wholesaler licensed by the Oklahoma Tax Commission pursuant to Section 304 or 415 of Title 68 of the Oklahoma Statutes who also distributes cigarettes in a state bordering Oklahoma, if and only if, the packing slip accompanying the shipment indicates the shipment is for sale in another state and indicates which state and the invoice for the shipment also indicates the shipment is for sale in a state other than Oklahoma and identifies the state in which shipment is to be sold. The time of delivery of such shipments shall be indicated on the bill of lading of the common carrier, when delivery is completed. The receiving Oklahoma distributor or wholesaler must, within twenty-four (24) hours of receiving the delivery, affix or cause to be affixed to each package of cigarettes the stamp of the state in which they are to be sold.

6. All cigarettes, tobacco products, vehicles, and property so seized shall be listed and appraised by the officer making the seizure and turned over to the county sheriff of the county in which the seizure is made and a receipt therefor taken. The person making the seizure shall immediately make a written report of the seizure, showing the name of the person making the seizure, the location of the seizure, the person from whom the property was seized, and an inventory and appraisal of the property, at the usual and ordinary retail price of the articles received. The report shall be filed with the Oklahoma Tax Commission and the Attorney General. The district attorney of the county in which the seizures are made, at the request of the Oklahoma Tax Commission or Attorney General, shall file in the district court forfeiture proceedings in the name of the State of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown or not susceptible to the jurisdiction of the court, in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession the property was found, directing the owner or person to answer within ten (10) days. At

the forfeiture proceeding, if a distributor or wholesaler demonstrates through clear and convincing evidence that the distributor or wholesalers' possession of contraband was accidental, the vehicle in which the contraband was being transported shall not be forfeited. In no case, however, shall possession of more than twenty (20) cartons of contraband product be considered by the courts as being possessed accidentally. If the property is declared forfeited and ordered sold, notice of the sale shall be posted not less than ten (10) days before the date of sale in five public places in the county in which the seizures are made. However, any cigarettes or tobacco products forfeited pursuant to this section shall be destroyed by the county sheriff. Proceeds of the sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of prosecution, storage, and sale, pay the balance to the Oklahoma Tax Commission for deposit in the Tobacco Settlement Endowment Trust Fund established by Section 40 of Article X of the Oklahoma Constitution.

D. Any cigarette or tobacco product wholesaler or distributor found in possession of or dealing in contraband cigarettes or tobacco products pursuant to this section or who affixes or causes to be affixed Oklahoma tax stamps to individual packages of cigarettes made contraband pursuant to this section shall have its license revoked by the Oklahoma Tax Commission. In addition, licensees whose licenses are revoked pursuant to this section and all individuals with an ownership interest in the licensed entity and members of their immediate family shall be ineligible to be licensed as a cigarette or tobacco product wholesaler, distributor or retailer for a period of twenty-five (25) years thereafter.

E. The Tax Commission shall also revoke the license of any licensed tobacco products retailer twice found in possession of or dealing in contraband cigarettes or tobacco products pursuant to this section. Retail licensees and all individuals with an ownership interest in a licensed entity whose license is revoked pursuant to this section and members of their immediate family shall be ineligible to be licensed as a cigarette or tobacco product wholesaler, distributor, or retailer for a period of twenty-five (25) years thereafter.

F. Licensed cigarette or tobacco products wholesalers or distributors found in possession of contraband products or dealing in contraband cigarette or tobacco products pursuant to this section shall also be liable for the establishment of an escrow account and have the same responsibilities pursuant to Sections 600.21 through 600.23 of Title 37 of the Oklahoma Statutes as a tobacco product manufacturer which does not participate in the Master Settlement Agreement as defined in Section 600.22 of Title 37 of the Oklahoma Statutes.

G. The Attorney General shall notify the Oklahoma Tax Commission when a tobacco manufacturer or brand named in a notice pursuant to subsection A of this section comes into belated compliance. Within five (5) business days after receiving such notice from the Attorney General, the Tax Commission shall post notice of such belated compliance on its website. From the time of the website posting, the cigarettes and tobacco product of newly complying manufacturers or brands shall no longer be contraband. Cigarettes and tobacco products of such newly complying manufacturers or brands seized prior to the notice of compliance on

the Oklahoma Tax Commission's website, shall still be subject to forfeiture, as they were contraband at the time of seizure.

Passed the House of Representatives the 16th day of May, 2002.

Presiding Officer of the House of
Representatives

Passed the Senate the 21st day of May, 2002.

Presiding Officer of the Senate