ENROLLED HOUSE
BILL NO. 1814

By: Hilliard of the House

and

Crutchfield of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 301, 304, 305 and 316, which relate to the Cigarette Stamp Tax; defining terms; providing restrictions on renewal of license; providing for revocation or suspension of license; requiring Tax Commission to maintain web site with current licensees listed; requiring application of tax stamps; allowing Tax Commission to establish procedures for maintaining records and filing reports; requiring wholesalers, distributors, and manufacturers to submit periodic reports with certain information; providing for reporting period; providing for electronic submission of reports; requiring distributors, retailers, and manufacturers to maintain certain records; providing penalties for certain actions; providing penalties for sale or possession of counterfeit cigarettes; providing requirements for delivery of sales of cigarettes; requiring confirmation of certain information before mailing of shipment; providing requirements for notice required to be filed; providing mailing requirements; requiring filing with Tax Commission prior to delivery sales; requiring person to collect and remit taxes for such sales; providing for penalties for violations of provisions related to delivery sales; providing for enforcement of provisions related to delivery sales; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 301, is amended to read as follows:

Section 301. For purposes of Section 301 et seq. of this ~~article~~ title:

~~(a)~~ 1. The term "cigarette" is defined to mean and include all rolled tobacco or any substitute therefor, wrapped in paper or any substitute therefor and weighing not to exceed three (3) pounds per thousand cigarettes~~.~~;

~~(b)~~ 2. The term "person" is defined to mean and include any individual, company, partnership, joint venture, joint agreement,

association (mutual or otherwise), limited liability company, corporation, estate, trust, business trust receiver, or trustee appointed by any state or federal court, or otherwise, syndicate, or any political subdivision of the state or combination acting as a unit, in the plural or singular number~~.~~;

~~(c)~~ 3. The term "wholesaler", "distributor" and/or "jobber" is defined to mean and include a person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes to, and render service to retailers in the territory such person, firm or corporation chooses to serve~~;~~, and that:

a. purchases cigarettes directly from the manufacturer~~; that~~,

b. at least seventy-five percent (75%) of whose gross sales are made at wholesale~~; that~~,

c. handles goods in wholesale quantities and sells through ~~salesmen~~ salespersons, advertising and/or sales promotion devices~~; that~~,

d. carries at all times at ~~his or~~ its principal place of business a representative stock of cigarettes for sale, and ~~that~~

e. comes into the possession of cigarettes for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail such cigarettes to consumers.

In addition to the foregoing, and irrespective of the percentage or type of sales, the term "wholesaler", "distributor" and/or "jobber" shall also include all purchasers of cigarettes making purchases directly from the manufacturer for distribution at wholesale or retail sale and this shall not affect the requirements relating to retail licenses~~.~~;

~~(d)~~ 4. The term "retailer" is defined to be: ~~(First)~~

a. a person who comes into the possession of cigarettes for the purpose of selling, or who sells them at retail~~;~~, or~~, (Second)~~

b. a person, not coming within the classification of wholesaler, distributor and/or jobber as herein defined, having possession of more than one thousand cigarettes~~.~~;

~~(e)~~ 5. The term "consumer" is defined to be a person who receives or who in any way comes into possession of cigarettes for the purpose of consuming them, giving them away, or disposing of them in a way other than by sale, barter or exchange~~.~~;

~~(f)~~ 6. The term "Tax Commission" is defined to mean the Oklahoma Tax Commission~~.~~;

~~(g)~~ 7. The term "sale" and/or "sales" is hereby defined to be and declared to include sales, barters, exchanges and every other manner, method and form of transferring the ownership of personal

property from one person to another, and is also declared to be the use or consumption in this state in the first instance of cigarettes received from without the state or of any other cigarettes upon which the tax has not been paid. The term "first sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce or the first use or consumption of cigarettes within this state~~.~~;

~~(h)~~ 8. The term "stamp" as herein used shall mean the stamp or stamps by use of which:

~~1. The~~

a. the tax levied pursuant to the provisions of Section 301 et seq. of this title is paid~~;~~,

~~2. The~~

b. the tax levied pursuant to the provisions of Section 349 of this title is paid~~;~~, or

~~3. The~~

c. the payment in lieu of taxes authorized pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section 346 of this title is paid~~.~~;

~~(i)~~ 9. The term "drop shipment" shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee~~.~~;

~~(j)~~ 10. The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon order from ~~said~~ the person outside the state to distributors, wholesale dealers and retail dealers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigarettes to be shipped in interstate commerce to a person in this state by a person residing outside of Oklahoma, the tax not having been paid on ~~said~~ such cigarettes~~.~~;

~~(k)~~ 11. The term "vending machine" shall mean and include any coin operating machine, contrivance, or device, by means of which cigarettes are sold or dispensed in their original container~~.~~;

~~(l)~~ 12. The term "use" means and includes the exercise of any right or power over cigarettes incident to the ownership or possession thereof, except that it shall not include the sale of cigarettes in the regular course of business;

13. a. The term "delivery sale" means any sale of cigarettes to a consumer in Oklahoma where either:

(1) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery

service, or the Internet or other online service, or

(2) the cigarettes are delivered by use of the mails or other delivery service.

b. A sale of cigarettes which satisfies the criteria in subparagraph a of this paragraph shall be a delivery sale regardless of whether the seller is located within or outside of Oklahoma.

c. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer shall not be a delivery sale.

d. For purposes of this paragraph, any sale of cigarettes to an individual in Oklahoma shall be treated as a sale to a consumer unless such individual is licensed as a distributor or retailer of cigarettes by the Tax Commission;

14. The term "delivery service" means any person, including but not limited to the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers;

15. The term "manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette; or imports, either directly or indirectly, a finished cigarette for sale or distribution in this state;

16. The term "mails" or "mailing" means the shipment of cigarettes through the United States Postal Service;

17. The term "shipping container" means a container in which cigarettes are shipped in connection with a delivery sale; and

18. The term "shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 304, is amended to read as follows:

Section 304. A. Every manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes in this state, as a condition of carrying on such business, shall annually secure from the Oklahoma Tax Commission a written license, and shall pay therefor an annual fee of Twenty-five Dollars ($25.00). This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include the place where orders are received, or where cigarettes are sold. If cigarettes are sold on or from any vehicle, the vehicle shall constitute a place of business and the regular license fee of Twenty-five Dollars ($25.00) shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular Twenty-five Dollars ($25.00) is paid, the

annual fee for the license with respect to such vehicle shall be only Ten Dollars ($10.00).

~~Provided, that no license for the sale of cigarettes or tobacco shall be issued to any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a place of business within the State of Oklahoma at which all products sold within this state are stocked, sold and delivered, and from which vehicles classed as a "place of business", as hereinabove defined, are loaded and operated, and where all records and accounts are kept, and necessary accounting procedures are performed; but these provisions shall not apply to manufacturers, wholesalers, warehousemen, jobbers or distributors having a place of business located in another state where such state does not require manufacturers, wholesalers, warehousemen, jobbers or distributors who have their place of business in Oklahoma to maintain a warehouse or place of business in such other state in order to secure a license to do business in such state.~~

Provided, ~~further,~~ that the ~~Oklahoma~~ Tax Commission shall not authorize the use of a stamp-metering device by any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a warehouse or wholesale establishment or place of business within the State of Oklahoma from which cigarettes are received, stocked and sold and where such metering device is kept and used; but the Tax Commission may, in its discretion, permit the use of such metering device by manufacturers, wholesalers, warehousemen, jobbers or distributors of cigarettes residing wholly within another state where such state permits a licensed Oklahoma resident, manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes the use of the metering device of such state without first requiring that such manufacturer, wholesaler, warehouseman, jobber or distributor establish a place of business in such other state. The provisions of this ~~paragraph~~ subsection relating to metering devices shall not apply to states which do not require the affixing of tax stamps to packages of cigarettes before same are offered for sale in such states.

B. Every retailer in this state, as a condition of carrying on such business, shall secure from the Tax Commission a license and shall pay therefor a fee of Thirty Dollars ($30.00). Such license, which will be for the ensuing three (3) years, must at all times be displayed in a conspicuous place so that it can be seen. ~~A license issued prior to September 1, 1994, shall be valid until it expires.~~ Upon expiration of such license, the retailer to whom such license was issued may obtain a renewal license which shall be valid for three (3) years or until expiration of the retailer's sales tax permit, whichever is earlier, after which a renewal license shall be valid for three (3) years. The manner and prorated fee for renewals shall be prescribed by the Tax Commission. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include places where orders are received or where cigarettes are sold.

C. Every distributing agent shall, as a condition of carrying on such business, pursuant to written application on a form prescribed by and in such detailed form as the Tax Commission may require, annually secure from the Tax Commission a license, and shall pay therefor an annual fee of One Hundred Dollars ($100.00).

An application shall be filed and a license obtained for each place of business owned or operated by a distributing agent. The license, which will be for the ensuing year, shall be consecutively numbered, nonassignable and nontransferable, and shall authorize the storing and distribution of unstamped cigarettes within this state when such distribution is made upon interstate orders only.

D. 1. All wholesale, retail, and distributing agent's licenses shall be nonassignable and nontransferable from one person to another person. Such licenses may be transferred from one location to another location after an application has been filed with the Tax Commission requesting such transfer and after the approval of the Tax Commission.

2. Wholesale, retail, and distributing agent's licenses shall be applied for on a form prescribed by the Tax Commission. Any person operating as a wholesaler, retailer, or distributing agent must at all times have an effective unexpired license which has been issued by the Tax Commission. If any such person or licensee continues to operate as such on a license issued by the Tax Commission which has expired, or operates without ever having obtained from the Tax Commission such license, ~~he~~ such person or licensee shall, after becoming delinquent for a period in excess of fifteen (15) days, pay to the Tax Commission, in addition to the annual license fee, a penalty of twenty-five cents ($0.25) per day on each delinquent license for each day so operated in excess of fifteen (15) days. The penalty provided for herein shall not exceed the annual license fee for such license.

E. No license may be granted, maintained or renewed if any of the following conditions applies to the applicant. For purposes of this section, "applicant" includes any combination of persons owning directly or indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the applicant:

1. The applicant owes Five Hundred Dollars ($500.00) or more in delinquent cigarette taxes;

2. The applicant had a cigarette manufacturer, retailer or distributor license revoked by the Tax Commission within the past two (2) years;

3. The applicant has been convicted of a crime relating to stolen or counterfeit cigarettes, or receiving stolen or counterfeit cigarettes;

4. If the applicant is a cigarette manufacturer, the applicant is neither:

a. a participating manufacturer as defined in Section II (jj) of the Master Settlement Agreement as defined in Section 600.22 of Title 37 of the Oklahoma Statutes, nor

b. in full compliance with the provisions of paragraph 2 of subsection A of Section 600.23 of Title 37 of the Oklahoma Statutes;

5. If the applicant is a cigarette manufacturer, if any cigarette imported by such applicant is imported into the United States in violation of 19 U.S.C., Section 1681a; or

6. If the applicant is a cigarette manufacturer, if any cigarette imported or manufactured by the applicant does not fully comply with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C., Section 1331 et seq.

F. No person or entity licensed pursuant to the provisions of this section shall purchase cigarettes from or sell cigarettes to a person or entity required to obtain a license unless such person or entity has obtained such license.

G. In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provision of Section 301 et seq. of this title, the Tax Commission may revoke or suspend the license or licenses of the licensee pursuant to the procedures applicable to revocation of a license set forth in Section 316 of this title.

H. The Tax Commission shall create and maintain a web site setting forth all current valid licenses and the identity of licensees holding such licenses, and shall update the site no less frequently than once per month.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 305, is amended to read as follows:

Section 305. A. Every wholesaler, jobber, distributor, or warehouseman doing business within this state and required to secure a license as provided under Section 304 of this title shall, upon withdrawal from storage, and before making any sale or distribution of cigarettes for consumption thereof, affix or cause the same to have affixed thereto the stamp or stamps as required by Section 301 et seq. of this title. It shall be the duty of the wholesaler, jobber, distributor, or warehouseman to supply and charge to the retailer the necessary stamps to cover any and all drop shipments of cigarettes billed to the retailer or consumer by the wholesaler, jobber, distributor, or warehouseman; and the wholesaler, jobber, distributor, or warehouseman shall be liable to the Oklahoma Tax Commission to perform this service. Distributors may apply stamps only to cigarette packages that they have received directly from a manufacturer or importer of cigarettes who possesses a valid and current permit under Section 5712 of Title 26 of the United States Code.

B. Every retailer who has received cigarettes from a manufacturer, wholesaler, jobber, warehouseman or distributor not required to secure a license as provided for under Section 304 of this title, or to affix stamps as required under subsection A of this section, shall, within seventy-two (72) hours, excluding Sundays and holidays, from the time such cigarettes come into the retailer's possession, and before making any sale or distribution for consumption thereof, affix stamps upon all cigarette packages in the proper denomination and amount, as required by Section 302 of this title.

C. Any unlicensed consumer who buys direct from any distributor, jobber, manufacturer, warehouseman, or wholesaler, or

other person, within or without this state, any cigarettes in excess of forty ~~(40)~~, at any one time to which are not affixed the stamps required by Section 301 et seq. of this title shall, before purchasing such cigarettes, secure from the Tax Commission a written license and shall pay therefor an annual fee of Twenty-five Dollars ($25.00), and shall immediately, upon the receipt of any unstamped cigarettes, report the same to the Tax Commission on such forms as the Tax Commission may prescribe, and immediately purchase from the Tax Commission proper stamps and attach the same to all such cigarettes received. It shall be unlawful for any person to sell or consume cigarettes on which the tax, as levied by Section 301 et seq. of this title, has not been paid, and which are not contained in packages to which are securely affixed the stamps evidencing payment of the tax imposed by Section 301 et seq. of this title.

D. If, upon examination of invoices or from other investigations, the Tax Commission finds that cigarettes have been sold without stamps affixed as required by Section 301 et seq. of this title, the Tax Commission shall have the power to require such person to pay to the Tax Commission a sum equal to twice the amount of the tax due. If, under the same circumstances, a person is unable to furnish evidence to the Tax Commission of sufficient stamp purchases to cover unstamped cigarettes purchased, the prima facie presumption shall arise that such cigarettes were sold without proper stamps being affixed thereto.

E. 1. All unstamped cigarettes upon which taxes are imposed by Section 301 et seq. of this title and all cigarettes stamped, sold, offered for sale, or imported into this state in violation of the provisions of Section ~~2~~ 305.1 of this ~~act~~ title which shall be found in the possession, custody, or control of any person, for the purpose of being consumed, sold or transported from one place to another in this state, for the purpose of evading or violating the provisions of Section 301 et seq. of this title, or with intent to avoid payment of the tax imposed hereunder, and any automobile, truck, conveyance, or other vehicle whatsoever used in the transportation of such cigarettes, and all paraphernalia, equipment or other tangible personal property incident to the use of such purposes, found in the place, building, vehicle or vehicles, where such cigarettes are found, may be seized by any authorized agent of the Tax Commission, or any sheriff, deputy sheriff, ~~Constable~~ constable or other peace officer within the state, without process. The same shall be, from the time of such seizure, forfeited to the State of Oklahoma, and a proper proceeding filed in a court of competent jurisdiction in the county of seizure, to maintain such seizure and prosecute the forfeiture as herein provided.

2. All such cigarettes, vehicles and property so seized shall first be listed and appraised by the officer making such 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 such seizure shall immediately make and file a written report thereof, showing the name of the person making such seizure, the place, and the person where, and from whom such property was seized, and an inventory and appraisement thereof, at the usual and ordinary retail price of such articles received, to the Tax Commission, or the Attorney General, in the case of cigarettes stamped, sold, offered for sale, or imported into this state in violation of the provisions of Section ~~2~~ 305.1 of this ~~act~~ title. The district attorney of the county in which the seizures are made shall, at the request of the

Tax Commission or Attorney General, 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 in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing the owner or person to answer within ten (10) days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five public places in the county not less than ten (10) days before the date of sale; provided, cigarette packages or containers as described in Section ~~2~~ 305.1 of this ~~act~~ title shall only be sold for export outside the United States or as otherwise permitted by federal law. The proceeds of the sale shall be deposited with the clerk of the court, who shall after deducting costs, including the costs of sale, pay the balance to the Tax Commission as cigarette tax collected, or in the case of cigarettes seized as being in violation of the provisions of Section ~~2~~ 305.1 of this ~~act~~ title, to the Attorney General. The Attorney General shall remit the amount of cigarette tax, if any be due, including all penalties and interest due, to the Tax Commission as cigarette tax collected and shall deposit the remainder to the revolving fund created in Section ~~7~~ 305.2 of this ~~act~~ title.

3. The seizure and sale of cigarettes shall not relieve the person from whom such cigarettes were seized from any prosecution or the payment of any penalties provided for under Section 301 et seq. of this title; nor shall it relieve the purchaser thereof from any payment of the regular cigarette tax and the placing of proper stamps thereon before making any sale of the cigarettes or the personal consumption of the same.

4. The forfeiture provisions of Section 301 et seq. of this title shall only apply to persons having possession of or transporting cigarettes with intent to barter, sell or give away the same; provided, that such possession of cigarettes in any quantity of five or more cartons of ten packages each shall be prima facie evidence of intent to barter, sell or give away such cigarettes in violation of the provisions of Section 301 et seq. of this title.

F. The Tax Commission shall exchange new stamps for any stamps which are damaged, or for stamps which have been affixed to packages of cigarettes returned to factories, or shipped to other states, or sold to government agencies or state institutions, or for stamps purchased in excess of floor stocks. Application to the Tax Commission for such exchanges must be accompanied by affidavit, damaged stamps, bill of lading covering shipment to factory or other states, or other proof required by the Tax Commission. Any person to whom stamps shall be issued under this paragraph may, upon approval of the Tax Commission, sell such stamps to any wholesaler as defined in Section 301 et seq. of this title.

G. Any person, including distributing agents, wholesalers, jobbers, carriers, warehousemen, retailers and consumers, having possession of unstamped cigarettes in this state shall be liable for the tax on such cigarettes in case the same are lost, stolen or unaccounted for, in transit, storage or otherwise, and in such event a presumption shall exist for the purposes of taxation, that such cigarettes were used and consumed in Oklahoma.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 312.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Tax Commission, if in its discretion it deems practical and reasonable, may establish procedures for maintaining records and filing reports containing the information required by this section. The exercise by the Tax Commission of the authority granted in this subsection shall be by adoption of rules necessary to establish procedures that increase compliance with the requirements of this article. If the Tax Commission determines to utilize its discretion, the provisions of subsections B through J of this section shall apply.

B. Every wholesaler and distributor receiving cigarettes shall submit periodic reports containing the information required by this subsection. In each case, the information required shall be itemized so as to disclose clearly the brand style of the product. The reports shall be provided separately with respect to each of the facilities operated by the wholesaler and distributor and shall include:

1. The quantity of cigarette packages that were distributed or shipped to another distributor or to a retailer within the borders of Oklahoma during the reporting period and the name and address of each person to whom those products were distributed or shipped;

2. The quantity of cigarette packages that were distributed or shipped to another facility of the same distributor within the borders of Oklahoma during the reporting period; and

3. The quantity of cigarette packages that were distributed or shipped within the borders of Oklahoma to Indian tribal entities or instrumentalities of the federal government during the reporting period and the name and address of each person to whom those products were distributed or shipped.

C. Manufacturers shall submit periodic reports containing the information required by this subsection. In each case, the information required shall be itemized so as to disclose clearly the brand style of the product. The reports shall be provided separately with respect to each of the facilities operated by the manufacturer and shall include:

1. The quantity of cigarette packages that were distributed or shipped to another manufacturer or to a distributor within the borders of Oklahoma during the reporting period and the name and address of each person to whom those products were distributed or shipped;

2. The quantity of cigarette packages that were distributed or shipped to another facility of the same manufacturer within the borders of Oklahoma during the reporting period; and

3. The quantity of cigarette packages that were distributed or shipped within the borders of Oklahoma to instrumentalities of the federal government during the reporting period and the name and address of each person to whom those products were distributed or shipped.

D. The Tax Commission shall establish the reporting period, which shall be no longer than three (3) calendar months and no shorter than one (1) calendar month. Reports shall be submitted electronically as prescribed by the Tax Commission.

E. Each distributor shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation shall show the name and address of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction.

F. Each retailer shall maintain copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases cigarettes at each of its facilities. The invoices or documentation shall show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the cigarettes were received, and the quantity of each brand style received in such transaction.

G. Each manufacturer shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the manufacturer is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation shall show the name and address of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction.

H. Records required under subsections E through G of this section shall be preserved on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, distributors, and retailers with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission.

I. The records required by subsections E through G of this section shall be retained for a period of three (3) years from the date of the transaction.

J. The Tax Commission, upon request, shall have access to reports and records required under this act. The Tax Commission at its sole discretion may share the records and reports required by such sections with law enforcement officials of the federal government, other states, or international authorities.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 316, is amended to read as follows:

Section 316. A. Any person who shall:

1. Sell, offer for sale or present as a prize or gift cigarettes without a stamp being then and there affixed to each individual package;

2. Sell cigarettes in quantities less than an individual package;

3. Knowingly consume, use or smoke any cigarettes upon which a tax is required to be paid without a stamp being affixed upon each individual package;

4. Knowingly cancel or mutilate any stamp affixed to any individual package of cigarettes for the purpose of concealing any violation of Section 301 et seq. of this title or with any other fraudulent intent;

5. Use any artful device or deceptive practice to conceal any violation of Section 301 et seq. of this title;

6. Refuse to surrender to the Oklahoma Tax Commission upon demand any cigarettes possessed in violation of any provision of Section 301 et seq. of this title; or

7. Make a first sale of cigarettes without a stamp being then and there affixed to each individual package;

shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Two Hundred Dollars ($200.00), where specific penalties are not otherwise provided.

B. Any distributor, wholesale dealer, retail dealer or distributing agent who shall:

1. Commit any of the acts specifically enumerated in subsection A of this section, where such acts are applicable to such person;

2. Sell any cigarettes upon which tax is required to be paid by Section 301 et seq. of this title without at the time of making such sale having a valid license;

3. Make a first sale of cigarettes without at the time of first sale having a license posted so as to be easily seen by the public; or

4. Fail to deliver an invoice required by law to a purchaser of cigarettes;

shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Two Hundred Dollars ($200.00), where specific penalties are not otherwise provided.

C. Any distributing agent who shall:

1. Commit any of the acts specifically enumerated in subsections A and B of this section where such provisions are applicable to such distributing agent; or

2. Store any unstamped cigarettes in the state or deliver or distribute any unstamped cigarettes within this state, without at the time of storage or delivery having a valid license posted so as to be easily seen by the public;

shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than Two Hundred Dollars ($200.00).

D. Any retailer violating the provisions of Section ~~2~~ 305.1 of this ~~act~~ title shall:

1. For a first offense, be punished by an administrative fine of not more than One Hundred Dollars ($100.00);

2. For a second offense, be punished by an administrative fine of not more than One Thousand Dollars ($1,000.00); and

3. For a third or subsequent offense, be punished by an administrative fine of not more than Five Thousand Dollars ($5,000.00).

E. Any wholesaler, jobber or warehouseman violating the provisions of Section ~~2~~ 305.1 of this ~~act~~ title shall:

1. For a first offense, be punished by an administrative fine of not more than Five Thousand Dollars ($5,000.00); and

2. For a second or subsequent offense, be punished by an administrative fine of not more than Twenty Thousand Dollars ($20,000.00).

Administrative fines collected pursuant to the provisions of this subsection shall be deposited to the revolving fund created in Section ~~7~~ 305.2 of this ~~act~~ title.

F. The Tax Commission shall immediately revoke the license of a person punished for a violation pursuant to the provisions of paragraph 3 of subsection D of this section or a person punished for a violation pursuant to the provisions of subsection E of this section. A person whose license is so revoked shall not be eligible to receive another license pursuant to the provisions of Section 301 et seq. of this title for a period of ten (10) years.

G. Whoever, with intent to defraud Oklahoma:

1. Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by Section 301 et seq. of this title or rules promulgated thereunder;

2. Refuses to pay any tax imposed by Section 301 et seq. of this title, or attempts in any manner to evade or defeat the tax or the payment thereof; or

3. Fails to comply with any requirement of Section 301 et seq. of this title;

shall, for each such offense, be fined not more than Ten Thousand Dollars ($10,000.00), or imprisoned not more than five (5) years, or both.

H. Whoever knowingly omits, neglects, or refuses to comply with any duty imposed upon the person by Section 301 et seq. of this title, or to do, or cause to be done, any of the things required by Section 301 et seq. of this title, or does anything prohibited by Section 301 et seq. of this title, shall, in addition to any other

penalty provided in Section 301 et seq. of this title, pay an administrative penalty of One Thousand Dollars ($1,000.00).

I. Whoever fails to pay any tax imposed by Section 301 et seq. of this title at the time prescribed by law or rules, shall, in addition to any other penalty provided in Section 301 et seq. of this title, be liable to a penalty of five hundred percent (500%) of the tax due but unpaid.

J. 1. All cigarettes which are held for sale or distribution within the borders of Oklahoma, in violation of the requirements of Section 301 et seq. of this title, and the machinery used to manufacture counterfeit cigarettes shall be forfeited to Oklahoma. All cigarettes and machinery forfeited to Oklahoma under this paragraph shall be destroyed.

2. All fixtures, equipment, and all other materials and personal property on the premises of any distributor or retailer who, with intent to defraud the state, fails to keep or make any record, return, report, or inventory; keeps or makes any false or fraudulent record, return, report, or inventory required by Section 301 et seq. of this title; refuses to pay any tax imposed by Section 301 et seq. of this title; or attempts in any manner to evade or defeat the requirements of Section 301 et seq. of this title shall be forfeited to Oklahoma.

K. Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, distributor, or retailer shall result in the seizure of the product and related machinery by the Tax Commission or any law enforcement agency and shall be punishable as follows:

1. A first violation with a total quantity of less than two cartons of cigarettes or the equivalent amount of other cigarettes shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment not to exceed five (5) years, or both fine and imprisonment;

2. A subsequent violation with a total quantity of less than two cartons of cigarettes, or the equivalent amount of other cigarettes shall be punishable by a fine not to exceed Five Thousand Dollars ($5,000.00), or imprisonment not to exceed five (5) years, or both the fine and the imprisonment, and shall also result in the revocation by the Tax Commission of the manufacturer, distributor, or retailer license;

3. A first violation with a total quantity of more than two cartons of cigarettes, or the equivalent amount of other cigarettes, shall be punishable by a fine not to exceed Two Thousand Dollars ($2,000.00) or imprisonment not to exceed five (5) years, or both the fine and imprisonment; and

4. A subsequent violation with a quantity of two cartons of cigarettes or more, or the equivalent amount of other cigarettes shall be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00) or imprisonment not to exceed five (5) years, or both the fine and imprisonment, and shall also result in the revocation by the Tax Commission of the manufacturer, distributor, or retailer license.

For the purposes of this section, "counterfeit cigarettes" includes cigarettes that have false manufacturing labels or tobacco product packs without tax stamps or with counterfeit tax stamps or a combination thereof. Any counterfeit cigarette seized by the Tax Commission shall be destroyed.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in this state.

B. Each person taking a delivery sale order shall comply with:

1. The age verification requirements set forth in Section 7 of this act;

2. The disclosure requirements set forth in Section 8 of this act;

3. The shipping requirements set forth in Section 9 of this act;

4. The registration and reporting requirements set forth in Section 10 of this act;

5. The tax collection requirements set forth in Section 11 of this act; and

6. All other laws of Oklahoma generally applicable to sales of cigarettes that occur entirely within Oklahoma, including, but not limited to, those laws imposing:

a. excise taxes,

b. sales taxes,

c. licensing and tax-stamping requirements, and

d. escrow or other payment obligations.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. No person shall mail, ship or otherwise deliver cigarettes in connection with a delivery sale unless, prior to the first delivery sale to such consumer, the person:

1. Obtains from the prospective customer a certification which includes:

a. reliable confirmation that the purchaser is at least the legal minimum purchase age, and

b. a statement signed by the prospective purchaser in writing and under penalty of perjury which:

(1) certifies the prospective purchaser's address and date of birth, and

(2) confirms that the prospective purchaser understands:

(i) that signing another person's name to such certification is illegal,

(ii) that sales of cigarettes to individuals under the legal minimum purchase age are illegal,

(iii) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of Oklahoma, and

(iv) that the prospective consumer wants to receive mailings from a tobacco company;

2. Makes a good-faith effort to verify the information contained in the certification provided by the prospective purchaser pursuant to paragraph 1 of this subsection against a commercially available database or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

3. Provides to the prospective purchaser, via e-mail or other means, a notice which meets the requirements of Section 8 of this act and requests confirmation that the delivery sale order was placed by the prospective purchaser; and

4. In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in such purchaser's name or by check.

B. Persons taking delivery sale orders may request that prospective purchasers provide their e-mail addresses.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

The notice required under paragraph 3 of subsection A of Section 7 of this act shall include:

1. A prominent and clearly legible statement that cigarette sales to individuals below the legal minimum purchase age are illegal;

2. A prominent and clearly legible statement that consists of one of the warnings set forth in Section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C., Section 1333(a)(1), rotated on a quarterly basis;

3. A prominent and clearly legible statement that sales of cigarettes are restricted to those individuals who provide

verifiable proof of age in accordance with Section 8 of this act; and

4. A prominent and clearly legible statement that cigarette sales are taxable under Section 301 et seq. of Title 68 of the Oklahoma Statutes, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.4 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each person who mails, ships or otherwise delivers cigarettes in connection with a delivery sale:

1. Shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "CIGARETTES: OKLAHOMA LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN, AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

2. Shall use a method of mailing or shipping that obligates the delivery service to require:

a. the purchaser placing the delivery sale, or another adult of legal minimum purchase age residing at the purchaser's address, to sign to accept delivery of the shipping container, and

b. proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that such person is either the addressee or another adult of legal minimum purchase age residing at the purchaser's address, but such proof shall be required only if that individual appears to be under twenty-seven (27) years of age; and

3. Shall provide to the delivery service retained to deliver such delivery sale evidence of full compliance with Section 11 of this act.

B. If the person taking a purchase order for delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this act applicable to a delivery service and shall be in violation of this act if it fails to comply with any such requirement.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, every person shall file with the Oklahoma Tax Commission a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

B. Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped or otherwise delivered cigarettes in connection with any such sale during the previous calendar month shall file with the Tax Commission a memorandum or a copy of the invoice which provides for each and every such delivery sale:

1. The name and address of the individual to whom such delivery sale was made;

2. The brand or brands of the cigarettes that were sold in such delivery sale; and

3. The quantity of cigarettes that were sold in such delivery sale.

C. Any person that satisfies the requirements of Section 376 of Title 15 of the United States Code shall be deemed to satisfy the requirements of this section.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.6 of Title 68, unless there is created a duplication in numbering, reads as follows:

Each person accepting a purchase order for a delivery sale shall collect and remit to the Oklahoma Tax Commission any taxes levied by Oklahoma with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that such taxes already have been paid to Oklahoma.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.7 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as otherwise provided in this section, the first time a person violates any provision of Section 6, 7, 8, 9, 10 or 11 of this act, such person shall be fined not more than One Thousand Dollars ($1,000.00).

2. In the case of a second or subsequent violation of Section 6, 7, 8, 9, 10 or 11 of this act, such person shall be fined not less than One Thousand Dollars ($1,000.00) or five times the retail value of the cigarettes involved, whichever is greater.

B. Any person who knowingly violates any provision of Section 6, 7, 8, 9, 10 or 11 of this act, or who knowingly and falsely submits a certification under paragraph 1 of subsection A of Section 7 of this act in another person’s name, shall, for each such offense, be fined Ten Thousand Dollars ($10,000.00) or five times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than five (5) years, or both.

C. Whoever fails to collect or remit any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.

D. 1. Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of Section 301 et seq. of this title shall be forfeited to the State of Oklahoma and destroyed.

2. All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud the State of Oklahoma, fails to satisfy any of the requirements of Section 6, 7, 8, 9, 10 or 11 of this act shall be forfeited to the State of Oklahoma.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.8 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Attorney General or his or her designee, or any person who holds a permit under 26 U.S.C., Section 5712, may bring an action in the appropriate court in the State of Oklahoma to prevent or restrain violations of Section 6, 7, 8, 9, 10 or 11 of this act by any person or any person controlling such person.

SECTION 14. This act shall become effective November 1, 2003.

Passed the House of Representatives the 27th day of May, 2003.

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Presiding Officer of the House of Representatives

Passed the Senate the 28th day of May, 2003.

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Presiding Officer of the Senate