

CS for EHB 1814

THE STATE SENATE  
Thursday, April 3, 2003

Committee Substitute for  
ENGROSSED

House Bill No. 1814

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1814 - By: HILLARD  
of the House and CRUTCHFIELD of the Senate.

[ revenue and taxation - Cigarette Stamp Tax - codification  
- 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 ~~this article~~ Section 301 et seq.  
of this 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

1 any political subdivision of the state or combination acting as a  
2 unit, in the plural or singular number;

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

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

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

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

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

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

22 In addition to the foregoing, and irrespective of the percentage  
23 or type of sales, the term "wholesaler", "distributor" and/or

1 "jobber" shall also include all purchasers of cigarettes making  
2 purchases directly from the manufacturer for distribution at  
3 wholesale or retail sale and this shall not affect the requirements  
4 relating to retail licenses-;i

5 ~~(d)~~ 4. The term "retailer" is defined to be: ~~(First)~~  
6 a. a person who comes into the possession of cigarettes  
7 for the purpose of selling, or who sells them at  
8 retail-;i or-;i ~~(Second)~~  
9 b. a person, not coming within the classification of  
10 wholesaler, distributor and/or jobber as herein  
11 defined, having possession of more than one thousand  
12 (1,000) cigarettes-;i

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

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

19 ~~(g)~~ 7. The term "sale" and/or "sales" is hereby defined to be  
20 and declared to include sales, barter, exchanges and every other  
21 manner, method and form of transferring the ownership of personal  
22 property from one person to another, and is also declared to be the  
23 use or consumption in this state in the first instance of cigarettes

1 received from without the state or of any other cigarettes upon  
2 which the tax has not been paid. The term "first sale" shall mean  
3 and include the first sale or distribution of cigarettes in  
4 intrastate commerce or the first use or consumption of cigarettes  
5 within this state.i

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

8 ~~1.~~ The

9 a. the tax levied pursuant to the provisions of Section  
10 301 et seq. of this title is paid.i

11 ~~2.~~ The

12 b. the tax levied pursuant to the provisions of Section  
13 349 of this title is paid.i or

14 ~~3.~~ The

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

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

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

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

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

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

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

1 service, or the Internet or other online service,

2 or

3 (2) the cigarettes are delivered by use of the mails

4 or other delivery service.

5 b. A sale of cigarettes which satisfies the criteria in

6 subparagraph a of this paragraph shall be a delivery

7 sale regardless of whether the seller is located

8 within or outside of Oklahoma.

9 c. A sale of cigarettes not for personal consumption to a

10 person who is a wholesale dealer or a retail dealer

11 shall not be a delivery sale.

12 d. For purposes of this paragraph, any sale of cigarettes

13 to an individual in Oklahoma shall be treated as a

14 sale to a consumer unless such individual is licensed

15 as a distributor or retailer of cigarettes by the Tax

16 Commission;

17 14. The term "delivery service" means any person, including but

18 not limited to the United States Postal Service, that is engaged in

19 the commercial delivery of letters, packages, or other containers;

20 15. The term "manufacturer" means any person who manufactures,

21 fabricates, assembles, processes, or labels a finished cigarette; or

22 imports, either directly or indirectly, a finished cigarette for

23 sale or distribution in this state;

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

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

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

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

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

1 However, if the vehicle is owned or operated by a place of business  
2 for which the regular Twenty-five Dollars (\$25.00) is paid, the  
3 annual fee for the license with respect to such vehicle shall be  
4 only Ten Dollars (\$10.00).

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

20 Provided, ~~further,~~ that the ~~Oklahoma~~ Tax Commission shall not  
21 authorize the use of a stamp-metering device by any manufacturer,  
22 wholesaler, warehouseman, jobber or distributor who does not  
23 maintain a warehouse or wholesale establishment or place of business

1 within the State of Oklahoma from which cigarettes are received,  
2 stocked and sold and where such metering device is kept and used;  
3 but the Tax Commission may, in its discretion, permit the use of  
4 such metering device by manufacturers, wholesalers, warehousemen,  
5 jobbers or distributors of cigarettes residing wholly within another  
6 state where such state permits a licensed Oklahoma resident,  
7 manufacturer, wholesaler, warehouseman, jobber or distributor of  
8 cigarettes the use of the metering device of such state without  
9 first requiring that such manufacturer, wholesaler, warehouseman,  
10 jobber or distributor establish a place of business in such other  
11 state. The provisions of this ~~paragraph~~ subsection relating to  
12 metering devices shall not apply to states which do not require the  
13 affixing of tax stamps to packages of cigarettes before same are  
14 offered for sale in such states.

15 B. Every retailer in this state, as a condition of carrying on  
16 such business, shall secure from the Tax Commission a license and  
17 shall pay therefor a fee of Thirty Dollars (\$30.00). Such license,  
18 which will be for the ensuing three (3) years, must at all times be  
19 displayed in a conspicuous place so that it can be seen. ~~A license~~  
20 ~~issued prior to September 1, 1994, shall be valid until it expires.~~  
21 Upon expiration of such license, the retailer to whom such license  
22 was issued may obtain a renewal license which shall be valid for  
23 three (3) years or until expiration of the retailer's sales tax

1 permit, whichever is earlier, after which a renewal license shall be  
2 valid for three (3) years. The manner and prorated fee for renewals  
3 shall be prescribed by the Tax Commission. Every person operating  
4 under such license as a retailer and who owns or operates more than  
5 one place of business must secure a license for each place of  
6 business. "Place of business" shall be construed to include places  
7 where orders are received or where cigarettes are sold.

8 C. Every distributing agent shall, as a condition of carrying  
9 on such business, pursuant to written application on a form  
10 prescribed by and in such detailed form as the Tax Commission may  
11 require, annually secure from the Tax Commission a license, and  
12 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).  
13 An application shall be filed and a license obtained for each place  
14 of business owned or operated by a distributing agent. The license,  
15 which will be for the ensuing year, shall be consecutively numbered,  
16 nonassignable and nontransferable, and shall authorize the storing  
17 and distribution of unstamped cigarettes within this state when such  
18 distribution is made upon interstate orders only.

19 D. 1. All wholesale, retail, and distributing agent's licenses  
20 shall be nonassignable and nontransferable from one person to  
21 another person. Such licenses may be transferred from one location  
22 to another location after an application has been filed with the Tax

1 Commission requesting such transfer and after the approval of the  
2 Tax Commission.

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

17 E. No license may be granted, maintained or renewed if any of  
18 the following conditions applies to the applicant. For purposes of  
19 this section, "applicant" includes any combination of persons owning  
20 directly or indirectly, in the aggregate, more than ten percent  
21 (10%) of the ownership interests in the applicant:

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

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

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

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

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

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

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

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

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

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

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

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

17        Section 305. A. Every wholesaler, jobber, distributor, or  
18 warehouseman doing business within this state and required to secure  
19 a license as provided under Section 304 of this title shall, upon  
20 withdrawal from storage, and before making any sale or distribution  
21 of cigarettes for consumption thereof, affix or cause the same to  
22 have affixed thereto the stamp or stamps as required by Section 301  
23 et seq. of this title. It shall be the duty of the wholesaler,

1 jobber, distributor, or warehouseman to supply and charge to the  
2 retailer the necessary stamps to cover any and all drop shipments of  
3 cigarettes billed to the retailer or consumer by the wholesaler,  
4 jobber, distributor, or warehouseman; and the wholesaler, jobber,  
5 distributor or warehouseman shall be liable to the Oklahoma Tax  
6 Commission to perform this service. Distributors may apply stamps  
7 only to cigarette packages that they have received directly from a  
8 manufacturer or importer of cigarettes who possesses a valid and  
9 current permit under Section 5712 of Title 26 of the United States  
10 Code.

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

21 C. Any unlicensed consumer who buys direct from any  
22 distributor, jobber, manufacturer, warehouseman, or wholesaler, or  
23 other person, within or without this state, any cigarettes in excess

1 of forty (40), at any one time to which are not affixed the stamps  
2 required by Section 301 et seq. of this title shall, before  
3 purchasing such cigarettes, secure from the Tax Commission a written  
4 license and shall pay therefor an annual fee of Twenty-five Dollars  
5 (\$25.00), and shall immediately, upon the receipt of any unstamped  
6 cigarettes, report the same to the Tax Commission on such forms as  
7 the Tax Commission may prescribe, and immediately purchase from the  
8 Tax Commission proper stamps and attach the same to all such  
9 cigarettes received. It shall be unlawful for any person to sell or  
10 consume cigarettes on which the tax, as levied by Section 301 et  
11 seq. of this title, has not been paid, and which are not contained  
12 in packages to which are securely affixed the stamps evidencing  
13 payment of the tax imposed by Section 301 et seq. of this title.

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

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

21           2. All such cigarettes, vehicles and property so seized shall  
22 first be listed and appraised by the officer making such seizure and  
23 turned over to the county sheriff of the county in which the seizure

1 is made and a receipt therefor taken. The person making such  
2 seizure shall immediately make and file a written report thereof,  
3 showing the name of the person making such seizure, the place, and  
4 the person where, and from whom such property was seized, and an  
5 inventory and appraisalment thereof, at the usual and ordinary retail  
6 price of such articles received, to the Tax Commission, or the  
7 Attorney General, in the case of cigarettes stamped, sold, offered  
8 for sale, or imported into this state in violation of the provisions  
9 of Section ~~2~~ 305.1 of this ~~act~~ title. The district attorney of the  
10 county in which the seizures are made shall, at the request of the  
11 Tax Commission or Attorney General, file in the district court  
12 forfeiture proceedings in the name of the State of Oklahoma, as  
13 plaintiff, and in the name of the owner or person in possession, as  
14 defendant, if known, and if unknown in the name of the property  
15 seized. The clerk of the court shall issue summons to the owner or  
16 person in whose possession such property was found, directing the  
17 owner or person to answer within ten (10) days. If the property is  
18 declared forfeited and ordered sold, notice of the sale shall be  
19 posted in five public places in the county not less than ten (10)  
20 days before the date of sale; provided, cigarette packages or  
21 containers as described in Section ~~2~~ 305.1 of this ~~act~~ title shall  
22 only be sold for export outside the United States or as otherwise  
23 permitted by federal law. The proceeds of the sale shall be

1 deposited with the clerk of the court, who shall after deducting  
2 costs, including the costs of sale, pay the balance to the Tax  
3 Commission as cigarette tax collected, or in the case of cigarettes  
4 seized as being in violation of the provisions of Section ~~2~~ 305.1 of  
5 this ~~act~~ title, to the Attorney General. The Attorney General shall  
6 remit the amount of cigarette tax, if any be due, including all  
7 penalties and interest due, to the Tax Commission as cigarette tax  
8 collected and shall deposit the remainder to the revolving fund  
9 created in Section ~~7~~ 305.2 of this ~~act~~ title.

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

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

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

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

19 SECTION 4. AMENDATORY 68 O.S. 2001, Section 312, is  
20 amended to read as follows:

21 Section 312. ~~(a)~~ A. Every person subject to the payment of a  
22 tax hereunder shall keep in Oklahoma accurate records covering the  
23 business carried on and shall for three (3) years, and more if

1 required by the rules and regulations of the Oklahoma Tax  
2 Commission, keep and preserve all invoices, showing all purchases  
3 and sales of cigarettes; and such invoices and stock of cigarettes  
4 shall at all times be subject to the examination and inspection of  
5 any member or legally authorized agent or representative of the Tax  
6 Commission, in the enforcement of ~~this article~~ Section 301 et seq.  
7 of this title. Every wholesaler, jobber, warehouseman or retailer  
8 operating in the State of Oklahoma, whose main warehouse or  
9 headquarters is in another state shall keep all records of all  
10 cigarette transactions made ~~by him~~ at ~~his~~ the place of business in  
11 Oklahoma, or at a designated place in the State of Oklahoma.

12 ~~(b)~~ B. 1. A retailer shall report to the Tax Commission each  
13 sale or distribution of more than two thousand (2,000) cigarettes to  
14 any person in any single transaction.

15 2. A retailer shall not knowingly sell more than the amount of  
16 cigarettes in paragraph 1 of this subsection to any person in any  
17 series of transactions in any two-day period without filing a report  
18 to the Tax Commission.

19 C. Every wholesaler and retailer receiving unstamped cigarettes  
20 shall file a report with the Tax Commission on or before the ~~10th~~  
21 tenth day of each month covering the previous calendar month, on  
22 forms prescribed and furnished by the Tax Commission, disclosing the  
23 beginning and closing inventory of unstamped cigarettes, the

1 beginning and closing inventory of stamped cigarettes, the beginning  
2 and closing inventory of cigarette stamps, the number and  
3 denomination of cigarette stamps affixed to packages of cigarettes,  
4 and all purchases of cigarettes by showing the invoice number, name  
5 and address of the consignee or seller, the date, and the number of  
6 cigarettes purchased, and such other information as may be required  
7 by the Tax Commission. Retailers or consumers purchasing cigarettes  
8 in drop shipments shall be required to make monthly reports to the  
9 Commission as are required of wholesale dealers.

10 ~~(e)~~ D. Each retailer shall submit the information required by  
11 this subsection to the Tax Commission on its sales tax return. In  
12 each case, the information required shall be itemized to disclose  
13 clearly the brand style, and the type of stamp, tax or tax-exempt,  
14 applied to the product. Such information shall be provided  
15 separately with respect to each of the facilities operated by the  
16 retailer and shall include:

17 1. The inventory of stamped cigarette packages on hand at the  
18 beginning of the reporting period;

19 2. The quantity of stamped cigarette packages received by the  
20 retailer from another person during the reporting period and the  
21 name and address of each person from whom those products were  
22 received;

1       3. The quantity of stamped cigarette packages distributed or  
2 shipped to another retailer during the reporting period and the name  
3 and address of each person to whom those products were distributed  
4 or shipped;

5       4. The quantity of stamped cigarette packages distributed or  
6 shipped to another facility of the same retailer during the  
7 reporting period and the address of the facility to which those  
8 products were distributed or shipped;

9       5. The quantity of stamped cigarette packages sold or  
10 distributed to consumers during the reporting period;

11       6. The inventory of stamped cigarette packages on hand at the  
12 end of the reporting period; and

13       7. All transactions required to be reported by paragraph 2 of  
14 subsection B of this section.

15       E. Every distributing agent shall, except as otherwise provided  
16 herein, keep at each place of business in Oklahoma for a period of  
17 three (3) years for inspection by the Commission a complete record  
18 of all cigarettes received ~~by him~~, including all orders, invoices,  
19 bills of lading, waybills, freight bills, express receipts, and all  
20 other shipping records which are furnished to the distributing agent  
21 by the carrier and the shipper of ~~said~~ the cigarettes, or copies  
22 thereof, and, in addition thereto, a complete record of each and  
23 every distribution or delivery made by ~~said~~ the distributing agent.

1 Such records of distribution or delivery shall include all orders,  
2 invoices or copies thereof, all other shipping records furnished by  
3 the carrier, and the person ordering distribution or delivery of the  
4 cigarettes.

5 ~~(d)~~ F. Upon a form to be prescribed by the Tax Commission,  
6 every distributing agent in Oklahoma shall report each day, except  
7 Sundays and holidays, to the Tax Commission all deliveries of  
8 cigarettes made on the preceding day or days. The reports shall  
9 show the name of the person ordering the delivery, date of delivery,  
10 name and address of the person to whom delivered, the invoice  
11 number, bill of lading or waybill number, the number and kind of  
12 cigarettes delivered, the means of delivery and/or the  
13 transportation agent and the destination of drop shipment, if a drop  
14 shipment. However, if the invoice furnished the distributing agent  
15 by the manufacturer or other person ordering such delivery, or the  
16 bill of lading prepared by ~~said~~ the distributing agent to cover the  
17 shipment under ~~said~~ the invoice, contains all the information  
18 required to be reported, it will be sufficient to send a copy of  
19 ~~said~~ the invoice or invoices, or a copy of ~~said~~ the bill of lading  
20 or bills of lading, to the Tax Commission.

21 G. Distributors shall submit periodic reports containing the  
22 information required by this subsection. In each case, the  
23 information required shall be itemized so as to disclose clearly by

1 the brand style, and, if applicable, the type of stamp, tax or tax-  
2 exempt, applied to the product. Such reports shall be provided  
3 separately with respect to each of the facilities operated by the  
4 distributor and shall include:

5 1. The inventory of stamped and unstamped cigarette packages  
6 held by the distributor for sale or distribution within the borders  
7 of Oklahoma on hand at the beginning of the reporting period;

8 2. The inventory of cigarette packages held by the distributor  
9 for sale or distribution beyond the borders of Oklahoma on hand at  
10 the beginning of the reporting period;

11 3. The quantity of stamped cigarette packages held for sale or  
12 distribution within the borders of Oklahoma that were received by  
13 the distributor from another person during the reporting period and  
14 the name and address of each person from whom those products were  
15 received;

16 4. The quantity of cigarette packages held for sale or  
17 distribution beyond the borders of Oklahoma that were received by  
18 the distributor from another person during the reporting period and  
19 the name and address of each person from whom those products were  
20 received;

21 5. The inventory of stamped and unstamped cigarette packages  
22 held for sale or distribution within the borders of Oklahoma on hand  
23 at the end of the reporting period;

1       6. The inventory of cigarette packages held for sale or  
2 distribution beyond the borders of Oklahoma on hand at the end of  
3 the reporting period;

4       7. The number of each type of stamp on hand at the beginning of  
5 the reporting period;

6       8. The number of each type of stamp purchased or received  
7 during the reporting period;

8       9. The number of each type of stamp applied during the  
9 reporting period; and

10       10. The number of each type of stamp on hand at the end of the  
11 reporting period.

12       H. Manufacturers shall submit periodic reports containing the  
13 information required by this subsection. In each case, the  
14 information required shall be itemized so as to disclose clearly by  
15 the brand style. Such reports shall be provided separately with  
16 respect to each of the facilities operated by the manufacturer and  
17 shall include:

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

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

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

9        I. The Tax Commission shall establish the reporting period for  
10 all reports required by this section, which shall be no longer than  
11 three (3) calendar months and no shorter than one (1) calendar  
12 month.

13        J. Reports shall be submitted on forms prescribed by the Tax  
14 Commission.

15        K. The Tax Commission shall establish procedures to allow  
16 electronic submission of reports required under this section.

17        SECTION 5.        NEW LAW        A new section of law to be codified  
18 in the Oklahoma Statutes as Section 312.1 of Title 68, unless there  
19 is created a duplication in numbering, reads as follows:

20        A. Each distributor shall maintain copies of invoices or  
21 equivalent documentation for each of its facilities for every  
22 transaction in which the distributor is the seller, purchaser,  
23 consignor, consignee, or recipient of cigarettes. The invoices or

1 documentation shall show the name and address of the consignor,  
2 seller, purchaser, or consignee, and the quantity by brand style of  
3 the cigarettes involved in the transaction.

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

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

18 D. Records required under subsections A through C of this  
19 section shall be preserved on the premises described in the license  
20 in such a manner as to ensure permanency and accessibility for  
21 inspection at reasonable hours by authorized personnel of the  
22 Oklahoma Tax Commission. With the Tax Commission's permission,  
23 manufacturers, distributors and retailers with multiple places of

1 business may retain centralized records, but shall transmit  
2 duplicates of the invoices or the equivalent documentation to each  
3 place of business within twenty-four (24) hours upon the request of  
4 the Tax Commission.

5 E. The records required by subsections A through C of this  
6 section shall be retained for a period of three (3) years from the  
7 date of the transaction.

8 F. The Tax Commission, upon request, shall have access to  
9 reports and records required under Section 301 et seq. of this  
10 title. The Tax Commission at its sole discretion may share the  
11 records and reports required by such sections with law enforcement  
12 officials of the federal government, other states or international  
13 authorities.

14 G. Public access to reports submitted by licensees shall be  
15 provided under the procedures established by the Oklahoma Open  
16 Records Act. In no case, however, shall information about  
17 quantities of cigarettes by brand be released to anyone other than  
18 those permitted access under subsection F of this section.

19 SECTION 6. AMENDATORY 68 O.S. 2001, Section 316, is  
20 amended to read as follows:

21 Section 316. A. Any person who shall:

1        1. Sell, offer for sale or present as a prize or gift  
2 cigarettes without a stamp being then and there affixed to each  
3 individual package;  
4        2. Sell cigarettes in quantities less than an individual  
5 package;  
6        3. Knowingly consume, use or smoke any cigarettes upon which a  
7 tax is required to be paid without a stamp being affixed upon each  
8 individual package;  
9        4. Knowingly cancel or mutilate any stamp affixed to any  
10 individual package of cigarettes for the purpose of concealing any  
11 violation of Section 301 et seq. of this title or with any other  
12 fraudulent intent;  
13        5. Use any artful device or deceptive practice to conceal any  
14 violation of Section 301 et seq. of this title;  
15        6. Refuse to surrender to the Oklahoma Tax Commission upon  
16 demand any cigarettes possessed in violation of any provision of  
17 Section 301 et seq. of this title; or  
18        7. Make a first sale of cigarettes without a stamp being then  
19 and there affixed to each individual package;  
20 shall be guilty of a misdemeanor, and upon conviction thereof shall  
21 be fined not more than Two Hundred Dollars (\$200.00), where specific  
22 penalties are not otherwise provided.

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

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

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

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

11           4. Fail to deliver an invoice required by law to a purchaser of  
12 cigarettes;  
13 shall be guilty of a misdemeanor, and upon conviction thereof shall  
14 be punished by a fine of not more than Two Hundred Dollars  
15 (\$200.00), where specific penalties are not otherwise provided.

16           C. Any distributing agent who shall:

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

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

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

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

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

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

9 3. For a third or subsequent offense, be punished by an  
10 administrative fine of not more than Five Thousand Dollars  
11 (\$5,000.00).

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

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

16 2. For a second or subsequent offense, be punished by an  
17 administrative fine of not more than Twenty Thousand Dollars  
18 (\$20,000.00).

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

22 F. The Tax Commission shall immediately revoke the license of a  
23 person punished for a violation pursuant to the provisions of

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

6 G. Whoever, with intent to defraud Oklahoma:

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

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

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

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

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

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

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

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

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

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

7        1. A first violation with a total quantity of less than two  
8 cartons of cigarettes or the equivalent amount of other cigarettes  
9 shall be punishable by a fine not to exceed One Thousand Dollars  
10 (\$1,000.00) or imprisonment not to exceed five (5) years, or both  
11 fine and imprisonment;

12        2. A subsequent violation with a total quantity of less than two  
13 cartons of cigarettes, or the equivalent amount of other cigarettes  
14 shall be punishable by a fine not to exceed Five Thousand Dollars  
15 (\$5,000.00), or imprisonment not to exceed five (5) years, or both  
16 the fine and the imprisonment, and shall also result in the  
17 revocation by the Tax Commission of the manufacturer, distributor,  
18 or retailer license;

19        3. A first violation with a total quantity of more than two  
20 cartons of cigarettes, or the equivalent amount of other cigarettes,  
21 shall be punishable by a fine not to exceed Two Thousand Dollars  
22 (\$2,000.00) or imprisonment not to exceed five (5) years, or both  
23 the fine and imprisonment; and

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

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

13        SECTION 7.        NEW LAW        A new section of law to be codified  
14 in the Oklahoma Statutes as Section 317.1 of Title 68, unless there  
15 is created a duplication in numbering, reads as follows:

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

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

20        1. The age verification requirements set forth in Section 8 of  
21 this act;

22        2. The disclosure requirements set forth in Section 9 of this  
23 act;

1           3. The shipping requirements set forth in Section 10 of this  
2 act;

3           4. The registration and reporting requirements set forth in  
4 Section 11 of this act;

5           5. The tax collection requirements set forth in Section 12 of  
6 this act; and

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

10           a. excise taxes,

11           b. sales taxes,

12           c. licensing and tax-stamping requirements, and

13           d. escrow or other payment obligations.

14           SECTION 8.        NEW LAW        A new section of law to be codified  
15 in the Oklahoma Statutes as Section 317.2 of Title 68, unless there  
16 is created a duplication in numbering, reads as follows:

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

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

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

- 1           b.    a statement signed by the prospective purchaser in  
2                   writing and under penalty of perjury which:
- 3                   (1)   certifies the prospective purchaser's address and  
4                         date of birth, and
- 5                   (2)   confirms that the prospective purchaser  
6                         understands:
- 7                         (i)   that signing another person's name to such  
8                                 certification is illegal,
- 9                         (ii)  that sales of cigarettes to individuals  
10                               under the legal minimum purchase age are  
11                               illegal,
- 12                        (iii) that the purchase of cigarettes by  
13                               individuals under the legal minimum purchase  
14                               age is illegal under the laws of Oklahoma,  
15                               and
- 16                        (iv)  that the prospective consumer wants to  
17                               receive mailings from a tobacco company;

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

1           3. Provides to the prospective purchaser, via e-mail or other  
2 means, a notice which meets the requirements of Section 9 of this  
3 act and requests confirmation that the delivery sale order was  
4 placed by the prospective purchaser; and

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

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

11           SECTION 9.           NEW LAW           A new section of law to be codified  
12 in the Oklahoma Statutes as Section 317.3 of Title 68, unless there  
13 is created a duplication in numbering, reads as follows:

14           The notice required under paragraph 3 of subsection A of Section  
15 8 of this act shall include:

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

19           2. A prominent and clearly legible statement that consists of  
20 one of the warnings set forth in Section 4(a)(1) of the Federal  
21 Cigarette Labeling and Advertising Act, 15 U.S.C., Section  
22 1333(a)(1), rotated on a quarterly basis;

1           3. A prominent and clearly legible statement that sales of  
2 cigarettes are restricted to those individuals who provide  
3 verifiable proof of age in accordance with Section 8 of this act;  
4 and

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

9           SECTION 10.       NEW LAW       A new section of law to be codified  
10 in the Oklahoma Statutes as Section 317.4 of Title 68, unless there  
11 is created a duplication in numbering, reads as follows:

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

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

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

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

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

10          3. Shall provide to the delivery service retained to deliver  
11 such delivery sale evidence of full compliance with Section 12 of  
12 this act.

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

18          SECTION 11.        NEW LAW        A new section of law to be codified  
19 in the Oklahoma Statutes as Section 317.5 of Title 68, unless there  
20 is created a duplication in numbering, reads as follows:

21          A. Prior to making delivery sales or mailing, shipping, or  
22 otherwise delivering cigarettes in connection with any such sales,  
23 every person shall file with the Oklahoma Tax Commission a statement

1 setting forth such person's name, trade name, and the address of  
2 such person's principal place of business and any other place of  
3 business.

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

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

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

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

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

19 SECTION 12. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 317.6 of Title 68, unless there  
21 is created a duplication in numbering, reads as follows:

22 Each person accepting a purchase order for a delivery sale shall  
23 collect and remit to the Oklahoma Tax Commission any taxes levied by

1 Oklahoma with respect to such delivery sale, except that such  
2 collection and remission shall not be required to the extent such  
3 person has obtained proof, in the form of the presence of applicable  
4 tax stamps or otherwise, that such taxes already have been paid to  
5 Oklahoma.

6 SECTION 13. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 317.7 of Title 68, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. 1. Except as otherwise provided in this section, the first  
10 time a person violates any provision of Section 7, 8, 9, 10, 11 or  
11 12 of this act, such person shall be fined not more than One  
12 Thousand Dollars (\$1,000.00).

13 2. In the case of a second or subsequent violation of Section  
14 7, 8, 9, 10, 11 or 12 of this act, such person shall be fined not  
15 less than One Thousand Dollars (\$1,000.00) or five times the retail  
16 value of the cigarettes involved, whichever is greater.

17 B. Any person who knowingly violates any provision of Section  
18 7, 8, 9, 10, 11 or 12 of this act, or who knowingly and falsely  
19 submits a certification under paragraph 1 of subsection A of Section  
20 8 of this act in another person's name, shall, for each such  
21 offense, be fined Ten Thousand Dollars (\$10,000.00) or five times  
22 the retail value of the cigarettes involved, whichever is greater,  
23 or imprisoned not more than five (5) years, or both.

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

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

9 2. All fixtures, equipment, and all other materials and  
10 personal property on the premises of any person who, with the intent  
11 to defraud the State of Oklahoma, fails to satisfy any of the  
12 requirements of Section 7, 8, 9, 10, 11 or 12 of this act shall be  
13 forfeited to the State of Oklahoma.

14 SECTION 14. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 317.8 of Title 68, unless there  
16 is created a duplication in numbering, reads as follows:

17 The Attorney General or his or her designee, or any person who  
18 holds a permit under 26 U.S.C., Section 5712, may bring an action in  
19 the appropriate court in the State of Oklahoma to prevent or  
20 restrain violations of Section 7, 8, 9, 10, 11 or 12 of this act by  
21 any person or any person controlling such person.

22 SECTION 15. This act shall become effective November 1, 2003.

23 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-1-03 - DO PASS,  
24 As Amended.