

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1983

By: Morgan

AS INTRODUCED

An Act relating to revenue and taxation; amending Section 7, Chapter 266, O.S.L. 2004 (68 O.S. Supp. 2005, Section 360.7), which relates to violations and civil penalties; clarifying references; and providing an effective date.

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

SECTION 1. AMENDATORY Section 7, Chapter 266, O.S.L. 2004 (68 O.S. Supp. 2005, Section 360.7), is amended to read as follows:

Section 360.7 A. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated Section ~~6~~ 360.6 of this ~~act~~ title or any rule promulgated pursuant to the Master Settlement Agreement Complementary Act, the Oklahoma Tax Commission may revoke or suspend the license of the stamping agent. Each stamp affixed and each sale or offer to sell cigarettes in violation of the Master Settlement Agreement Complementary Act shall constitute a separate violation. For each violation, the Oklahoma Tax Commission may also impose a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes or Five Thousand Dollars (\$5,000.00) upon a determination of violation of the Master Settlement Agreement Complementary Act or any rules promulgated pursuant thereto.

B. Any cigarettes that have been sold, offered for sale, or possessed for sale in this state or imported for personal consumption in this state, in violation of the Master Settlement

Agreement Complementary Act, shall be deemed contraband pursuant to the Master Settlement Agreement Complementary Act. Those cigarettes shall be subject to seizure and forfeiture as provided by this section and all cigarettes so seized and forfeited shall be destroyed as provided by this section and not resold.

C. 1. Cigarettes or tobacco product distributors and wholesalers licensed by the Oklahoma Tax Commission, pursuant to Section 304 or 415 of ~~Title 68 of the Oklahoma Statutes~~ this title, who also distribute cigarettes in a state bordering Oklahoma may store in their Oklahoma warehouse cigarettes made contraband under this section if, and only if, they have the tax stamp of another state affixed to each package of cigarettes.

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

- a. on a commercial carrier with a proper bill of lading with an out-of-state destination,
- b. when the tax stamp of another state is affixed to each pack of cigarettes or tobacco product transported, or
- c. on a commercial carrier with a proper bill of lading to a tobacco product distributor or wholesaler licensed by the Oklahoma Tax Commission, pursuant to Section 304 or 415 of ~~Title 68 of the Oklahoma Statutes~~ this title, who also distributes cigarettes in a state bordering Oklahoma if, and only if, the packing slip accompanying the shipment indicates the shipment is for sale in another state and indicates which state, and the invoice for the shipment also indicates the shipment is for sale in a state other than Oklahoma and identifies the state in which the shipment is to be sold. The time of delivery of the

shipments shall be indicated on the bill of lading of the common carrier when delivery is completed. The receiving Oklahoma distributor or wholesaler must, within twenty-four (24) hours of receiving the delivery, affix or cause to be affixed to each package of cigarettes the stamp of the state in which they are to be sold.

3. All cigarettes, tobacco products, vehicles, and property so seized shall be listed and appraised by the officer making the seizure and turned over to the county sheriff of the county in which the seizure is made and a receipt therefor taken. The person making the seizure shall immediately make a written report of the seizure, showing the name of the person making the seizure, the location of the seizure, the person from whom the property was seized, and an inventory and appraisal of the property at the usual and ordinary retail price of the articles received. The report shall be filed with the Oklahoma Tax Commission and the Attorney General. The district attorney of the county in which the seizures are made, at the request of the Oklahoma Tax Commission or Attorney General, shall file in the district court forfeiture proceedings in the name of the State of Oklahoma, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown or not susceptible to the jurisdiction of the court, in the name of the property seized. The clerk of the court shall issue a summons to the owner or person in whose possession the property was found directing the owner or person to answer within ten (10) days. At the forfeiture proceeding, if a distributor or wholesaler demonstrates through clear and convincing evidence that the possession of contraband by the distributor or wholesaler was accidental, the vehicle in which the contraband was being transported shall not be forfeited. In no case, however, shall possession of more than twenty (20) cartons of contraband product be

considered by the courts as being possessed accidentally. If the property is declared forfeited and ordered sold, notice of the sale shall be posted not less than ten (10) days before the date of sale in five (5) public places in the county in which the seizures are made. However, any cigarettes or tobacco products forfeited pursuant to this section shall be destroyed by the county sheriff. Proceeds of the sale shall be deposited with the clerk of the court, who shall, after deducting costs including the costs of prosecution, storage, and sale, pay the balance to the Oklahoma Tax Commission for deposit in the Tobacco Settlement Endowment Trust Fund.

D. The Attorney General may seek an injunction to restrain a threatened or actual violation of the Master Settlement Agreement Complementary Act by a stamping agent and to compel the stamping agent to comply with those provisions. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

E. 1. It shall be unlawful for a person to:

- a. sell or distribute cigarettes, or
- b. acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of the Master Settlement Agreement Complementary Act. A violation of the act shall be a misdemeanor.

2. A person who violates subsection C of Section 4 360.4 of this ~~act~~ title engages in an unfair and deceptive trade practice in violation of the provisions of the Oklahoma Consumer Protection Act.

SECTION 2. This act shall become effective November 1, 2006.