

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 1014

By: Anderson and Gumm of the
Senate

3

and

4

Jackson and Carey of the
House

5

6

7

8

9 (revenue and taxation - cigarette and tobacco

10 products tax - repealing - codification -

11 effective date)

12

13

14 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

15

16 "(revenue and taxation - cigarette and tobacco

17 products tax -

18 effective date)

19

20

21 SECTION 1. AMENDATORY 68 O.S. 2001, Section 304, as last
22 amended by Section 6, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2006,
23 Section 304), is amended to read as follows:

24

1 Section 304. A. Every manufacturer, and wholesaler,
2 ~~warehouseman, jobber or distributor~~ of cigarettes in this state, as
3 a condition of carrying on such business, shall annually secure from
4 the Oklahoma Tax Commission a written license, and shall pay
5 therefor an annual fee of ~~Twenty five Dollars (\$25.00)~~ Two Hundred
6 Fifty Dollars (\$250.00). Application for such license shall be made
7 upon such forms as prescribed by the Oklahoma Tax Commission, which
8 shall include, as a required part of the application, the
9 applicant's agreement to the jurisdiction of the Tax Commission and
10 the courts of this state for the purpose of enforcement of the
11 provisions of the Cigarette and Tobacco Products Tax Codes. The
12 applicant, by submitting the application, further agrees to abide by
13 the provisions of the Cigarette and Tobacco Products Tax Codes and
14 the rules promulgated by the Tax Commission with reference thereto.
15 Further, the applicant agrees that it shall only sell cigarettes or
16 tobacco products to a licensed retailer or a tribally owned or
17 licensed store. This license, which will be for the ensuing year,
18 must at all times be displayed in a conspicuous place so that it can
19 be seen. Persons operating more than one place of business must
20 secure a license for each place of business. "Place of business"
21 shall be construed to include the place where orders are received,
22 or where cigarettes are sold. If cigarettes are sold on or from any
23 vehicle, the vehicle shall constitute a place of business and the
24 regular license fee of ~~Twenty five Dollars (\$25.00)~~ shall be paid

1 with respect thereto. However, if the vehicle is owned or operated
2 by a place of business for which the regular ~~Twenty five Dollars~~
3 ~~(\$25.00)~~ fee is paid, the annual fee for the license with respect to
4 such vehicle shall be only Ten Dollars (\$10.00). The expiration for
5 such vehicle license shall expire on the same date as the current
6 license of the place of business.

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

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

16 C. Every distributing agent shall, as a condition of carrying
17 on such business, pursuant to written application on a form
18 prescribed by and in such detailed form as the Tax Commission may
19 require, annually secure from the Tax Commission a license, and
20 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).
21 An application shall be filed and a license obtained for each place
22 of business owned or operated by a distributing agent. The license,
23 which will be for the ensuing year, shall be consecutively numbered,
24 nonassignable and nontransferable, and shall authorize the storing

1 and distribution of unstamped cigarettes within this state when such
2 distribution is made upon interstate orders only.

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

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

23 E. No license may be granted, maintained or renewed if any of
24 the following conditions applies to the applicant. For purposes of

1 this section, "applicant" includes any combination of persons owning
2 directly or indirectly, in the aggregate, more than ten percent
3 (10%) of the ownership interests in the applicant:

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

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

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

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

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

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

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

24

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

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

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

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

19 SECTION 2. AMENDATORY 68 O.S. 2001, Section 316, as
20 amended by Section 5, Chapter 475, O.S.L. 2003 (68 O.S. Supp. 2006,
21 Section 316), is amended to read as follows:

22 Section 316. A. Any person, other than a consumer, who shall:
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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~~ the Cigarette and
12 Tobacco Products Tax Codes or with any other fraudulent intent;

13 ~~5.~~ 4. Use any artful device or deceptive practice to conceal
14 any violation of ~~Section 301 et seq. of this title~~ the Cigarette and
15 Tobacco Products Tax Codes;

16 ~~6.~~ 5. Refuse to surrender to the Oklahoma Tax Commission upon
17 demand any cigarettes possessed in violation of any provision of
18 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
19 Tax Codes; or

20 ~~7.~~ Make 6. Knowingly or intentionally make a first sale of
21 cigarettes without a stamp being then and there affixed to each
22 individual package;
23 shall be guilty of a misdemeanor, and upon conviction thereof shall
24 be fined not more than ~~Two Hundred Dollars (\$200.00)~~ Ten Thousand

1 Dollars (\$10,000.00) for the first offense and not more than Twenty-
2 five Thousand Dollars (\$25,000.00) for the second offense, where
3 specific penalties are not otherwise provided.

4 B. Any consumer, who shall:

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

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

11 3. Knowingly cancel or mutilate any stamp affixed to any
12 individual package of cigarettes for the purpose of concealing any
13 violation of the Cigarette and Tobacco Products Tax Codes or with
14 any other fraudulent intent;

15 4. Use any artful device or deceptive practice to conceal any
16 violation of the Cigarette and Tobacco Products Tax Codes; or

17 5. Refuse to surrender to the Tax Commission upon demand any
18 cigarettes possessed in violation of any provision of Section 301 et
19 seq. of this title,

20 shall be fined not more than Two Hundred Dollars (\$200.00), where
21 specific penalties are not otherwise provided.

22 C. Any distributor, wholesale dealer, retail dealer wholesaler,
23 retailer, or distributing agent who shall intentionally:

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

3 2. Sell any cigarettes upon which tax is required to be paid by
4 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
5 Tax Codes without at the time of making such sale having a valid
6 license;

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

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

12 shall be guilty of a misdemeanor, and upon conviction thereof shall
13 be punished by a fine of not more than ~~Two Hundred Dollars (\$200.00)~~
14 Ten Thousand Dollars (\$10,000.00) for the first offense, and not
15 more than Twenty-five Thousand Dollars (\$25,000.00) for the second
16 offense, where specific penalties are not otherwise provided.

17 ~~C.~~ D. Any distributing agent who shall:

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

21 2. Store any unstamped cigarettes in the state or deliver or
22 distribute any unstamped cigarettes within this state, without at
23 the time of storage or delivery having a valid license posted so as
24 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 Ten Thousand Dollars (\$10,000.00) for the first offense, and not
4 more than Twenty-five Thousand Dollars (\$25,000.00) for the second
5 offense.

6 ~~D.~~ E. Any retailer violating the provisions of Section 305.1 of
7 this title shall:

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

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

12 3. For a third or subsequent offense, be punished by an
13 administrative fine of not more than Five Thousand Dollars
14 (\$5,000.00).

15 ~~E.~~ F. Any wholesaler, ~~jobber or warehouseman~~ violating the
16 provisions of Section 305.1 of this title shall:

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

19 2. For a second or subsequent offense, be punished by an
20 administrative fine of not more than Twenty Thousand Dollars
21 (\$20,000.00).

22 Administrative fines collected pursuant to the provisions of
23 this subsection shall be deposited to the revolving fund created in
24 Section 305.2 of this title.

1 ~~F.~~ G. The Tax Commission shall immediately revoke the license of
2 a person punished for a violation pursuant to the provisions of
3 paragraph 3 of subsection ~~D~~ E of this section or a person punished
4 for a violation pursuant to the provisions of subsection ~~E~~ F of this
5 section. A person whose license is so revoked shall not be eligible
6 to receive another license pursuant to the provisions of ~~Section 301~~
7 ~~et seq. of this title~~ the Cigarette and Tobacco Products Tax Codes
8 for a period of ten (10) years.

9 ~~G.~~ H. Whoever, with intent to defraud Oklahoma:

10 1. Fails to keep or make any record, return, report, or
11 inventory, or keeps or makes any false or fraudulent record, return,
12 report, or inventory, required by ~~Section 301 et seq. of this title~~
13 the Cigarette and Tobacco Products Tax Codes or rules promulgated
14 thereunder;

15 2. Refuses to pay any tax imposed by ~~Section 301 et seq. of~~
16 ~~this title~~ the Cigarette and Tobacco Products Tax Codes, or attempts
17 in any manner to evade or defeat the tax or the payment thereof; or

18 3. Fails to comply with any requirement of ~~Section 301 et seq.~~
19 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes;

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

23 ~~H.~~ I. Whoever knowingly omits, neglects, or refuses to comply
24 with any duty imposed upon the person by ~~Section 301 et seq. of this~~

1 ~~title~~ the Cigarette and Tobacco Products Tax Codes, or to do, or
2 cause to be done, any of the things required by ~~Section 301 et seq.~~
3 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes, or does
4 anything prohibited by ~~Section 301 et seq. of this title~~ the
5 Cigarette and Tobacco Products Tax Codes, shall, in addition to any
6 other penalty provided in ~~Section 301 et seq. of this title~~ the
7 Cigarette and Tobacco Products Tax Codes, pay an administrative
8 penalty of One Thousand Dollars (\$1,000.00).

9 ~~I.~~ J. Whoever fails to pay any tax imposed by ~~Section 301 et~~
10 ~~seq. of this title~~ the Cigarette and Tobacco Products Tax Codes at
11 the time prescribed by law or rules, shall, in addition to any other
12 penalty provided in ~~Section 301 et seq. of this title~~ the Cigarette
13 and Tobacco Products Tax Codes, be liable to a penalty of five
14 hundred percent (500%) of the tax due but unpaid.

15 ~~J.~~ K. 1. All cigarettes which are held for sale or distribution
16 within the borders of Oklahoma, in violation of the requirements of
17 ~~Section 301 et seq. of this title~~ the Cigarette and Tobacco Products
18 Tax Codes, and the machinery used to manufacture counterfeit
19 cigarettes shall be forfeited to Oklahoma. All cigarettes and
20 machinery forfeited to Oklahoma under this paragraph shall be
21 destroyed.

22 2. All fixtures, equipment, and all other materials and personal
23 property on the premises of any distributor or retailer who, with
24 intent to defraud the state, fails to keep or make any record,

1 return, report, or inventory; keeps or makes any false or fraudulent
2 record, return, report, or inventory required by ~~Section 301 et seq.~~
3 ~~of this title~~ the Cigarette and Tobacco Products Tax Codes; refuses
4 to pay any tax imposed by ~~Section 301 et seq. of this title~~ the
5 Cigarette and Tobacco Products Tax Codes; or attempts in any manner
6 to evade or defeat the requirements of ~~Section 301 et seq. of this~~
7 ~~title~~ the Cigarette and Tobacco Products Tax Codes shall be
8 forfeited to Oklahoma.

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

15 1. A first violation with a total quantity of less than two
16 cartons of cigarettes or the equivalent amount of other cigarettes
17 shall be punishable by a fine not to exceed ~~One Thousand Dollars~~
18 ~~(\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00) or imprisonment not to
19 exceed five (5) years, or both the fine and imprisonment;

20 2. A subsequent violation with a total quantity of less than two
21 cartons of cigarettes, or the equivalent amount of other cigarettes
22 shall be punishable by a fine not to exceed ~~Five Thousand Dollars~~
23 ~~(\$5,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), or
24 imprisonment not to exceed five (5) years, or both the fine and the

1 imprisonment, and shall also result in the revocation by the Tax
2 Commission of the manufacturer, ~~distributor~~ wholesaler, or retailer
3 license;

4 3. A first violation with a total quantity of more than two
5 cartons of cigarettes, or the equivalent amount of other cigarettes,
6 shall be punishable by a fine not to exceed ~~Two Thousand Dollars~~
7 ~~(\$2,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) or
8 imprisonment not to exceed five (5) years, or both the fine and
9 imprisonment; and

10 4. A subsequent violation with a quantity of two cartons of
11 cigarettes or more, or the equivalent amount of other cigarettes
12 shall be punishable by a fine not to exceed Fifty Thousand Dollars
13 (\$50,000.00) or imprisonment not to exceed five (5) years, or both
14 the fine and imprisonment, and shall also result in the revocation
15 by the Tax Commission of the manufacturer, ~~distributor~~ wholesaler,
16 or retailer license.

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

22 M. The Tax Commission shall immediately revoke the license of a
23 person punished for a violation pursuant to the provisions of
24 subsection H of this section. A person whose license is so revoked

1 shall not be eligible to receive another license for a period of
2 five (5) years.

3 SECTION 3. AMENDATORY Section 7, Chapter 266, O.S.L.
4 2004 (68 O.S. Supp. 2006, Section 360.7), is amended to read as
5 follows:

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

20 B. Any cigarettes that have been sold, offered for sale, or
21 possessed for sale in this state or imported for personal
22 consumption in this state, in violation of the Master Settlement
23 Agreement Complementary Act, shall be deemed contraband pursuant to
24 the Master Settlement Agreement Complementary Act. Those cigarettes

1 shall be subject to seizure and forfeiture as provided by this
2 section and all cigarettes so seized and forfeited shall be
3 destroyed as provided by this section and not resold.

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

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

- 15 a. ~~on a commercial carrier with a proper bill of lading~~
16 ~~with an out of state destination,~~
- 17 b. ~~when the tax stamp of another state is affixed to each~~
18 ~~pack of cigarettes or tobacco product transported, or~~
- 19 c. ~~on a commercial carrier with a proper bill of lading~~
20 ~~to a tobacco product distributor or wholesaler~~
21 ~~licensed by the Oklahoma Tax Commission, pursuant to~~
22 ~~Section 304 or 415 of Title 68 of the Oklahoma~~
23 ~~Statutes, who also distributes cigarettes in a state~~
24 ~~bordering Oklahoma if, and only if, the packing slip~~

1 ~~accompanying the shipment indicates the shipment is~~
2 ~~for sale in another state and indicates which state,~~
3 ~~and the invoice for the shipment also indicates the~~
4 ~~shipment is for sale in a state other than Oklahoma~~
5 ~~and identifies the state in which the shipment is to~~
6 ~~be sold. The time of delivery of the shipments shall~~
7 ~~be indicated on the bill of lading of the common~~
8 ~~carrier when delivery is completed. The receiving~~
9 ~~Oklahoma distributor or wholesaler must, within~~
10 ~~twenty four (24) hours of receiving the delivery,~~
11 ~~affix or cause to be affixed to each package of~~
12 ~~cigarettes the stamp of the state in which they are to~~
13 ~~be sold.~~

14 3. All cigarettes, tobacco products, vehicles, and property so
15 seized shall be listed and appraised by the officer making the
16 seizure and turned over to the county sheriff of the county in which
17 the seizure is made and a receipt therefor taken. The person making
18 the seizure shall immediately make a written report of the seizure,
19 showing the name of the person making the seizure, the location of
20 the seizure, the person from whom the property was seized, and an
21 inventory and appraisal of the property at the usual and ordinary
22 retail price of the articles received. The report shall be filed
23 with the Oklahoma Tax Commission and the Attorney General. The
24 district attorney of the county in which the seizures are made, at

1 the request of the Oklahoma Tax Commission or Attorney General,
2 shall file in the district court forfeiture proceedings in the name
3 of the State of Oklahoma, as plaintiff, and in the name of the owner
4 or person in possession, as defendant, if known, and if unknown or
5 not susceptible to the jurisdiction of the court, in the name of the
6 property seized. The clerk of the court shall issue a summons to
7 the owner or person in whose possession the property was found
8 directing the owner or person to answer within ten (10) days. At
9 the forfeiture proceeding, if a distributor or wholesaler
10 demonstrates through clear and convincing evidence that the
11 possession of contraband by the distributor or wholesaler was
12 accidental, the vehicle in which the contraband was being
13 transported shall not be forfeited. In no case, however, shall
14 possession of more than twenty (20) cartons of contraband product be
15 considered by the courts as being possessed accidentally. If the
16 property is declared forfeited and ordered sold, notice of the sale
17 shall be posted not less than ten (10) days before the date of sale
18 in five public places in the county in which the seizures are made.
19 However, any cigarettes or tobacco products forfeited pursuant to
20 this section shall be destroyed by the county sheriff. Proceeds of
21 the sale shall be deposited with the clerk of the court, who shall,
22 after deducting costs including the costs of prosecution, storage,
23 and sale, pay the balance to the Oklahoma Tax Commission for deposit
24 in the Tobacco Settlement Endowment Trust Fund.

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

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

9 a. sell or distribute cigarettes, or

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

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

19 SECTION 4. AMENDATORY 68 O.S. 2001, Section 418, is
20 amended to read as follows:

21 Section 418. A. It shall be unlawful for any person to
22 transport or possess unstamped tobacco products where the tax on
23 such unstamped tobacco products exceeds the sum of One Dollar
24 (\$1.00).

1 B. Except as otherwise provided in subsections C and D of this
2 section, any person found guilty of violating the provisions of
3 Section 401 et seq. of this title shall be deemed guilty of a
4 misdemeanor, and shall upon conviction be punished by a fine of not
5 more than Five Hundred Dollars (\$500.00) or by confinement in the
6 county jail for not to exceed thirty (30) days, or by both such fine
7 and imprisonment.

8 C. Any retailer violating the provisions of Section 4 403.2 of
9 this ~~act~~ title shall:

10 1. For a first offense, be punished by an administrative fine
11 of not more than ~~One Hundred Dollars (\$100.00)~~ One Thousand Dollars
12 (\$1,000.00);

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

16 3. For a third or subsequent offense, be punished by an
17 administrative fine of not more than ~~Five Thousand Dollars~~
18 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00).

19 D. Any wholesaler, distributing agent or dealer violating the
20 provisions of Section 4 403.2 of this ~~act~~ title shall:

21 1. For a first offense, be punished by an administrative fine
22 of not more than Five Thousand Dollars (\$5,000.00); and
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1 2. For a second or subsequent offense, be punished by an
2 administrative fine of not more than Twenty Thousand Dollars
3 (\$20,000.00).

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

7 E. The Oklahoma Tax Commission shall immediately revoke the
8 license of a person punished for a violation pursuant to the
9 provisions of paragraph 3 of subsection C of this section or a
10 person punished for a violation pursuant to the provisions of
11 subsection D of this section. A person whose license is so revoked
12 shall not be eligible to receive another license pursuant to the
13 provisions of ~~Section 301 et seq. of this title~~ the Cigarette and
14 Tobacco Products Tax Codes for a period of ten (10) years.

15 SECTION 5. This act shall become effective November 1, 2007."
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1 Passed the House of Representatives the 25th day of April, 2007.

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3
4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2007.

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9 Presiding Officer of the Senate
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