

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 802

6 By: Johnson (Rob) of the Senate

7 and

8 Derby of the House

9 COMMITTEE SUBSTITUTE

10 An Act relating to tobacco products; amending 37 O.S.
11 2011, Section 600.2, which relates to definitions;
12 amending 37 O.S. 2011, Section 600.3, which relates
13 to furnishing of tobacco products; amending 37 O.S.
14 2011, Section 600.4, which relates to purchase and
15 receipt of tobacco products; amending 37 O.S. 2011,
16 Section 600.5, which relates to signs in retail
17 establishments; amending 37 O.S. 2011, Section 600.6,
18 which relates to notice to retail employees; amending
19 37 O.S. 2011, Section 600.7, which relates to
20 restrictions on vending machine sales; amending 37
21 O.S. 2011, Section 600.8, which relates to
22 distribution of tobacco product samples; amending 37
23 O.S. 2011, Section 600.10, which relates to
24 regulation by political subdivisions; amending 37
O.S. 2011, Section 600.10A, which relates to display
or sale of tobacco products; amending 37 O.S. 2011,
Section 600.11, which relates to enforcement of
certain acts; amending 37 O.S. 2011, Section 600.13,
which relates to prohibition of certain product
transfers; amending 68 O.S. 2011, Section 401, which
relates to definitions; adding tobacco-derived
products and vapor products to certain definitions;
defining tobacco-derived products and vapor products;
amending 68 O.S. 2011, Section 402, which relates to
taxation; authorizing taxation of certain products;
providing amount of tax to be levied; amending 68
O.S. 2011, Section 403, which relates to payment by
affixing stamps; requiring certain information on

1 invoices; requiring certain persons to retain certain
2 documents; amending 68 O.S. 2011, Section 415, which
3 relates to purchaser licenses; adding tobacco-derived
4 products and vapor products to certain laws relating
5 to tobacco products; and providing an effective date.

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

7 SECTION 1. AMENDATORY 37 O.S. 2011, Section 600.2, is
8 amended to read as follows:

9 Section 600.2. As used in the Prevention of Youth Access to
10 Tobacco Act:

11 1. "Person" means any individual, firm, fiduciary, partnership,
12 corporation, trust, or association, however formed;

13 2. "Proof of age" means a driver license, license for
14 identification only, or other generally accepted means of
15 identification that describes the individual as eighteen (18) years
16 of age or older and contains a photograph or other likeness of the
17 individual and appears on its face to be valid;

18 3. "Sample" means a tobacco product, tobacco-derived product,
19 or vapor product distributed to members of the public at no cost for
20 the purpose of promoting the product;

21 4. "Sampling" means the distribution of samples to members of
22 the public in a public place;

23 5. "Tobacco-derived product" means any noncombustible product
24 derived from tobacco that contains nicotine and is intended for

1 human consumption, whether chewed, absorbed, dissolved, or ingested
2 by any other means, but does not include a vapor product or any
3 product regulated by the United States Food and Drug Administration
4 under Chapter V of the federal Food, Drug, and Cosmetic Act;

5 6. "Tobacco product" means any product that contains tobacco
6 and is intended for human consumption, but does not include any
7 tobacco-derived product or vapor product;

8 ~~6.~~ 7. "Transaction scan" means the process by which a seller
9 checks, by means of a transaction scan device, the validity of a
10 driver license or other government-issued photo identification; and

11 ~~7.~~ 8. "Transaction scan device" means any commercial device or
12 combination of devices used at a point of sale or entry that is
13 capable of deciphering in an electronically readable format the
14 information encoded on the magnetic strip or bar code of a driver
15 license or other government-issued photo identification; and

16 9. "Vapor product" means a noncombustible, tobacco-derived
17 product containing nicotine, such as an electronic cigarette, that
18 employs a mechanical heating element, battery, or electronic
19 circuit, regardless of shape or size, that can be used to heat a
20 liquid nicotine solution contained in a vapor cartridge as well as
21 any vapor cartridge containing liquid nicotine solution that can be
22 used with or in a vapor product. "Vapor product" does not include
23 any product regulated by the United States Food and Drug

1 Administration under Chapter V of the Food, Drug, and Cosmetic Act,
2 P.L. 75-717.

3 SECTION 2. AMENDATORY 37 O.S. 2011, Section 600.3, is
4 amended to read as follows:

5 Section 600.3. A. It is unlawful for any person to sell, give
6 or furnish in any manner any tobacco product, tobacco-derived
7 product or vapor product to another person who is under eighteen
8 (18) years of age, or to purchase in any manner a tobacco product,
9 tobacco-derived product or vapor product on behalf of any such
10 person. It shall not be unlawful for an employee under eighteen
11 (18) years of age to handle tobacco products, tobacco-derived
12 products or vapor products when required in the performance of the
13 employee's duties.

14 B. A person engaged in the sale or distribution of tobacco
15 products, tobacco-derived products or vapor products shall demand
16 proof of age from a prospective purchaser or recipient if an
17 ordinary person would conclude on the basis of appearance that the
18 prospective purchaser may be under eighteen (18) years of age.

19 If an individual engaged in the sale or distribution of tobacco
20 products, tobacco-derived products or vapor products has demanded
21 proof of age from a prospective purchaser or recipient who is not
22 under eighteen (18) years of age, the failure to subsequently
23 require proof of age shall not constitute a violation of subsection
24 B of this section.

1 C. 1. When a person violates subsection A or B of this
2 section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission
3 shall impose an administrative fine of:

4 a. not more than One Hundred Dollars (\$100.00) for the
5 first offense,

6 b. not more than Two Hundred Dollars (\$200.00) for the
7 second offense within a two-year period following the
8 first offense,

9 c. not more than Three Hundred Dollars (\$300.00) for a
10 third offense within a two-year period following the
11 first offense. In addition to any other penalty, the
12 store's license to sell tobacco products, tobacco-
13 derived products or vapor products may be suspended
14 for a period not exceeding thirty (30) days, or

15 d. not more than Three Hundred Dollars (\$300.00) for a
16 fourth or subsequent offense within a two-year period
17 following the first offense. In addition to any other
18 penalty, the store's license to sell tobacco products,
19 tobacco-derived products or vapor products may be
20 suspended for a period not exceeding sixty (60) days.

21 2. When it has been determined that a penalty shall include a
22 license suspension, the ABLE Commission shall notify the Oklahoma
23 Tax Commission, and the Tax Commission shall suspend the store's
24 license to sell tobacco products, tobacco-derived products or vapor

1 products at the location where the offense occurred for the period
2 of time prescribed by the ABLE Commission.

3 3. Proof that the defendant demanded, was shown, and reasonably
4 relied upon proof of age shall be a defense to any action brought
5 pursuant to this section. A person cited for violating this section
6 shall be deemed to have reasonably relied upon proof of age, and
7 such person shall not be found guilty of ~~such~~ the violation if such
8 person proves that:

9 a. the individual who purchased or received the tobacco
10 product, tobacco-derived product or vapor product
11 presented a driver license or other government-issued
12 photo identification purporting to establish that such
13 individual was eighteen (18) years of age or older,
14 and

15 b. the person cited for the violation confirmed the
16 validity of the driver license or other government-
17 issued photo identification presented by such
18 individual by performing a transaction scan by means
19 of a transaction scan device.

20 Provided, that this defense shall not relieve from liability any
21 person cited for a violation of this section if ~~such~~ the person
22 failed to exercise reasonable diligence to determine whether the
23 physical description and picture appearing on the driver license or
24 other government-issued photo identification was that of the

1 individual who presented it. The availability of the defense
2 described in this subsection does not affect the availability of any
3 other defense under any other provision of law.

4 D. If the sale is made by an employee of the owner of a store
5 at which tobacco products, tobacco-derived products or vapor
6 products are sold at retail, the employee shall be guilty of the
7 violation and shall be subject to the fine. Each violation by any
8 employee of an owner of a store licensed to sell tobacco products, tobacco-derived products or vapor products shall be deemed a
9 violation against the owner for purposes of a license suspension
10 pursuant to subsection C of this section. An owner of a store
11 licensed to sell tobacco products, tobacco-derived products or vapor
12 products shall not be deemed in violation of the provisions of the
13 Prevention of Youth Access to Tobacco Act for any acts constituting
14 a violation by any person, when the violation occurs prior to actual
15 employment of the person by the store owner or the violation occurs
16 at a location other than the owner's retail store. For purposes of
17 determining the liability of a person controlling franchises or
18 business operations in multiple locations, for any violations of
19 subsection A or B of this section, each individual franchise or
20 business location shall be deemed a separate entity.

22 E. On or before December 15, 1997, the ABLE Commission shall
23 adopt rules establishing a method of notification of storeowners
24 when one of their employees has been determined to be in violation

1 of this section by the ABLE Commission or convicted of a violation
2 by a municipality.

3 F. 1. Upon failure of the employee to pay the administrative
4 fine within ninety (90) days of the day of the assessment of such
5 fine, the ABLE Commission shall notify the Department of Public
6 Safety and the Department shall suspend or not issue a driver
7 license to the employee until proof of payment has been furnished to
8 the Department of Public Safety.

9 2. Upon failure of a storeowner to pay the administrative fine
10 within ninety (90) days of the assessment of the fine, the ABLE
11 Commission shall notify the Tax Commission and the Tax Commission
12 shall suspend the store's license to sell tobacco products, tobacco-
13 derived products or vapor products until proof of payment has been
14 furnished to the Oklahoma Tax Commission.

15 G. Cities and towns may enact and municipal police officers may
16 enforce ordinances prohibiting and penalizing conduct under
17 provisions of this section, but the provisions of municipal
18 ordinances shall be the same as provided for in this section, and
19 the penalty provisions under such ordinances shall not be more
20 stringent than those of this section.

21 H. County sheriffs may enforce the provisions of the Prevention
22 of Youth Access to Tobacco Act.

23 SECTION 3. AMENDATORY 37 O.S. 2011, Section 600.4, is
24 amended to read as follows:

1 Section 600.4. A. It is unlawful for a person who is under
2 eighteen (18) years of age to purchase, receive, or have in their
3 possession a tobacco product, tobacco-derived product or vapor
4 product, or to present or offer to any person any purported proof of
5 age which is false or fraudulent, for the purpose of purchasing or
6 receiving any tobacco product, tobacco-derived product or vapor
7 product. It shall not be unlawful for an employee under eighteen
8 (18) years of age to handle tobacco products, tobacco-derived
9 products or vapor products when required in the performance of the
10 employee's duties.

11 B. When a person violates subsection A of this section, the
12 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
13 an administrative fine of:

14 1. Not to exceed One Hundred Dollars (\$100.00) for a first
15 offense; and

16 2. Not to exceed Two Hundred Dollars (\$200.00) for a second or
17 subsequent offense within a one-year period following the first
18 offense.

19 Upon failure of the individual to pay the administrative fine
20 within ninety (90) days of the day of the fine, the ABLE Commission
21 shall notify the Department of Public Safety and the Department
22 shall suspend or not issue a driver license to the individual until
23 proof of payment has been furnished to the Department of Public
24 Safety.

1 C. The ABLE Commission shall establish rules to provide for
2 notification to a parent or guardian of any minor cited for a
3 violation of this section.

4 D. Cities and towns may enact and municipal police officers may
5 enforce ordinances prohibiting and penalizing conduct under
6 provisions of this section, but the provisions of such ordinances
7 shall be the same as provided for in this section, and the
8 enforcement provisions under such ordinances shall not be more
9 stringent than those of this section.

10 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.5, is
11 amended to read as follows:

12 Section 600.5. A. Every person who sells or displays tobacco
13 products, tobacco-derived products or vapor products at retail shall
14 post conspicuously and keep so posted at the place of business a
15 sign, as specified by the Alcoholic Beverage Laws Enforcement (ABLE)
16 Commission, stating the following: "IT'S THE LAW. WE DO NOT SELL
17 TOBACCO PRODUCTS, TOBACCO-DERIVED PRODUCTS OR VAPOR PRODUCTS TO
18 PERSONS UNDER 18 YEARS OF AGE". The sign shall also provide the
19 toll-free number operated by the Alcoholic Beverage Laws Enforcement
20 (ABLE) Commission for the purpose of reporting violations of the
21 Prevention of Youth Access to Tobacco Act.

22 B. When a person violates subsection A of this section, the
23 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
24 an administrative fine of not more than Fifty Dollars (\$50.00) for

1 each day a violation occurs. Each day a violation is continuing
2 shall constitute a separate offense. The notice required by
3 subsection A of this section shall be the only notice required to be
4 posted or maintained in any store that sells tobacco products,
5 tobacco-derived products or vapor products at retail.

6 SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.6, is
7 amended to read as follows:

8 Section 600.6. A. Every person engaged in the business of
9 selling tobacco products, tobacco-derived products or vapor products
10 at retail shall notify each individual employed by that person as a
11 retail sales clerk that state law:

12 1. Prohibits the sale or distribution of tobacco products,
13 tobacco-derived products or vapor products to any person under
14 eighteen (18) years of age and the purchase or receipt of tobacco
15 products, tobacco-derived products or vapor products by any person
16 under eighteen (18) years of age; and

17 2. Requires that proof of age be demanded from a prospective
18 purchaser or recipient if an ordinary person would conclude on the
19 basis of appearance that the prospective purchaser or recipient may
20 be under eighteen (18) years of age.

21 B. This notice shall be provided before the individual
22 commences work as a retail sales clerk. The individual shall
23 signify that he or she has received the notice required by this
24 section by signing a form stating as follows:

1 "I understand that state law prohibits the sale or distribution of
2 tobacco products, tobacco-derived products or vapor products to
3 persons under eighteen (18) years of age and out-of-package sales,
4 and requires proof of age of purchaser or recipient if an ordinary
5 person would conclude on the basis of appearance that the
6 prospective purchaser or recipient may be under eighteen (18) years
7 of age. I promise, as a condition of my employment, to obey the
8 law. I understand that violations by me may be punishable by fines,
9 suspension or nonissuance of my driver license. In addition, I
10 understand that violations by me may subject the storeowner to fines
11 or license suspension."

12 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.7, is
13 amended to read as follows:

14 Section 600.7. It shall be unlawful for any person to sell
15 tobacco products, tobacco-derived products or vapor products through
16 a vending machine unless the vending machine is located:

17 1. In areas of factories, businesses, offices or other places
18 that are not open to the public; and

19 2. In places that are open to the public, but to which persons
20 under eighteen (18) years of age are not admitted.

21 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.8, is
22 amended to read as follows:

23 Section 600.8. A. It shall be unlawful for any person or
24 retailer to distribute tobacco products, tobacco-derived products,

1 vapor products or product samples to any person under eighteen (18)
2 years of age.

3 B. No person shall distribute tobacco products, tobacco-derived
4 products, vapor products or product samples in or on any public
5 street, sidewalk, or park that is within three hundred (300) feet of
6 any playground, school, or other facility when the facility is being
7 used primarily by persons under eighteen (18) years of age.

8 C. When a person violates any provision of subsection A or B of
9 this section, the Alcoholic Beverage Laws Enforcement (ABLE)
10 Commission shall impose an administrative fine of:

11 1. Not more than One Hundred Dollars (\$100.00) for the first
12 offense;

13 2. Not more than Two Hundred Dollars (\$200.00) for the second
14 offense; and

15 3. Not more than Three Hundred Dollars (\$300.00) for a third or
16 subsequent offense.

17 D. Upon failure of any person to pay an administrative fine
18 within ninety (90) days of the assessment of the fine, the ABLE
19 Commission shall notify the Department of Public Safety, and the
20 Department shall suspend or not issue a driver license to the person
21 until proof of payment has been furnished to the Department of
22 Public Safety.

23 E. Cities and towns may enact and municipal police officers may
24 enforce ordinances prohibiting and penalizing conduct under

1 provisions of this section, but the provisions of municipal
2 ordinances shall be the same as provided for in this section, and
3 the penalty provisions under such ordinances shall not be more
4 stringent than those of this section.

5 SECTION 8. AMENDATORY 37 O.S. 2011, Section 600.10, is
6 amended to read as follows:

7 Section 600.10. No agency or other political subdivision of the
8 state, including, but not limited to, municipalities, counties or
9 any agency thereof, may adopt any order, ordinance, rule or
10 regulation concerning the sale, purchase, distribution, advertising,
11 sampling, promotion, display, possession, licensing, or taxation of
12 tobacco products, tobacco-derived products or vapor products, except
13 as provided in Section 1511 of Title 68 of the Oklahoma Statutes,
14 Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes and
15 Section 1247 of Title 21 of the Oklahoma Statutes. Provided,
16 however, nothing in this section shall preclude or preempt any
17 agency or political subdivision from exercising its lawful authority
18 to regulate zoning or land use or to enforce a fire code regulation
19 regulating smoking or tobacco products to the extent that such
20 regulation is substantially similar to nationally recognized
21 standard fire codes.

22 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.10A, is
23 amended to read as follows:

24

1 Section 600.10A. A. It is unlawful for any person or retail
2 store to display or offer for sale tobacco products, tobacco-derived
3 products or vapor products in any manner that allows public access
4 to the tobacco product, tobacco-derived product or vapor product
5 without assistance from the person displaying the tobacco product,
6 tobacco-derived products or vapor products or an employee or the
7 owner of the store. The provisions of this subsection shall not
8 apply to retail stores which do not admit into the store persons
9 under eighteen (18) years of age.

10 B. When a person violates subsection A of this section, the
11 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
12 an administrative fine of not more than Two Hundred Dollars
13 (\$200.00) for each offense.

14 C. Cities and towns may enact and municipal police officers may
15 enforce ordinances prohibiting and penalizing conduct under
16 provisions of this section, but the provisions of municipal
17 ordinances shall be the same as provided for in this section and the
18 penalty provisions under such ordinances shall not be more stringent
19 than those of this section.

20 SECTION 10. AMENDATORY 37 O.S. 2011, Section 600.11, is
21 amended to read as follows:

22 Section 600.11. A. The Alcoholic Beverage Laws Enforcement
23 (ABLE) Commission is authorized and empowered to enforce the
24 provisions of Sections 600.1 et seq. of this title. The ABLE

1 Commission shall enforce those provisions in a manner that can
2 reasonably be expected to reduce the extent to which tobacco
3 products, tobacco-derived products or vapor products are sold or
4 distributed to persons under eighteen (18) years of age.

5 B. The ABLE Commission may consider mitigating or aggravating
6 circumstances involved with the violation of the Prevention of Youth
7 Access to Tobacco Act when assessing penalties.

8 C. Any conviction for a violation of a municipal ordinance
9 authorized by the Prevention of Youth Access to Tobacco Act and any
10 compliance checks by a municipal police officer or a county sheriff
11 pursuant to subsection E of this section shall be reported in
12 writing to the ABLE Commission within thirty (30) days of such
13 conviction or compliance check. Such reports shall be compiled in
14 the manner prescribed by the ABLE Commission.

15 D. For the purpose of determining second or subsequent
16 violations, both the offenses penalized by the ABLE Commission as
17 administrative fines and the offenses penalized by municipalities
18 and towns and reported to the ABLE Commission, shall be considered
19 together in such determination.

20 E. Persons under eighteen (18) years of age may be enlisted by
21 the ABLE Commission, a municipality or town, or a county to assist
22 in compliance checks and enforcement; provided, such persons may be
23 used to test compliance only if written parental consent has been
24 provided and the testing is conducted under the direct supervision

1 of the ABLE Commission or conducted by another law enforcement
2 agency if such agency has given written notice to the ABLE
3 Commission in the manner prescribed by the ABLE Commission.
4 Municipalities which have enacted municipal ordinances in accordance
5 with the Prevention of Youth Access to Tobacco Act may conduct,
6 pursuant to rules of the ABLE Commission, compliance checks without
7 prior notification to the ABLE Commission and shall be exempt from
8 the written notice requirement in this subsection. This subsection
9 shall not apply to the use of persons under eighteen (18) years of
10 age to test compliance if the compliance test is being conducted by
11 or on behalf of a retailer of cigarettes, as defined in Section 301
12 of Title 68 of the Oklahoma Statutes, at any location the retailer
13 of cigarettes is authorized to sell cigarettes. Any other use of
14 persons under eighteen (18) years of age to test compliance shall be
15 unlawful and punishable by the ABLE Commission by assessment of an
16 administrative fine of One Hundred Dollars (\$100.00).

17 F. At the beginning of each month, the Oklahoma Tax Commission,
18 pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall
19 provide to the ABLE Commission and to each municipality which has
20 ordinances concerning the Prevention of Youth Access to Tobacco Act,
21 the location, name, and address of each licensee licensed to sell
22 tobacco products, tobacco-derived products or vapor products at
23 retail or otherwise furnish tobacco products, tobacco-derived
24 products or vapor products. Upon violation of an employee at a

1 location, the ABLE Commission shall notify the storeowner for that
2 location of the latest and all previous violations when one of their
3 employees has been determined to be in violation of the Prevention
4 of Youth Access to Tobacco Act by the ABLE Commission or convicted
5 of a violation by a municipality. If the ABLE Commission fails to
6 notify the licensee of a violation by an employee, that violation
7 shall not apply against the licensee for the purpose of determining
8 a license suspension pursuant to Section 600.3 of this title. For
9 purposes of this subsection, notification shall be deemed given if
10 the ABLE Commission mails, by mail with delivery confirmation, the
11 notification to the address which is on file with the Oklahoma Tax
12 Commission of the licensee of the location at which the violation
13 occurred and the ABLE Commission receives delivery confirmation from
14 the U.S. Postal Service.

15 G. Upon request of a storeowner or a municipality which has
16 enacted ordinances in accordance with the Prevention of Youth Access
17 to Tobacco Act, the ABLE Commission is hereby authorized to provide
18 information on any Prevention of Youth Access to Tobacco Act offense
19 of any applicant for employment or employee of the storeowner.

20 H. The ABLE Commission shall prepare for submission annually to
21 the Secretary of the United States Department of Health and Human
22 Services, the report required by Section 1926 of the federal Public
23 Health Service Act (42 U.S.C. 300-26), and otherwise shall be
24 responsible for ensuring the state's compliance with that provision

1 of federal law and any implementing of regulations promulgated by
2 the United States Department of Health and Human Services.

3 SECTION 11. AMENDATORY 37 O.S. 2011, Section 600.13, is
4 amended to read as follows:

5 Section 600.13. A. It is unlawful for any person to sell, give
6 or furnish in any manner to another person who is under eighteen
7 (18) years of age any material or device used in the smoking,
8 chewing, or other method of consumption of tobacco, tobacco-derived
9 products or vapor products, including cigarette papers, pipes,
10 holders of smoking materials of all types, and other items designed
11 primarily for the smoking or ingestion of tobacco products, tobacco-
12 derived products or vapor products.

13 B. When a person violates subsection A of this section, the
14 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
15 an administrative fine of not more than One Hundred Dollars
16 (\$100.00) for each offense.

17 SECTION 12. AMENDATORY 68 O.S. 2011, Section 401, is
18 amended to read as follows:

19 Section 401. For the purpose of this article:

20 (a) The word "person" shall mean any individual, company,
21 limited liability company, corporation, partnership, association,
22 joint adventure, estate, trust, or any other group, or combination
23 acting as a unit, and the plural as well as the singular, unless the
24

1 intention to give a more limited meaning is disclosed by the
2 context.

3 (b) The term "Tax Commission" shall mean the Oklahoma Tax
4 Commission.

5 (c) The word "wholesaler" shall include dealers whose principal
6 business is that of a wholesale dealer or jobber, and who is known
7 to the trade as such, who shall sell any cigars ~~or~~, tobacco
8 products, tobacco-derived products or vapor products to licensed
9 retail dealers only for the purpose of resale, or giving them away,
10 or exposing the same where they may be taken or purchased, or
11 otherwise acquired by the retailer.

12 (d) The word "retailer" shall include every dealer, other than
13 a wholesale dealer as defined above, whose principal business is
14 that of selling merchandise at retail, who shall sell, or offer for
15 sale, cigars ~~or~~, tobacco products, tobacco-derived products or vapor
16 products, irrespective of quantity, number of sales, giving the same
17 away or exposing the same where they may be taken, or purchased, or
18 otherwise acquired by the consumer.

19 (e) The word "consumer" shall mean a person who comes into
20 possession of tobacco, tobacco-derived products or vapor products
21 for the purpose of consuming it, giving it away, or disposing of it
22 in any way by sale, barter or exchange.

23 (f) The words "first sale" shall mean and include the first
24 sale, or distribution, of cigars ~~or~~, tobacco products, tobacco-

1 derived products or vapor products in intrastate commerce, or the
2 first use or consumption of cigars, ~~or~~ tobacco products, tobacco-
3 derived products or vapor products within this state.

4 (g) The words "tobacco products" shall mean any cigars,
5 cheroots, stogies, smoking tobacco (including granulated, plug cut,
6 crimp cut, ready rubbed and any other kinds and forms of tobacco
7 suitable for smoking in a pipe or cigarette), chewing tobacco
8 (including cavendish, twist, plug, scrap and any other kinds and
9 forms of tobacco suitable for chewing), however prepared; and shall
10 include any other articles or products made of tobacco or any
11 substitute therefor, but shall not include tobacco-derived products
12 or vapor products.

13 (h) The term "distributing agent" shall mean and include every
14 person in this state who acts as an agent of any person outside the
15 state by receiving cigars and tobacco products, tobacco-derived
16 products and vapor products in interstate commerce and storing such
17 items subject to distribution or delivery, upon order from said
18 person outside the state, to distributors, wholesale dealers and
19 retail dealers, or to consumers. The term "distributing agent"
20 shall also mean and include any person who solicits or takes orders
21 for cigars and tobacco products to be shipped in interstate commerce
22 to a person in this state by a person residing outside of Oklahoma,
23 the tax not having been paid on such cigars ~~and,~~ tobacco products,
24 tobacco-derived products, and vapor products.

1 (i) The term "stamp" shall mean the stamp or stamps by use of
2 which:

3 1. The tax levied pursuant to the provisions of Section 401 et
4 seq. of this title is paid;

5 2. The tax levied pursuant to the provisions of Section 426 of
6 this title is paid; or

7 3. The payment in lieu of taxes authorized pursuant to a
8 compact entered into by the State of Oklahoma and a federally
9 recognized Indian tribe or nation pursuant to the provisions of
10 subsection C of Section 346 of this title is paid.

11 (j) The term "drop shipment" shall mean and include any
12 delivery of cigars or tobacco products, tobacco-derived products or
13 vapor products received by any person within the state when payment
14 for such cigars or tobacco products, tobacco-derived products or
15 vapor products is made to the shipper or seller by or through a
16 person other than the consignee.

17 (k) The term "cigars" shall include any roll of tobacco for
18 smoking, irrespective of size or shape and irrespective of the
19 tobacco being flavored, adulterated or mixed with any other
20 ingredients, where such roll has a wrapper made chiefly of tobacco.

21 (l) The word "dealer" shall include every person, firm,
22 corporation, or association of persons, who manufactures cigars ~~or,~~
23 tobacco products, tobacco-derived products or vapor products for
24 distribution, sale, use or consumption in the State of Oklahoma.

1 The word "dealer" is also further defined to mean any person, firm,
2 corporation or association of persons, who imports cigars ~~or~~,
3 tobacco products, tobacco-derived products or vapor products from
4 any state or foreign country, for distribution, sale, use or
5 consumption in the State of Oklahoma.

6 (m) The words "tobacco-derived products" mean any
7 noncombustible products derived from tobacco that contain nicotine
8 and are intended for human consumption, whether chewed, absorbed,
9 dissolved or ingested by any other means, but do not include vapor
10 products or any products regulated by the United States Food and
11 Drug Administration under Chapter V of the Food, Drug, and Cosmetic
12 Act, P.L. 75-717.

13 (n) The words "vapor products" mean noncombustible, tobacco-
14 derived products containing nicotine, such as electronic cigarettes,
15 that employ a mechanical heating element, battery or electronic
16 circuit, regardless of shape or size, that can be used to heat a
17 liquid nicotine solution contained in a vapor cartridge as well as
18 any vapor cartridges containing liquid nicotine solution that can be
19 used with or in a vapor product. "Vapor products" do not include
20 any products regulated by the United States Food and Drug
21 Administration under Chapter V of the Food, Drug, and Cosmetic Act,
22 P.L. 75-717.

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24

1 (o) The words "vapor product unit" mean all amounts of
2 consumable material in a vapor product up to and including .03
3 ounces.

4 (p) The words "tobacco-derived product unit" mean any package
5 of tobacco-derived products intended to be sold in such package at
6 retail the net weight of which is any amount up to and including one
7 (1) ounce.

8 (q) The words "consumable material" mean any liquid nicotine
9 solution or other material containing nicotine that is depleted as a
10 vapor product is used.

11 (r) The word "manufacturer" means a person within or outside of
12 this state who produces cigarettes, tobacco products, tobacco-
13 derived products or vapor products or a person who contracts with
14 another person to produce cigarettes, tobacco products, tobacco-
15 derived products or vapor products.

16 SECTION 13. AMENDATORY 68 O.S. 2011, Section 402, is
17 amended to read as follows:

18 Section 402. There shall be levied, assessed, collected, and
19 paid in respect to the articles containing tobacco enumerated in
20 Section 401 et seq. of this title, a tax in the following amounts:

21 1. Little Cigars. Upon cigars of all descriptions made of
22 tobacco, or any substitute therefor, and weighing not more than
23 three (3) pounds per thousand, four (4) mills for each cigar.

24 Provided, that the tax levied on the products coming under this

1 paragraph shall not apply if the tax on such products is reported
2 and paid as cigarette tax under Sections 301 through 325 of this
3 title;

4 2. Cigars. Upon cigars of all descriptions made of tobacco, or
5 any substitute therefor, weighing more than three (3) pounds per
6 thousand and having a manufacturer's recommended retail selling
7 price, under the Federal Code, of not exceeding four cents (\$0.04)
8 per cigar, one cent (\$0.01) for each cigar;

9 3. Cigars. Upon all other cigars of all descriptions made of
10 tobacco, or any substitute therefor, and weighing more than three
11 (3) pounds per thousand, Twenty Dollars (\$20.00) per thousand. For
12 the purpose of computing the tax, cheroots, stogies, etc., are
13 hereby classed as cigars;

14 4. Smoking Tobacco. Upon all smoking tobacco including
15 granulated, plug cut, crimp cut, ready rubbed and other kinds and
16 forms of tobacco prepared in such manner as to be suitable for
17 smoking in a pipe or cigarette, the tax shall be twenty-five percent
18 (25%) of the factory list price exclusive of any trade discount,
19 special discount or deals; ~~and~~

20 5. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco,
21 and snuff, the tax shall be twenty percent (20%) of the factory list
22 price exclusive of any trade discount, special discount or deals;

23 6. Vapor products. Upon all vapor products, the tax shall be
24 five cents (\$0.05) per vapor product unit and a proportionate tax at

1 the like rate on all fractional parts of a vapor product unit in
2 excess of a single vapor product unit. At no time shall the rate
3 levied upon a vapor product unit exceed one-tenth (0.10) the rate of
4 tax imposed on a pack of cigarettes in this state; and

5 7. Tobacco-derived products. Upon all tobacco-derived
6 products, the tax shall be five cents (\$0.05) per tobacco-derived
7 product unit and a proportionate tax at the like rate on all
8 fractional parts of a tobacco-derived product unit in excess of a
9 single tobacco-derived product unit. At no time shall the rate
10 levied upon a tobacco-derived product unit exceed one-tenth (0.10)
11 the rate of tax imposed on a pack of cigarettes in this state.

12 It shall not be permissible for a retailer to advertise that the
13 retailer will absorb the tax due on the taxable merchandise
14 described herein. Such tax shall be paid by the consumer.

15 Notwithstanding any other provision of law, the tax levied
16 pursuant to the provisions of Section 401 et seq. of this title
17 shall be part of the gross proceeds or gross receipts from the sale
18 of cigars or tobacco products, or both, as those terms are defined
19 in paragraph 7 of Section 1352 of this title.

20 SECTION 14. AMENDATORY 68 O.S. 2011, Section 403, is
21 amended to read as follows:

22 Section 403. (a) The excise taxes levied by this article shall
23 be paid by affixing stamps in the manner and at the time herein set
24 forth. In the case of cigars, including five-pack and other small

1 packs, stogies and cheroots, the stamps shall be affixed to the box,
2 or container, in which or from which normally sold at wholesale.
3 Wholesalers and jobbers shall affix the required stamps within
4 seventy-two (72) hours after such tobacco products are received by
5 them. Any retailer shall have twenty-four (24) hours within which
6 to affix the stamps after such tobacco products are received by him,
7 or them. Provided that the Tax Commission may, in its discretion,
8 where it is practical and reasonable for the enforcement of the
9 collection of taxes provided hereunder, promulgate such rules and
10 regulations as to permit cigars, stogies, cheroots, and tobacco
11 products, to remain unstamped in the hands of the wholesalers and
12 jobbers until the original case or crate is broken, unpacked or
13 sold.

14 (b) In the case of tobacco products wrapped in packages of two
15 (2) pounds or less, the stamps shall be affixed to the containers in
16 which or from which the individual packages are normally sold at
17 wholesale and the stamps shall be affixed by wholesalers and jobbers
18 within seventy-two (72) hours after such products are received by
19 them, and by any retailer within the twenty-four (24) hours of
20 receipt by him or them of any such products. Such goods must be
21 stamped before being sold. All retail dealers in manufactured
22 tobacco products, purchasing or receiving such commodities from
23 without the state, whether the same shall have been ordered through
24 a wholesaler or jobber in this state and/or by drop shipment and/or

1 otherwise, shall within five (5) days after receipt of same, mail a
2 duplicate invoice of all such purchases or receipts to the Tax
3 Commission. Failure to furnish duplicate invoices as required shall
4 be deemed a misdemeanor, and, upon conviction, be punishable by a
5 fine of not more than One Hundred Dollars (\$100.00) for each
6 offense, or imprisonment in the county jail for a period not
7 exceeding thirty (30) days.

8 (c) It is the intent and purpose of this section to require all
9 manufacturers within this state, wholesale dealers, jobbers,
10 distributors and retail dealers, to affix the stamps provided for in
11 this section to taxable commodities, but when the stamps have been
12 affixed as required herein, no further or other stamp shall be
13 required regardless of how often such articles may be sold or resold
14 within this state.

15 (d) All invoices for tobacco-derived products or vapor products
16 issued by manufacturers shall include the actual pounds or ounces of
17 tobacco-derived products or the actual fluid ounces of the
18 consumable material contained in vapor products, if available.

19 (e) Copies of all invoices for the purchase or sale of any
20 tobacco products, tobacco-derived products or vapor products shall
21 be retained by each wholesale dealer, retailer, distributor, jobber,
22 and subjobber for a period of three (3) years, subject to the
23 examination of the Oklahoma Tax Commission.
24

1 SECTION 15. AMENDATORY 68 O.S. 2011, Section 415, is
2 amended to read as follows:

3 Section 415. A. Every dealer and wholesaler of tobacco
4 products, tobacco-derived products or vapor products in this state,
5 as a condition of carrying on such business, shall annually secure
6 from the Oklahoma Tax Commission a written license and shall pay an
7 annual fee of Two Hundred Fifty Dollars (\$250.00); provided, such
8 fee shall not be applicable if paid pursuant to Section 304 of this
9 title. The Tax Commission shall promulgate rules which provide a
10 procedure for the issuance of a joint license for any wholesaler
11 making application pursuant to this section and Section 304 of this
12 title. Application for such license, which shall be made upon such
13 forms as prescribed by the Tax Commission, shall include the
14 following:

15 1. The applicant's agreement to the jurisdiction of the Tax
16 Commission and the courts of this state for purposes of enforcement
17 of the provisions of Section 301 et seq. of this title; ~~and~~

18 2. The applicant's agreement to abide by the provisions of
19 Section 301 et seq. of this title and the rules promulgated by the
20 Tax Commission with reference thereto. This license, which will be
21 for the ensuing year, must at all times be displayed in a
22 conspicuous place so that it can be seen. Persons operating more
23 than one place of business must secure a license for each place of
24 business. "Place of business" shall be construed to include the

1 place where orders are received, or where tobacco products, tobacco-
2 derived products or vapor products are sold. If tobacco products,
3 tobacco-derived products or vapor products are sold on or from any
4 vehicle, the vehicle shall constitute a place of business, and the
5 license fee of Two Hundred Fifty Dollars (\$250.00) shall be paid
6 with respect thereto. However, if the vehicle is owned or operated
7 by a place of business for which the regular license fee is paid,
8 the annual fee for the license with respect to such vehicle shall be
9 only Ten Dollars (\$10.00). The expiration for such vehicle license
10 shall expire on the same date as the current license of the place of
11 business.

12 B. Every retailer in this state, as a condition of carrying on
13 such business, shall secure from the Tax Commission a license and
14 shall pay therefor a fee of Thirty Dollars (\$30.00). Application
15 for such license, which shall be made upon such forms as prescribed
16 by the Tax Commission, shall include the following:

17 1. The applicant's agreement to the jurisdiction of the Tax
18 Commission and the courts of this state for purposes of enforcement
19 of the provisions of Section 301 et seq. of this title; and

20 2. The applicant's agreement to abide by the provisions of
21 Section 301 et seq. of this title and the rules promulgated by the
22 Tax Commission with reference thereto;

23 3. The applicant's agreement that it shall not purchase any
24 tobacco products, tobacco-derived products or vapor products for

1 resale from a supplier that does not hold a current wholesaler's
2 license issued pursuant to this section; and

3 4. The applicant's agreement to sell tobacco products, tobacco-
4 derived products or vapor products only to consumers.

5 Such license, which will be for the ensuing three (3) years,
6 must at all times be displayed in a conspicuous place so that it can
7 be seen. Upon expiration of such license, the retailer to whom such
8 license was issued may obtain a renewal license which shall be valid
9 for three (3) years or until expiration of the retailer's sales tax
10 permit, whichever is earlier, after which a renewal license shall be
11 valid for three (3) years. The manner and prorated fee for renewals
12 shall be prescribed by the Tax Commission. Every person operating
13 under such license as a retailer and who owns or operates more than
14 one place of business must secure a license for each place of
15 business. "Place of business" shall be construed to include places
16 where orders are received or where tobacco products, tobacco-derived
17 products or vapor products are sold.

18 C. Nothing in this section shall be construed to prohibit any
19 person holding a retail license from also holding a wholesaler
20 license.

21 D. Every distributing agent shall, as a condition of carrying
22 on such business, pursuant to written application on a form
23 prescribed by and in such detailed form as the Tax Commission may
24 require, annually secure from the Tax Commission a license, and

1 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).
2 An application shall be filed and a license obtained for each place
3 of business owned or operated by a distributing agent. The license,
4 which will be for the ensuing year, shall be consecutively numbered,
5 nonassignable and nontransferable, and shall authorize the storing
6 and distribution of unstamped tobacco products within this state
7 when such distribution is made upon interstate orders only.

8 E. 1. All wholesale, retail, and distributing agents' licenses
9 shall be nonassignable and nontransferable from one person to
10 another person. Such licenses may be transferred from one location
11 to another location after an application has been filed with the Tax
12 Commission requesting such transfer and after the approval of the
13 Tax Commission.

14 2. Wholesale, retail, and distributing agent's licenses shall
15 be applied for on a form prescribed by the Tax Commission. Any
16 person operating as a wholesaler, retailer, or distributing agent
17 must at all times have an effective unexpired license which has been
18 issued by the Tax Commission. If any such person or licensee
19 continues to operate as such on a license issued by the Tax
20 Commission which has expired, or operates without ever having
21 obtained from the Tax Commission such license, such person or
22 licensee shall, after becoming delinquent for a period in excess of
23 fifteen (15) days, pay to the Tax Commission, in addition to the
24 annual license fee, a penalty of twenty-five cents (\$0.25) per day

1 on each delinquent license for each day so operated in excess of
2 fifteen (15) days. The penalty provided for herein shall not exceed
3 the annual license fee for such license.

4 F. No license may be granted, maintained or renewed if any of
5 the following conditions apply to the applicant. For purposes of
6 this section, "applicant" includes any combination of persons owning
7 directly or indirectly, in the aggregate, more than ten percent
8 (10%) of the ownership interests in the applicant:

9 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
10 delinquent tobacco products taxes;

11 2. The applicant had a dealer, wholesaler, or retailer license
12 revoked by the Tax Commission within the past two (2) years; or

13 3. The applicant has been convicted of a crime relating to
14 stolen or counterfeit tobacco products, tobacco-derived products or
15 vapor products, or receiving stolen or counterfeit tobacco products,
16 tobacco-derived products or vapor products.

17 G. No person or entity licensed pursuant to the provisions of
18 this section shall purchase tobacco products, tobacco-derived
19 products or vapor products from or sell tobacco products, tobacco-
20 derived products or vapor products to a person or entity required to
21 obtain a license unless such person or entity has obtained such
22 license.

23 H. In addition to any civil or criminal penalty provided by
24 law, upon a finding that a licensee has violated any provision of

1 Section 301 et seq. of this title, the Tax Commission may revoke or
2 suspend the license or licenses of the licensee pursuant to the
3 procedures applicable to revocation of a license set forth in
4 Section 418 of this title.

5 SECTION 16. This act shall become effective November 1, 2013.

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