05/15/2013 05:00:00 PM

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2097

By: Jackson of the House and Brinkley of the Senate

Title: Revenue and taxation; tobacco products; fines; emergency.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

HOUSE CONFEREES

Jackson _____

Derby _____

Armes _____

Biggs _____

Christian _____

Hall _____

Schwartz _____

Sanders _____

Dorman _____

Virgin _____

HB2097 CCR A

SENATE CONFEREES

Bass

Branan

Brinkley

Coates

Crain

David

Ellis

Fields

Ford

Griffin

Halligan

Holt

Ivester

C. Johnson

R. Johnson

Jolley

Justice

Marlatt

Mazzei

Newberry

Paddack

Standridge

Stanislawski

Sykes

Treat

Wyrick

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2097 By: Jackson and Roberts (Dustin) of the House

and

Brinkley of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to tobacco products; amending 37 O.S. 2011, Sections 600.2, 600.3, 600.4, 600.5, 600.6, 600.7, 600.8, 600.10, 600.10A, 600.11 and 600.13, which relate to the Prevention of Youth Access to Tobacco Act; modifying definitions; modifying provisions related to unlawful acts related to tobacco-derived products or vapor products; modifying provisions related to proof of age; modifying provisions related to administrative penalty; authorizing suspension of sales tax permit under certain circumstances; modifying provisions related to notice; modifying provisions related to employee responsibility; providing for effect of certain employee violations; authorizing suspension of sales tax permit based upon certain offenses; modifying provisions related to possession of certain products; modifying provisions related to posted information; modifying duties with respect to notifications to individual employees with respect to tobacco-derived products or vapor products; modifying provisions related to content of required forms; modifying provisions related to sales from vending machines; modifying provisions related to distribution of products to persons under eighteen years of age; modifying provisions related to authority of certain government entities; modifying provisions related to public access to certain tobacco products without

assistance; modifying duties of the Alcoholic Beverage Laws Enforcement Commission; imposing duties with respect to certain required notice; modifying provisions related to certain material or devices with respect to persons under the age of eighteen years; amending 68 O.S. 2011, Sections 401, 402, 403, 404, 412, 418, 420 and 420.1, which relate to tobacco products taxation; modifying definitions; providing for no state excise tax or tobacco products tax on certain vapor products; providing for excise tax rate on tobacco-derived products; modifying provisions related to certain stamps; imposing requirements related to invoice documents; requiring retention of invoice copies; modifying provisions related to sale, barter or exchange; providing for imposition of administrative fines; modifying provisions related to the rules of the Oklahoma Tax Commission; amending 68 O.S. 2011, Section 1355, which relates to sales tax; modifying provisions related to payment of sales tax based upon imposition of other taxes; and declaring an emergency.

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

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

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

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

2. "Proof of age" means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as eighteen (18) years

of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;

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

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

5. "Tobacco-derived product" means any noncombustible product derived from tobacco that contains nicotine and is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means, but does not include a vapor product or any product regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

6. "Tobacco product" means any product that contains tobacco and is intended for human consumption, but does not include vapor products;

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

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

9. "Vapor product" means a noncombustible product containing nicotine that employs a mechanical heating element, battery, or electronic circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in a vapor cartridge as well as any vapor cartridge containing liquid nicotine solution that can be used with or in a vapor product and electronic cigarettes, electronic cigars, electronic cigarillos and electronic pipes. "Vapor product" does not include any product regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

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

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

B. A person engaged in the sale or distribution of tobacco products, tobacco-derived products or vapor products shall demand proof of age from a prospective purchaser or recipient if an

ordinary person would conclude on the basis of appearance that the prospective purchaser may be under eighteen (18) years of age.

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

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

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

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

c. not more than Three Hundred Dollars ($300.00) for a third offense within a two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco products, or the store's sales tax permit in the case of offenses relating to tobacco-derived products or vapor products may be suspended for a period not exceeding thirty (30) days, or

d. not more than Three Hundred Dollars ($300.00) for a fourth or subsequent offense within a two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco products, or the store's sales tax permit in the case of offenses relating to tobacco-derived products or vapor products may be suspended for a period not exceeding sixty (60) days.

2. When it has been determined that a penalty shall include a license or sales tax permit suspension, the ABLE Commission shall notify the Oklahoma Tax Commission, and the Tax Commission shall suspend the store's license to sell tobacco products, or the store's sales tax permit in the case of offenses relating to tobacco-derived products or vapor products at the location where the offense occurred for the period of time prescribed by the ABLE Commission.

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

a. the individual who purchased or received the tobacco product, tobacco-derived product or vapor product presented a driver license or other government-issued

photo identification purporting to establish that such individual was eighteen (18) years of age or older, and

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

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if ~~such~~ the person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

D. If the sale is made by an employee of the owner of a store at which tobacco products, tobacco-derived products or vapor products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine. Each violation by any employee of an owner of a store licensed to sell tobacco products shall be deemed a violation against the owner for purposes of a license suspension pursuant to subsection C of this section. Each violation by any employee of an owner of a store engaged in the sale

of tobacco-derived products or vapor products shall be deemed a violation against the owner for purposes of a sales tax permit suspension pursuant to subsection C of this section. An owner of a store licensed to sell tobacco products, or a store engaged in the sale of tobacco-derived products or vapor products shall not be deemed in violation of the provisions of the Prevention of Youth Access to Tobacco Act for any acts constituting a violation by any person, when the violation occurs prior to actual employment of the person by the store owner or the violation occurs at a location other than the owner's retail store. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations, for any violations of subsection A or B of this section, each individual franchise or business location shall be deemed a separate entity.

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

F. 1. Upon failure of the employee to pay the administrative fine within ninety (90) days of the day of the assessment of such fine, the ABLE Commission shall notify the Department of Public Safety and the Department shall suspend or not issue a driver

license to the employee until proof of payment has been furnished to the Department of Public Safety.

2. Upon failure of a storeowner to pay the administrative fine within ninety (90) days of the assessment of the fine, the ABLE Commission shall notify the Tax Commission and the Tax Commission shall suspend the store's license to sell tobacco products, or the store's sales tax permit in the case of offenses relating to tobacco-derived products or vapor products until proof of payment has been furnished to the Oklahoma Tax Commission.

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

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

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

Section 600.4 A. It is unlawful for a person who is under eighteen (18) years of age to purchase, receive, or have in their possession a tobacco product, tobacco-derived products or vapor products, or to present or offer to any person any purported proof of age which is false or fraudulent, for the purpose of purchasing

or receiving any tobacco product, tobacco-derived products or vapor products. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products, tobacco-derived products or vapor products when required in the performance of the employee's duties.

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

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

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

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

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

D. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under

provisions of this section, but the provisions of such ordinances shall be the same as provided for in this section, and the enforcement provisions under such ordinances shall not be more stringent than those of this section.

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

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

B. When a person violates subsection A of this section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose an administrative fine of not more than Fifty Dollars ($50.00) for each day a violation occurs. Each day a violation is continuing shall constitute a separate offense. The notice required by subsection A of this section shall be the only notice required to be posted or maintained in any store that sells tobacco products, tobacco-derived products or vapor products at retail.

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

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

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

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

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

"I understand that state law prohibits the sale or distribution of tobacco products, tobacco-derived products or vapor products to persons under eighteen (18) years of age and out-of-package sales, and requires proof of age of purchaser or recipient if an ordinary person would conclude on the basis of appearance that the

prospective purchaser or recipient may be under eighteen (18) years of age. I promise, as a condition of my employment, to obey the law. I understand that violations by me may be punishable by fines, suspension or nonissuance of my driver license. In addition, I understand that violations by me may subject the storeowner to fines or license suspension."

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

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

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

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

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

Section 600.8 A. It shall be unlawful for any person or retailer to distribute tobacco products, tobacco-derived products, vapor products or product samples to any person under eighteen (18) years of age.

B. No person shall distribute tobacco products or product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other

facility when the facility is being used primarily by persons under eighteen (18) years of age.

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

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

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

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

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

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

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

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

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

Section 600.10A A. It is unlawful for any person or retail store to display or offer for sale tobacco products, tobacco-derived products or vapor products in any manner that allows public access to the tobacco product, tobacco-derived products or vapor products without assistance from the person displaying the tobacco product,

tobacco-derived products or vapor products or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under eighteen (18) years of age.

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

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

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

Section 600.11 A. The Alcoholic Beverage Laws Enforcement (ABLE) Commission is authorized and empowered to enforce the provisions of Sections 600.1 et seq. of this title. The ABLE Commission shall enforce those provisions in a manner that can reasonably be expected to reduce the extent to which tobacco products, tobacco-derived products or vapor products are sold or distributed to persons under eighteen (18) years of age.

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

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

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

E. Persons under eighteen (18) years of age may be enlisted by the ABLE Commission, a municipality or town, or a county to assist in compliance checks and enforcement; provided, such persons may be used to test compliance only if written parental consent has been provided and the testing is conducted under the direct supervision of the ABLE Commission or conducted by another law enforcement agency if such agency has given written notice to the ABLE Commission in the manner prescribed by the ABLE Commission. Municipalities which have enacted municipal ordinances in accordance

with the Prevention of Youth Access to Tobacco Act may conduct, pursuant to rules of the ABLE Commission, compliance checks without prior notification to the ABLE Commission and shall be exempt from the written notice requirement in this subsection. This subsection shall not apply to the use of persons under eighteen (18) years of age to test compliance if the compliance test is being conducted by or on behalf of a retailer of cigarettes, as defined in Section 301 of Title 68 of the Oklahoma Statutes, at any location the retailer of cigarettes is authorized to sell cigarettes. Any other use of persons under eighteen (18) years of age to test compliance shall be unlawful and punishable by the ABLE Commission by assessment of an administrative fine of One Hundred Dollars ($100.00).

F. At the beginning of each month, the Oklahoma Tax Commission, pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall provide to the ABLE Commission and to each municipality which has ordinances concerning the Prevention of Youth Access to Tobacco Act, the location, name, and address of each licensee licensed to sell tobacco products at retail or otherwise furnish tobacco products. Upon violation of an employee at a location, the ABLE Commission shall notify the storeowner for that location of the latest and all previous violations when one of their employees has been determined to be in violation of the Prevention of Youth Access to Tobacco Act by the ABLE Commission or convicted of a violation by a municipality. If the ABLE Commission fails to notify the licensee,

or sales tax permit holder, of a violation by an employee, that violation shall not apply against the licensee or sales tax permit holder for the purpose of determining a license or sales tax permit suspension pursuant to Section 600.3 of this title. For purposes of this subsection, notification shall be deemed given if the ABLE Commission mails, by mail with delivery confirmation, the notification to the address which is on file with the Oklahoma Tax Commission of the licensee or sales tax permit holder of the location at which the violation occurred and the ABLE Commission receives delivery confirmation from the U.S. Postal Service.

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

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

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

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

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

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

Section 401. For the purpose of this article:

~~(a)~~ 1. The word "person" shall mean any individual, company, limited liability company, corporation, partnership, association, joint adventure, estate, trust, or any other group, or combination acting as a unit, and the plural as well as the singular, unless the intention to give a more limited meaning is disclosed by the context~~.~~;

~~(b)~~ 2. The term "Tax Commission" shall mean the Oklahoma Tax Commission~~.~~;

~~(c)~~ 3. The word "wholesaler" shall include dealers whose principal business is that of a wholesale dealer or jobber, and who is known to the trade as such, who shall sell any cigars, tobacco-derived products or tobacco products to licensed retail dealers only for the purpose of resale, or giving them away, or exposing the same where they may be taken or purchased, or otherwise acquired by the retailer~~.~~;

~~(d)~~ 4. The word "retailer" shall include every dealer, other than a wholesale dealer as defined above, whose principal business is that of selling merchandise at retail, who shall sell, or offer for sale, cigars ~~or~~, tobacco products or tobacco-derived products, irrespective of quantity, number of sales, giving the same away or exposing the same where they may be taken, or purchased, or otherwise acquired by the consumer~~.~~;

~~(e)~~ 5. The word "consumer" shall mean a person who comes into possession of tobacco or tobacco-derived products for the purpose of consuming it, giving it away, or disposing of it in any way by sale, barter or exchange~~.~~;

~~(f)~~ 6. The words "first sale" shall mean and include the first sale, or distribution, of cigars ~~or~~, tobacco products or tobacco-derived products in intrastate commerce, or the first use or consumption of cigars, ~~or~~ tobacco products or tobacco-derived products within this state~~.~~;

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

~~(h)~~ 8. The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigars ~~and~~, tobacco products or tobacco-derived products in interstate commerce and storing such items subject to distribution or delivery, upon order from said person outside the state, to distributors, wholesale dealers and retail dealers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigars ~~and~~, tobacco products or tobacco-derived products to be shipped in interstate commerce to a person in this state by a person residing outside of Oklahoma, the tax not having been paid on such cigars ~~and~~, tobacco products~~.~~ or tobacco-derived products;

~~(i)~~ 9. The term "stamp" shall mean the stamp or stamps by use of which:

~~1. The~~

a. the tax levied pursuant to the provisions of Section 401 et seq. of this title is paid~~;~~,

~~2. The~~

b. the tax levied pursuant to the provisions of Section 426 of this title is paid~~;~~, or

~~3. The~~

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

~~(j)~~ 10. The term "drop shipment" shall mean and include any delivery of cigars ~~or~~, tobacco products or tobacco-derived products received by any person within the state when payment for such cigars ~~or~~, tobacco products or tobacco-derived products is made to the shipper or seller by or through a person other than the consignee~~.~~;

~~(k)~~ 11. The term "cigars" shall include any roll of tobacco for smoking, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredients, where such roll has a wrapper made chiefly of tobacco~~.~~;

~~(l)~~ 12. The word "dealer" shall include every person, firm, corporation, or association of persons, who manufactures cigars ~~or~~, tobacco products or tobacco-derived products for distribution, sale, use or consumption in the State of Oklahoma. The word "dealer" is

also further defined to mean any person, firm, corporation or association of persons, who imports cigars ~~or~~, tobacco products or tobacco-derived products from any state or foreign country, for distribution, sale, use or consumption in the State of Oklahoma;

13. The words "tobacco-derived products" shall mean any noncombustible products derived from tobacco that contain nicotine and are intended for human consumption, including snus, whether chewed, absorbed, dissolved or ingested by any other means, but do not include vapor products or any products regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

14. The words "vapor products" shall mean noncombustible products containing nicotine that employ a mechanical heating element, battery or electronic circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in a vapor cartridge as well as any vapor cartridge or other container containing liquid nicotine solution that can be used with or in a vapor product and electronic cigarettes, electronic cigars, electronic cigarillos and electronic pipes. "Vapor products" do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

15. The words "tobacco-derived product unit" shall mean the contents of any package of tobacco-derived products intended to be

sold in such package at retail the net weight of which is any amount up to and including one (1) ounce;

16. For purposes of the tax statutes, the word "snus" shall mean an oral tobacco product derived from finely ground tobaccos mixed with water and other additives, the manufacturing of which includes a heat treatment process rather than fermentation; and

17. The word "manufacturer" shall mean a person within or outside of this state who produces cigarettes, tobacco products or tobacco-derived products or a person who contracts with another person to produce cigarettes, tobacco products or tobacco-derived products.

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

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

1. Little Cigars. Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three (3) pounds per thousand, four (4) mills for each cigar. Provided, that the tax levied on the products coming under this paragraph shall not apply if the tax on such products is reported and paid as cigarette tax under Sections 301 through 325 of this title;

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

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

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

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

6. Vapor products. There shall be no state excise tax or tobacco products tax assessed on vapor products; and

7. Tobacco-derived products. Upon all tobacco-derived products, the tax shall be ten cents ($0.10) per tobacco-derived product unit and a proportionate tax at the like rate on all

fractional parts of a tobacco-derived product unit in excess of a single tobacco-derived product unit. At no time shall the amount of tax imposed upon a tobacco-derived product unit exceed one-tenth (0.10) the rate of tax imposed on a pack of cigarettes in this state.

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

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

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

Section 403. ~~(a)~~ A. The excise taxes levied by this article shall be paid by affixing stamps in the manner and at the time herein set forth. In the case of cigars, including five-pack and other small packs, stogies and cheroots, the stamps shall be affixed to the box, or container, in which or from which normally sold at wholesale. Wholesalers and jobbers shall affix the required stamps within seventy-two (72) hours after such tobacco products are received by them. Any retailer shall have twenty-four (24) hours within which to affix the stamps after such tobacco products are

received by him, or them. Provided that the Tax Commission may, in its discretion, where it is practical and reasonable for the enforcement of the collection of taxes provided hereunder, promulgate such rules and regulations as to permit cigars, stogies, cheroots, and tobacco products, to remain unstamped in the hands of the wholesalers and jobbers until the original case or crate is broken, unpacked or sold.

~~(b)~~ B. In the case of tobacco products wrapped in packages of two (2) pounds or less, the stamps shall be affixed to the containers in which or from which the individual packages are normally sold at wholesale and the stamps shall be affixed by wholesalers and jobbers within seventy-two (72) hours after such products are received by them, and by any retailer within the twenty-four (24) hours of receipt by him or them of any such products. Such goods must be stamped before being sold. All retail dealers in manufactured tobacco products or tobacco-derived products, purchasing or receiving such commodities from without the state, whether the same shall have been ordered through a wholesaler or jobber in this state and/or by drop shipment and/or otherwise, shall within five (5) days after receipt of same, mail a duplicate invoice of all such purchases or receipts to the Tax Commission. Failure to furnish duplicate invoices as required shall be deemed a misdemeanor, and, upon conviction, be punishable by a fine of not more than One Hundred Dollars ($100.00) for each offense, or

imprisonment in the county jail for a period not exceeding thirty (30) days.

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

D. All invoices for tobacco-derived products issued by manufacturers shall include the actual pounds of tobacco-derived products, if available.

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

SECTION 15. AMENDATORY 68 O.S. 2011, Section 404, is amended to read as follows:

Section 404. The sale, barter or exchange of tobacco products or tobacco-derived products or possession of tobacco products or tobacco-derived products for consumption, is hereby declared to be subject to taxation authorized by Section 12 of Article X of the Oklahoma Constitution, and it is the purpose and intention of this

article to provide revenue for the expense of the state government. The revenue, including interest and penalties, collected under this article shall be paid monthly by the Tax Commission to the State Treasurer to be placed in the General Revenue Fund, to be paid out pursuant to direct appropriation by the Legislature.

SECTION 16. AMENDATORY 68 O.S. 2011, Section 412, is amended to read as follows:

Section 412. (a) Every wholesaler, jobber, retailer or consumer who purchases or allows to come into his or her possession any unstamped merchandise coming under the scope of this article shall file with the Oklahoma Tax Commission a surety or collateral or cash bond in the amount of Twenty-five Thousand Dollars ($25,000.00), payable to the State of Oklahoma and conditioned upon compliance with the provisions of this article and the rules of the Tax Commission.

(b) Any consumer who purchases or brings into this state unstamped cigars or tobacco products whereon the tax would be more than twenty-five cents ($0.25) is subject to the tax thereon. Upon failure to pay the tax levied in this article, the consumer shall be subject to a fine of not more than Five Hundred Dollars ($500.00) or not less than Twenty-five Dollars ($25.00). <u>Provided, any person in possession of more than one thousand small or large cigars or two hundred sixteen (216) ounces of chewing or smoking tobacco products or tobacco-derived products in packages or containers for which the</u>

tax required by law has not been paid shall be punished by administrative fines in the manner and amounts provided in subsection D of Section 418 of this title.

SECTION 17. AMENDATORY 68 O.S. 2011, Section 418, is amended to read as follows:

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

B. Except as otherwise provided in subsections C and D of this section, any person found guilty of violating the provisions of Section 401 et seq. of this title shall be punished by an administrative fine of not more than Five Hundred Dollars ($500.00). Provided, any person in possession of more than one thousand small or large cigars or two hundred sixteen (216) ounces of chewing or smoking tobacco products or tobacco-derived products in packages or containers for which the tax required by law has not been paid shall be punished by administrative fines in the manner and amounts provided in subsection D of this section.

C. Any retailer violating the provisions of Section 403.2 of this title shall:

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

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

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

D. Any wholesaler, distributing agent or dealer violating the provisions of Section 403.2 of this title shall:

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

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

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

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

SECTION 18. AMENDATORY 68 O.S. 2011, Section 420, is amended to read as follows:

Section 420. The Oklahoma Tax Commission shall prescribe such rules and make such regulations as to the sale of such tobacco products, tobacco-derived products and the exemption from the tobacco products tax thereon, as shall be deemed necessary to comply with the provisions of the preceding section.

SECTION 19. AMENDATORY 68 O.S. 2011, Section 420.1, is amended to read as follows:

Section 420.1 A. Each distributor of tobacco products, as defined in Section 401 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation shall contain the distributor's tobacco license number and the quantity by brand style of the tobacco products involved in the transaction.

B. Each retailer of tobacco products, as defined in Section 401 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall maintain copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The invoices or documentation shall show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the tobacco

products were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number.

C. Copies of all invoices for the purchase or sale of any tobacco-derived products shall be retained in accordance with Section 403 of this title, and the rules and regulations of the Oklahoma Tax Commission.

SECTION 20. AMENDATORY 68 O.S. 2011, Section 1355, is amended to read as follows:

Section 1355. There are hereby specifically exempted from the tax levied pursuant to the provisions of Section 1350 et seq. of this title:

1. Sale of gasoline, motor fuel, methanol, "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, compressed natural gas, liquefied natural gas, or liquefied petroleum gas on which the Motor Fuel Tax, Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special Fuels Tax levied in Section 500.1 et seq., Section 601 et seq. or Section 701 et seq. of this title has been, or will be paid;

2. Sale of motor vehicles or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Section 2101 et seq. of this title has been, or will be paid;

3. Sale of crude petroleum or natural or casinghead gas and other products subject to gross production tax pursuant to the provisions of Section 1001 et seq. and Section 1101 et seq. of this title. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas. This paragraph shall not operate to increase or repeal the gross production tax levied by the laws of this state;

4. Sale of aircraft on which the tax levied pursuant to the provisions of Sections 6001 through 6007 of this title has been, or will be paid or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title;

5. Sales from coin-operated devices on which the fee imposed by Sections 1501 through 1512 of this title has been paid;

6. Leases of twelve (12) months or more of motor vehicles in which the owners of the vehicles have paid the vehicle excise tax levied by Section 2103 of this title;

7. Sales of charity game equipment on which a tax is levied pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of Title 3A of the Oklahoma Statutes, or which is sold to an organization that is:

a. a veterans' organization exempt from taxation pursuant to the provisions of paragraph (4), (7), (8), (10) or

(19) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq., or

b. a group home for mentally disabled individuals exempt from taxation pursuant to the provisions of paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, as amended, 26 U.S.C., Section 501(c) et seq.;

8. Sales of cigarettes or tobacco products to:

a. a federally recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of subsection C of Section 346 of this title or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid, or

b. a federally recognized Indian tribe or nation or to a licensee of such a tribe or nation upon which the tax levied pursuant to the provisions of Section 349 or Section 426 of this title has been paid;

9. Leases of aircraft upon which the owners have paid the aircraft excise tax levied by Section 6001 et seq. of this title or which are specifically exempt from such tax pursuant to the provisions of Section 6003 of this title;

10. The sale of low-speed or medium speed electrical vehicles on which the Oklahoma Motor Vehicle Excise Tax levied in Section 2101 et seq. of this title has been or will be paid; and

11. Effective January 1, 2005, sales of cigarettes on which the tax levied in Section 301 et seq. of this title or tobacco products <u>or tobacco-derived products</u> on which the tax levied in Section 401 et seq. of this title has been paid.

SECTION 21. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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