

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1892, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Johnson (Rob)

Johnson (Rob)-JCR-FS-Req#3414
3/12/2014 9:26 AM

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1892

By: Johnson (Rob) of the Senate

and

Jackson of the House

7
8 FLOOR SUBSTITUTE

9 [revenue and taxation - tobacco products tax - vapor
10 or alternative nicotine products -
11 emergency]

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

13 SECTION 1. AMENDATORY 68 O.S. 2011, Section 401, is
14 amended to read as follows:

15 Section 401. For the purpose of this article:

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

22 ~~(b)~~ 2. The term "Tax Commission" shall mean the Oklahoma Tax
23 Commission. i

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

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

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

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

21 ~~(g)~~ 7. The words "tobacco products" shall mean any cigars,
22 cheroots, stogies, smoking tobacco (including granulated, plug cut,
23 crimp cut, ready rubbed and any other kinds and forms of tobacco
24 suitable for smoking in a pipe or cigarette), chewing tobacco

1 (including cavendish, twist, plug, scrap and any other kinds and
2 forms of tobacco suitable for chewing), however prepared; and shall
3 include any other articles or products made of tobacco or any
4 substitute therefor~~;~~;

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

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

18 ~~1. The~~

19 a. the tax levied pursuant to the provisions of Section
20 401 et seq. of this title is paid~~;~~l

21 ~~2. The~~

22 b. the tax levied pursuant to the provisions of Section
23 426 of this title is paid~~;~~l or

24 ~~3. The~~

1 mechanical heating element, battery, electronic circuit, or other
2 mechanism, regardless of shape or size, that can be used to produce
3 a vapor in a solution or other form. "Vapor products" shall include
4 any vapor cartridge or other container with or without nicotine or
5 other form that is intended to be used with an electronic cigarette,
6 electronic cigar, electronic cigarillo, electronic pipe, or similar
7 product or device and any vapor cartridge or other container of a
8 solution, that may or may not contain nicotine that is intended to
9 be used with or in an electronic cigarette, electronic cigar,
10 electronic cigarillo or electronic device. "Vapor products" do not
11 include any products regulated by the United States Food and Drug
12 Administration under Chapter V of the Federal Food, Drug, and
13 Cosmetic Act;

14 14. "Alternative nicotine products" shall mean any
15 noncombustible product containing nicotine that is intended for
16 human consumption, whether chewed, absorbed, dissolved or ingested
17 by any other means. "Alternative nicotine products" do not include
18 any vapor product, tobacco products as defined by paragraph 7 of
19 this section or any product regulated as a drug or device by the
20 United States Food and Drug Administration under Chapter V of the
21 Food, Drug and Cosmetic Act.

22 SECTION 2. AMENDATORY 68 O.S. 2011, Section 402, is
23 amended to read as follows:
24

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

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

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

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

21 4. Smoking Tobacco. Upon all smoking tobacco including
22 granulated, plug cut, crimp cut, ready rubbed and other kinds and
23 forms of tobacco prepared in such manner as to be suitable for
24 smoking in a pipe or cigarette, the tax shall be twenty-five percent

1 (25%) of the factory list price exclusive of any trade discount,
2 special discount or deals; and

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

6 The tax prescribed by this section shall not apply to vapor
7 products or alternative nicotine products as those terms are defined
8 in Section 1 of this act.

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

12 Notwithstanding any other provision of law, the tax levied
13 pursuant to the provisions of Section 401 et seq. of this title
14 shall be part of the gross proceeds or gross receipts from the sale
15 of cigars or tobacco products, or both, as those terms are defined
16 in paragraph 7 12 of Section 1352 of this title.

17 SECTION 3. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

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22 54-2-3414 JCR 3/12/2014 9:26:42 AM

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