

<DateSubmitted>

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 Action _____ Date _____ Senate Action _____ Date _____

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2097

By: Jackson and Roberts
(Dustin) of the House

7 and

8 Brinkley of the Senate

9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to tobacco products; amending 37 O.S.
12 2011, Sections 600.2, 600.3, 600.4, 600.5, 600.6,
13 600.7, 600.8, 600.10, 600.10A, 600.11 and 600.13,
14 which relate to the Prevention of Youth Access to
15 Tobacco Act; modifying definitions; modifying
16 provisions related to unlawful acts related to
17 tobacco-derived products or vapor products; modifying
18 provisions related to proof of age; modifying
19 provisions related to administrative penalty;
20 authorizing suspension of sales tax permit under
21 certain circumstances; modifying provisions related
22 to notice; modifying provisions related to employee
23 responsibility; providing for effect of certain
24 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

1 assistance; modifying duties of the Alcoholic
2 Beverage Laws Enforcement Commission; imposing duties
3 with respect to certain required notice; modifying
4 provisions related to certain material or devices
5 with respect to persons under the age of eighteen
6 years; amending 68 O.S. 2011, Sections 401, 402, 403,
7 404, 412, 418, 420 and 420.1, which relate to tobacco
8 products taxation; modifying definitions; providing
9 for no state excise tax or tobacco products tax on
10 certain vapor products; providing for excise tax rate
11 on tobacco-derived products; modifying provisions
12 related to certain stamps; imposing requirements
13 related to invoice documents; requiring retention of
14 invoice copies; modifying provisions related to sale,
15 barter or exchange; providing for imposition of
16 administrative fines; modifying provisions related to
17 the rules of the Oklahoma Tax Commission; amending 68
18 O.S. 2011, Section 1355, which relates to sales tax;
19 modifying provisions related to payment of sales tax
20 based upon imposition of other taxes; and declaring
21 an emergency.

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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

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

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

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

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

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

17 ~~6.~~ 7. "Transaction scan" means the process by which a seller
18 checks, by means of a transaction scan device, the validity of a
19 driver license or other government-issued photo identification; ~~and~~

20 ~~7.~~ 8. "Transaction scan device" means any commercial device or
21 combination of devices used at a point of sale or entry that is
22 capable of deciphering in an electronically readable format the
23 information encoded on the magnetic strip or bar code of a driver
24 license or other government-issued photo identification; and

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

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

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

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

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

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

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

- 12 a. not more than One Hundred Dollars (\$100.00) for the
13 first offense,
- 14 b. not more than Two Hundred Dollars (\$200.00) for the
15 second offense within a two-year period following the
16 first offense,
- 17 c. not more than Three Hundred Dollars (\$300.00) for a
18 third offense within a two-year period following the
19 first offense. In addition to any other penalty, the
20 store's license to sell tobacco products, or the
21 store's sales tax permit in the case of offenses
22 relating to tobacco-derived products or vapor products
23 may be suspended for a period not exceeding thirty
24 (30) days, or

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

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

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

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

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

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

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

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

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

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

20 F. 1. Upon failure of the employee to pay the administrative
21 fine within ninety (90) days of the day of the assessment of such
22 fine, the ABLE Commission shall notify the Department of Public
23 Safety and the Department shall suspend or not issue a driver
24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

5 B. When a person violates subsection A of this section, the
6 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
7 an administrative fine of not more than Two Hundred Dollars
8 (\$200.00) for each offense.

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

9 B. When a person violates subsection A of this section, the
10 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
11 an administrative fine of not more than One Hundred Dollars
12 (\$100.00) for each offense.

13 SECTION 12. 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

24

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, tobacco-
4 derived products or tobacco products to licensed retail dealers only
5 for the purpose of resale, or giving them away, or exposing the same
6 where they may be taken or purchased, or otherwise acquired by the
7 retailer-;i

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

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

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

24

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

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

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

24 ~~1.~~ ~~The~~

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

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

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

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

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

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

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

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

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

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

20 Provided, that the tax levied on the products coming under this
21 paragraph shall not apply if the tax on such products is reported
22 and paid as cigarette tax under Sections 301 through 325 of this
23 title;

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

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

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

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

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

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

1 fractional parts of a tobacco-derived product unit in excess of a
2 single tobacco-derived product unit. At no time shall the amount of
3 tax imposed upon a tobacco-derived product unit exceed one-tenth
4 (0.10) the rate of tax imposed on a pack of cigarettes in this
5 state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Section 412. (a) Every wholesaler, jobber, retailer or
9 consumer who purchases or allows to come into his or her possession
10 any unstamped merchandise coming under the scope of this article
11 shall file with the Oklahoma Tax Commission a surety or collateral
12 or cash bond in the amount of Twenty-five Thousand Dollars
13 (\$25,000.00), payable to the State of Oklahoma and conditioned upon
14 compliance with the provisions of this article and the rules of the
15 Tax Commission.

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

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

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

6 Section 418. A. It shall be unlawful for any person to
7 transport or possess unstamped tobacco products where the tax on
8 such unstamped tobacco products exceeds the sum of One Dollar
9 (\$1.00).

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

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

22 1. For a first offense, be punished by an administrative fine
23 of not more than One Thousand Dollars (\$1,000.00);
24

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

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

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

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

10 2. For a second or subsequent offense, be punished by an
11 administrative fine of not more than Twenty Thousand Dollars
12 (\$20,000.00).

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

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

24

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

9 8. Sales of cigarettes or tobacco products to:

- 10 a. a federally recognized Indian tribe or nation which
11 has entered into a compact with the State of Oklahoma
12 pursuant to the provisions of subsection C of Section
13 346 of this title or to a licensee of such a tribe or
14 nation, upon which the payment in lieu of taxes
15 required by the compact has been paid, or
16 b. a federally recognized Indian tribe or nation or to a
17 licensee of such a tribe or nation upon which the tax
18 levied pursuant to the provisions of Section 349 or
19 Section 426 of this title has been paid;

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

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

4 11. Effective January 1, 2005, sales of cigarettes on which the
5 tax levied in Section 301 et seq. of this title or tobacco products
6 or tobacco-derived products on which the tax levied in Section 401
7 et seq. of this title has been paid.

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

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