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**AS AMENDED**

By: Cox and Pittman of the  
House

David of the Senate

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SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.9 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. No person or entity engaged in the business of selling or distributing cigarettes shall mail, ship or otherwise deliver cigarettes to any person in this state that is not:

1. A retailer, distributor or wholesaler of cigarettes licensed by the Oklahoma Tax Commission under Section 304 of Title 68 of the Oklahoma Statutes;

2. An export warehouse proprietor pursuant to Chapter 52 of the Internal Revenue Code or the operator of a customs bonded warehouse pursuant to 19 U.S.C., Section 1311 or 1555; or

3. A person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state when the person is acting in accordance with the official duties of the person.

B. For purposes of this section, "cigarette" shall have the same definition as that found in Section 600.22 of Title 37 of the Oklahoma Statutes and "distributor", "wholesaler" and "retailer" shall have the same definitions that are found in Section 301 of Title 68 of the Oklahoma Statutes.

C. It shall be illegal for any common or contract carrier to knowingly transport cigarettes to any person in this state

1 reasonably believed by the carrier to be a person other than  
2 described in paragraph 1, 2 or 3 of subsection A of this section.  
3 For purposes of this subsection, cigarettes may be transported to a  
4 home or residence in this state by persons other than common and  
5 contract carriers in quantities that do not exceed one thousand  
6 cigarettes at any one time.

7 D. 1. A person that violates the provisions of subsection A or  
8 C of this section shall be subject to:

- 9 a. a civil penalty of Two Thousand Five Hundred Dollars  
10 (\$2,500.00) for each violation or Twenty-five Dollars  
11 (\$25.00) for each pack of cigarettes shipped or  
12 transported, whichever is greater,
- 13 b. an injunction to restrain a threatened or actual  
14 violation of this section,
- 15 c. the costs of any investigation conducted by the state  
16 related to a violation of this section, and
- 17 d. attorney fees and costs.

18 2. Any cigarettes that are shipped or transported into this  
19 state in violation of this section shall be forfeited to the state  
20 and destroyed.

21 3. Each shipment, transport, or attempted shipment or transport  
22 of cigarettes or tobacco products in violation of this section shall  
23 constitute a separate violation.  
24

1 E. All civil penalties obtained as a result of an action  
2 brought under this section shall be deposited into the Attorney  
3 General's Evidence Fund.

4 SECTION 3. AMENDATORY 68 O.S. 2011, Section 349.1, is  
5 amended to read as follows:

6 Section 349.1 A. Sales of cigarettes and other tobacco  
7 products by retailers licensed by noncompacting federally recognized  
8 Indian tribes or nations (hereinafter "tribe or nation") shall be  
9 subject to the cigarette excise tax imposed by Section 302 et seq.  
10 of ~~Title 68 of the Oklahoma Statutes~~ this title and the excise tax  
11 on other tobacco products imposed by Section 402 et seq. of ~~Title 68~~  
12 ~~of the Oklahoma Statutes~~ this title.

13 B. 1. Members of noncompacting federally recognized Indian  
14 tribes or nations may purchase cigarettes and other tobacco  
15 products, without payment of Oklahoma cigarette excise tax or  
16 Oklahoma other tobacco products excise tax, subject to the following  
17 conditions:

18 a. the member of the noncompacting federally recognized  
19 Indian tribe (hereinafter "purchaser") is purchasing  
20 for his or her personal use, and not for sale,  
21 transfer or other disposition to another person or  
22 entity,

- 1           b.    the purchaser is purchasing from a retailer licensed  
2                by the federally recognized Indian tribe or nation of  
3                which the purchaser is a member,  
4           c.    the licensed retailer of purchaser's federally  
5                recognized Indian tribe or nation is located upon  
6                "Indian country" of that licensing tribe or nation, as  
7                that term is defined by 18 USC ~~§~~ Section 1151(a) and  
8                paragraph 3 of Section 348.3 348 of Title 68 of the  
9                ~~Oklahoma Statutes~~ this title.

10        2.   Members of noncompacting federally recognized tribes or  
11        nations are not entitled to purchase cigarettes or other tobacco  
12        products, free of Oklahoma excise tax, from retailers licensed by  
13        any other tribe or nation, compacting or not, but have a right to  
14        purchase cigarettes and other tobacco products, free of Oklahoma  
15        excise tax, upon the "Indian country" of the tribe or nation of  
16        which the purchaser is a member, per the United States Supreme Court  
17        decision "Oklahoma Tax Commission v. Citizen Band Potawatomi Indian  
18        Tribe of Oklahoma", 498 U.S. 505 (1991).

19        C.   Cigarettes held for sale to members of a noncompacting tribe  
20        or nation by licensed retailers of that tribe or nation, which are  
21        located on the "Indian country" of that tribe or nation, as defined  
22        by 18 USC ~~§~~ Section 1151(a) and paragraph 3 of Section 348.3 348 of  
23        ~~Title 68 of the Oklahoma Statutes~~ this title, must bear a stamp  
24        issued by the Oklahoma Tax Commission evidencing that cigarettes are

1 purchased free of Oklahoma cigarette excise tax. The following  
2 procedures shall apply to said stamps (hereafter, "Native American  
3 tax free stamps"):

4 1. The probable demand for Native American tax free stamps for  
5 each noncompacting tribe or nation shall be determined by the Tax  
6 Commission by ascertaining the total membership in Oklahoma of the  
7 tribe or nation from the Bureau of Indian Affairs or other reliable  
8 source of public information regarding such membership, and  
9 multiplying that number by the percentage of smokers in Oklahoma or  
10 in the United States, whichever is greater, based on the most recent  
11 data available from the State Department of Health and/or other  
12 reliable source of public information. The product of that  
13 calculation shall be multiplied by the average yearly consumption of  
14 cigarettes by smokers in Oklahoma or the United States, whichever is  
15 greater, based on the most recent data available from the State  
16 Department of Health and/or other reliable source of public  
17 information. The resulting number shall be deemed to constitute the  
18 probable demand for Native American tax free stamps of such  
19 noncompacting tribe or nation for a calendar year.

20 2. A preliminary determination of probable demand shall be  
21 furnished to the governing authorities of each noncompacting tribe  
22 or nation which may submit, for consideration by the Tax Commission,  
23 any verifiable information in its possession regarding such probable  
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1 demand, including, but not limited to, a verifiable record of  
2 previous sales to tribal members or other statistical evidence.

3 3. After consideration of all verifiable information furnished  
4 by a noncompacting tribe or nation pursuant to paragraph 2 of this  
5 subsection, the Tax Commission shall make its final determination of  
6 probable demand, and furnish such determination to the subject  
7 noncompacting tribe or nation and to all Oklahoma-licensed cigarette  
8 wholesalers.

9 4. Each calendar year, the Tax Commission shall establish, as  
10 to any and all Oklahoma-licensed cigarette wholesalers supplying  
11 cigarettes to tribally licensed or owned retailers of each  
12 noncompacting tribe or nation an allocation of the probable demand  
13 for such tribe or nation, based upon each wholesaler's previous  
14 year's reported sales of cigarettes to the tribally licensed or  
15 owned retailers of such tribe or nation. In making such allocation,  
16 the Tax Commission shall consider such other verifiable information  
17 as may be submitted by a licensed wholesaler or such tribe or  
18 nation. Upon reaching a final determination of allocation, the Tax  
19 Commission shall advise the affected wholesaler and the tribe or  
20 nation.

21 5. Oklahoma-licensed wholesalers may request and receive from  
22 the Tax Commission, at the beginning of each quarter of the year,  
23 their allocated share of Native American tax free stamps for the  
24 tribally licensed or owned retailers of each noncompacting tribe or

1 nation. Once a wholesaler has received its allocated share of  
2 Native American tax free stamps for the tribally licensed or owned  
3 retailers of a noncompacting tribe or nation for the quarter, that  
4 wholesaler may not receive any further Native American tax free  
5 stamps for tribally licensed or owned retailers of that tribe or  
6 nation during the quarter, absent good cause shown by verifiable  
7 information submitted by the wholesaler and/or that tribe or nation,  
8 which shall be considered and determined by the Tax Commission on a  
9 case-by-case basis.

10 6. The Tax Commission is empowered and authorized to promulgate  
11 such rules and regulations as, in its discretion, shall be deemed  
12 necessary to implement and enforce the provisions of this section.

13 7. The sale of cigarettes bearing the Native American tax-free  
14 stamp to a nonmember of the tribe or nation which licensed the  
15 tribally owned or licensed retailer shall, in accordance with the  
16 United States Supreme Court decision "Oklahoma Tax Commission v.  
17 Citizen Band Potawatomi Indian Tribe of Oklahoma", 498 U.S. 505  
18 (1991), obligate that tribal retailer for payment of the applicable  
19 Oklahoma cigarette excise tax, together with the costs and attorney  
20 fees associated with any civil action brought to collect the unpaid  
21 Oklahoma cigarette excise tax. Such actions may be instituted in  
22 the district court in and for the county in which the tribal  
23 retailer is located.

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1 D. The Oklahoma excise tax on all tobacco products other than  
2 cigarettes (hereafter "other tobacco products") held for sale by  
3 Oklahoma-licensed wholesalers shall be paid by the wholesaler and  
4 stamps affixed thereto by the wholesaler pursuant to Section 403 of  
5 ~~Title 68 of the Oklahoma Statutes~~ this title, including those other  
6 tobacco products which may be purchased by members of noncompacting  
7 tribes and nations on the "Indian country" of such tribe or nation  
8 from a retailer licensed or owned by such tribe or nation. The  
9 following procedures shall apply to the tax-free sale of other  
10 tobacco products:

11 1. The probable demand for the tax-free consumption of other  
12 tobacco products by members of each noncompacting tribe or nation  
13 shall be determined by the Tax Commission by ascertaining the total  
14 membership in Oklahoma of the tribe or nation from the Bureau of  
15 Indian Affairs or other reliable source of public information  
16 regarding such membership, and multiplying that number by the  
17 percentage of users of such other tobacco products in Oklahoma or  
18 the United States, whichever is greater, based on the most recent  
19 data available from the State Department of Health and/or other  
20 reliable source of public information. The product of that  
21 calculation shall be multiplied by the average yearly consumption of  
22 users of such other tobacco products in Oklahoma or the United  
23 States, whichever is greater, based on the most recent data  
24 available from the State Department of Health and/or other reliable

1 source of public information. The resulting number shall be deemed  
2 to constitute the probable demand for the tax-free consumption of  
3 other tobacco products by members of such noncompacting tribes or  
4 nations for a calendar year.

5 2. A preliminary determination of probable demand shall be  
6 furnished to the governing authorities of each noncompacting tribe  
7 or nation, which may submit, for consideration by the Tax  
8 Commission, any verifiable information in its possession regarding  
9 such probable demand, including, but not limited to, a verifiable  
10 record of previous sales to tribal members or other statistical  
11 evidence.

12 3. After consideration of all verifiable information furnished  
13 by a noncompacting tribe or nation pursuant to paragraph 2 of this  
14 subsection, the Tax Commission shall make its final determination of  
15 probable demand and furnish such determination to the subject  
16 noncompacting tribe or nation and to all Oklahoma-licensed other  
17 tobacco product wholesalers.

18 4. Each calendar year, the Tax Commission shall establish, as  
19 to any and all Oklahoma-licensed other tobacco product wholesalers  
20 supplying other tobacco products to the tribally licensed or owned  
21 retailers of each noncompacting tribe or nation an allocation of the  
22 probable demand for such tribe or nation, based upon each  
23 wholesaler's previous year's reported sales of other tobacco  
24 products to the tribally licensed or owned retailers of such tribe

1 or nation. In making such allocation, the Tax Commission shall  
2 consider such other verifiable information as may be submitted by a  
3 licensed wholesaler or such tribe or nation. Upon reaching a final  
4 determination of allocation, the Tax Commission shall advise the  
5 affected wholesaler and the tribe or nation.

6 5. Oklahoma-licensed wholesalers may request and receive from  
7 the Tax Commission, on the 30th of each month, a refund and/or  
8 credit for the previous month's tax-free sales of other tobacco  
9 products, equal to the lesser of: one twelfth (1/12) of their  
10 allocated share of tax-free sales of other tobacco products to the  
11 tribally licensed or owned retailers of each noncompacting tribe or  
12 nation or verifiable tax-free sales to the licensed or owned tribal  
13 retailers of such tribe or nation. Once a wholesaler has received  
14 such refund and/or credit for a previous month's tax-free sales to  
15 the tribally licensed or owned retailers of each noncompacting tribe  
16 or nation, that wholesaler may not receive any further refund and/or  
17 credit for said previous month, absent good cause shown by  
18 verifiable information submitted by the wholesaler and/or the  
19 noncompacting tribe or nation, which shall be considered and  
20 determined by the Tax Commission on a case-by-case basis.

21 6. The Tax Commission is empowered and authorized to promulgate  
22 such rules and regulations as, in its discretion, shall be deemed  
23 necessary to implement and enforce the provisions of this section.

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1        7. The tax-free sale of other tobacco products to a nonmember  
2 of the noncompacting tribe or nation which licenses the tribally  
3 owned or licensed retailer shall, in accordance with the United  
4 States Supreme Court decision "Oklahoma Tax Commission v. Citizen  
5 Potawatomi Indian Tribe of Oklahoma", 498 U.S. 505 (1991), obligate  
6 that tribal retailer for payment of the applicable Oklahoma other  
7 tobacco product excise tax, together with the costs and attorney  
8 fees associated with any civil action brought to collect the unpaid  
9 Oklahoma other tobacco product excise tax. Such actions may be  
10 instituted in the district court in and for the county in which the  
11 tribal retailer is located.

12        E. The provisions of this section are intended to, and shall be  
13 construed to apply only to, sales of cigarettes and other tobacco  
14 products on the "Indian country" of noncompacting federally  
15 recognized Indian tribes or nations to the members of such tribes or  
16 nations. In the event that a noncompacting tribe or nation enters  
17 into an agreement with the State of Oklahoma, pursuant to Section  
18 346 of ~~Title 68 of the Oklahoma Statutes~~ this title, the terms of  
19 such compact shall take precedence over the provisions of this  
20 section, which shall have no application to any tribe or nation,  
21 while any compact between the State of Oklahoma and that tribe or  
22 nation is in force and effect.

23        F. All cigarettes which are sold or held for sale at tribally  
24 owned or licensed stores shall have affixed thereto a stamp or

1 stamps evidencing payment or nonpayment of the Oklahoma cigarette  
2 excise tax, as required by the provisions in this section.

3 G. It shall be unlawful for any person knowingly to ship,  
4 transport, receive, possess, sell, distribute or purchase contraband  
5 cigarettes. Any person who engages in shipping, transporting,  
6 receiving, possessing, selling, distributing or purchasing  
7 contraband cigarettes shall, upon conviction, be guilty of a  
8 misdemeanor punishable by a fine of not more than One Thousand  
9 Dollars (\$1,000.00). Any person convicted of a second or subsequent  
10 violation hereof shall be guilty of a felony and shall be punishable  
11 by fine of not more than Five Thousand Dollars (\$5,000.00), by a  
12 term of imprisonment in the ~~State Penitentiary~~ custody of the  
13 Department of Corrections for not more than two (2) years, or by  
14 both such fine and imprisonment.

15 H. Any person who knowingly engages in shipping, transporting,  
16 receiving, processing, selling, distributing or purchasing  
17 contraband cigarettes shall be subject to the forfeiture of property  
18 as is provided by Section 305 of ~~Title 68 of the Oklahoma Statutes~~  
19 this title and assessment of penalty as provided thereby and  
20 assessment for any delinquent taxes found to be owing.

21 I. Pursuant to 25 C.F.R., Section 140.17, no trader shall sell  
22 tobacco, cigars or cigarettes to any Indian or other person under  
23 eighteen (18) years of age.  
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1       SECTION 4.       REPEALER       68 O.S. 2011, Sections 317.2, 317.3,  
2 317.4, 317.5, as amended by Section 6, Chapter 357, O.S.L. 2012,  
3 317.6 and 317.7 (68 O.S. Supp. 2013, Section 317.5), are hereby  
4 repealed.

5       SECTION 5.   This act shall become effective November 1, 2014.

6 COMMITTEE REPORT BY: COMMITTEE ON FINANCE  
7 April 1, 2014 - DO PASS AS AMENDED  
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