

1 ENGROSSED HOUSE
2 BILL NO. 3532

By: Roberts (Dustin), McEntire
and Hilbert of the House

3 and

4 Bullard of the Senate

5
6 An Act relating to revenue and taxation; amending 68
7 O.S. 2011, Sections 401, 402-1, as amended by Section
8 4, Chapter 8, 2nd Extraordinary Session, O.S.L. 2018,
9 403, 403.1, 403.2, 407, 412, as amended by Section 1,
10 Chapter 334, O.S.L. 2013, 413, as amended by Section
11 7, Chapter 357, O.S.L. 2012, 414, 415, 417, as
12 amended by Section 6, Chapter 66, O.S.L. 2018, 418,
13 as amended by Section 2, Chapter 334, O.S.L. 2013,
14 420.1, 422 and 426 (68 O.S. Supp. 2019, Sections 402-
15 1, 412, 413, 417 and 418), which relate to tobacco
16 products excise taxation; modifying definitions;
17 eliminating references to certain license holder
18 categories; eliminating references to stamps and
19 stamped tobacco products; imposing requirement with
20 respect to wholesalers in sales transactions
21 involving tobacco products; providing penalties for
22 unlawful purchase of tobacco products; providing for
23 license revocation; providing for monthly reporting;
24 prescribing procedures; requiring payments by
wholesalers; imposing due date; providing for
computation of delinquent date; providing for
increase in penalty amounts for violations of
requirements; providing for license revocation upon
repeated violations; modifying reporting
requirements; modifying provisions related to
distributing agents; repealing 68 O.S. 2011, Sections
406, 408, 409, 411 and 421, which relate to tobacco
products excise tax procedures; providing for
codification; providing an effective date; and
declaring an emergency.

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

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

3 Section 401. For the purpose of this article:

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

10 (b) The term "Tax Commission" shall mean the Oklahoma Tax
11 Commission.

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

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

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

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

8 (g) The words "tobacco products" shall mean any cigars,
9 cheroots, stogies, smoking tobacco (including granulated, plug cut,
10 crimp cut, ready rubbed and any other kinds and forms of tobacco
11 suitable for smoking in a pipe or cigarette), chewing tobacco
12 (including cavendish, twist, plug, scrap and any other kinds and
13 forms of tobacco suitable for chewing), however prepared; and shall
14 include any other articles or products made of tobacco or any
15 substitute therefor.

16 ~~(h) The term "distributing agent" shall mean and include every~~
17 ~~person in this state who acts as an agent of any person outside the~~
18 ~~state by receiving cigars and tobacco products in interstate~~
19 ~~commerce and storing such items subject to distribution or delivery,~~
20 ~~upon order from said person outside the state, to distributors,~~
21 ~~wholesale dealers and retail dealers, or to consumers. The term~~
22 ~~"distributing agent" shall also mean and include any person who~~
23 ~~solicits or takes orders for cigars and tobacco products to be~~
24 ~~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.~~

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

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

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

~~3. 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) The term "drop shipment" shall mean and include any delivery of cigars or tobacco products received by any person within the state when payment for such cigars or tobacco products is made to the shipper or seller by or through a person other than the consignee.~~

~~(k) 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) The word "dealer" shall include every person, firm, corporation, or association of persons, who manufactures cigars or tobacco products for distribution, sale, use or consumption in the~~

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

6 (i) The term "untaxed" means that the full amount of tax has
7 not been paid as required by Section 401 et seq. of this title.

8 SECTION 2. AMENDATORY 68 O.S. 2011, Section 402-1, as
9 amended by Section 4, Chapter 8, 2nd Extraordinary Session, O.S.L.
10 2018 (68 O.S. Supp. 2019, Section 402-1), is amended to read as
11 follows:

12 Section 402-1. In addition to the tax levied by Section 402 of
13 this title, there is hereby levied upon the sale, use, exchange or
14 possession of articles containing tobacco as defined in said Section
15 402, a tax in the following amounts:

16 (a) Upon cigars of all descriptions made of tobacco, or any
17 substitute therefor, and weighing more than three (3) pounds per
18 thousand, and having a manufacturer's recommended retail selling
19 price, under the Federal Code, of more than four cents (\$0.04) for
20 each cigar, Ten Dollars (\$10.00) per thousand. For the purpose of
21 computing the tax, cheroots, stogies, etc., are hereby classed as
22 cigars;

23 (b) Upon all smoking tobacco including granulated, plug cut,
24 crimp cut, ready rubbed and other kinds and forms of tobacco

1 prepared in such manner as to be suitable for smoking in a pipe or
2 cigarette, the tax shall be fifteen percent (15%) of the factory
3 list price exclusive of any trade discount, special discount or
4 deals; and

5 (c) Upon chewing tobacco, smokeless tobacco, and snuff, the tax
6 shall be ten percent (10%) of the factory list price exclusive of
7 any trade discount, special discount or deals.

8 This tax shall be paid by the consumer and no retailer may
9 advertise that he will pay or absorb this tax.

10 The tax herein levied on tobacco products shall be ~~evidenced by~~
11 ~~stamps and~~ collected on the same basis and in the same manner and in
12 all respects as the tax levied by the Tobacco Products Tax Law. The
13 revenue from this additional tax shall be apportioned by the
14 Oklahoma Tax Commission in the same manner as provided in Section
15 404 of this title, for the apportionment of other tobacco products
16 tax revenue.

17 SECTION 3. AMENDATORY 68 O.S. 2011, Section 403, is
18 amended to read as follows:

19 Section 403. (a) The excise taxes levied by this article shall
20 be paid by ~~affixing stamps in the manner and at the time herein set~~
21 ~~forth. In the case of cigars, including five-pack and other small~~
22 ~~packs, stogies and cheroots, the stamps shall be affixed to the box,~~
23 ~~or container, in which or from which normally sold at wholesale.~~
24 ~~Wholesalers and jobbers shall affix the required stamps within~~

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

11 (b) ~~In the case of tobacco products wrapped in packages of two~~
12 ~~(2) pounds or less, the stamps shall be affixed to the containers in~~
13 ~~which or from which the individual packages are normally sold at~~
14 ~~wholesale and the stamps shall be affixed by wholesalers and jobbers~~
15 ~~within seventy-two (72) hours after such products are received by~~
16 ~~them, and by any retailer within the twenty-four (24) hours of~~
17 ~~receipt by him or them of any such products. Such goods must be~~
18 ~~stamped before being sold. All retail dealers in manufactured~~
19 ~~tobacco products, purchasing or receiving such commodities from~~
20 ~~without the state, whether the same shall have been ordered through~~
21 ~~a wholesaler or jobber in this state and/or by drop shipment and/or~~
22 ~~otherwise, shall within five (5) days after receipt of same, mail a~~
23 ~~duplicate invoice of all such purchases or receipts to the Tax~~
24 ~~Commission. Failure to furnish duplicate invoices as required shall~~

1 ~~be deemed a misdemeanor, and, upon conviction, be punishable by a~~
2 ~~fine of not more than One Hundred Dollars (\$100.00) for each~~
3 ~~offense, or imprisonment in the county jail for a period not~~
4 ~~exceeding thirty (30) days.~~

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

12 SECTION 4. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 403-1A of Title 68, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The excise tax imposed pursuant to the provisions of Section
16 401 et seq. of Title 68 of the Oklahoma Statutes upon the sale,
17 distribution, use, exchange, barter or possession of tobacco
18 products within the state shall be paid through monthly tobacco
19 products tax reporting procedures.

20 B. It shall not be necessary for any person or entity to
21 purchase stamps or affix stamps to tobacco products in order to
22 comply with the requirements of Section 401 et seq. of Title 68 of
23 the Oklahoma Statutes or the provisions of this act.
24

1 C. All payments of the excise tax imposed pursuant to the
2 provisions of Section 401 et seq. of Title 68 of the Oklahoma
3 Statutes shall be made by the wholesaler and not by any other person
4 or entity.

5 D. The monthly reports required by the provisions of Section
6 401 et seq. of Title 68 of the Oklahoma Statutes shall be made not
7 later than the twentieth day of the calendar month immediately
8 following the calendar month in which the tobacco products subject
9 to taxation were first received, delivered, possessed, used or in
10 any manner dealt with in the state. The monthly report shall be
11 submitted to the Tax Commission on such form as it may prescribe for
12 such purpose. If the due date of a tobacco products tax report is a
13 Saturday, Sunday, holiday recognized by the executive department of
14 the state or a date when the Federal Reserve Banks are closed, then
15 the due date of the report shall be the next official working day
16 for the Oklahoma Tax Commission following such date. Any report or
17 payment mailed or postmarked by the United States Postal Service on
18 or prior to the due date shall be considered to have been filed or
19 paid on the due date. All excise tax or monthly reports due and not
20 paid or submitted to the Commission or before the due date shall be
21 delinquent.

22 SECTION 5. AMENDATORY 68 O.S. 2011, Section 403.1, is
23 amended to read as follows:
24

1 Section 403.1 The Oklahoma Tax Commission is hereby authorized
2 and empowered, if in its discretion it deems practical and
3 reasonable, to establish procedures for payment of excise taxes
4 levied in Section 401 et seq. of this title, for the collection from
5 a wholesaler of payments in lieu of excise taxes authorized pursuant
6 to a compact entered into by the State of Oklahoma and a federally
7 recognized Indian tribe or nation pursuant to the provisions of
8 subsection C of Section 346 of this title, in respect to articles
9 containing tobacco, pursuant to monthly tobacco products tax reports
10 ~~in lieu of payment by purchasing and affixing stamps,~~
11 ~~notwithstanding the provisions of Section 403 et seq. of this title.~~
12 Provided, exercise by the Tax Commission of the authority granted
13 herein shall be by adoption of rules ~~and regulations~~ necessary to
14 establish procedures for collection of such tax through monthly
15 reporting procedures consistent with the provisions of Section 401
16 et seq. of this title, ~~other than those provisions relating directly~~
17 ~~to payment of such tax by purchasing and affixing stamps.~~

18 In the event the Tax Commission shall determine to collect such
19 tax through monthly reporting procedures and adopt rules and
20 regulations therefor:

21 1. All provisions of Section 401 et seq. of this title relating
22 to ~~unstamped~~ untaxed tobacco products shall be interpreted to
23 include and shall be applicable to all tobacco products for which
24 the tax required by law has not been paid;

1 2. No person, ~~dealer, distributing agent~~ retailer or
2 wholesaler, as defined in Section 401 of this title, shall possess,
3 sell, use, exchange, barter, give away or in any manner deal with
4 any tobacco products within this state upon which such tax is levied
5 and unpaid, ~~unless such person, dealer, retailer, distributing agent~~
6 ~~or wholesaler holds a valid tobacco license issued pursuant to~~
7 ~~Section 415 of this title;~~ and

8 3. Any ~~person~~ wholesaler required to report and remit such
9 taxes or payments in lieu of taxes required pursuant to a compact
10 authorized by subsection C of Section 346 of this title to the Tax
11 Commission shall be allowed a discount of two percent (2%) of the
12 tax due for maintaining and collecting such tax or payments for the
13 benefit of the state, if such tax or payment is timely reported and
14 remitted.

15 SECTION 6. AMENDATORY 68 O.S. 2011, Section 403.2, is
16 amended to read as follows:

17 Section 403.2 A. It shall be unlawful ~~to affix a stamp to any~~
18 ~~package or container of tobacco products or~~ for any wholesaler to
19 sell, offer for sale, or import into this state any package or
20 container of tobacco products:

21 1. Which bears any label or notice prescribed by the United
22 States Department of Treasury to identify tobacco products intended
23 for export and exempt from tax by the United States pursuant to
24 Section 5704(b) of Title 26 of the United States Code or any notice

1 or label described in Section 290.185 of Title 27 of the United
2 States Code of Federal Regulations;

3 2. Which is not labeled in conformity with the provisions of
4 the Federal Cigarette Labeling and Advertising Act, or any other
5 federal requirement for the placement of labels, warnings or other
6 information applicable to packages or containers of tobacco products
7 intended for domestic consumption;

8 3. Upon which all federal taxes due have not been paid or which
9 is not in compliance with all federal trademark and copyright laws;
10 or

11 4. The packaging of which has been modified or altered by a
12 person other than the manufacturer or person specifically authorized
13 by the manufacturer, including, but not limited to, the placement of
14 a sticker or label to cover information on the package or container.

15 Possession of more than thirty (30) ounces of tobacco products
16 ~~in packages or containers bearing Oklahoma stamps~~ in violation of
17 this subsection by a person other than an employee of this state or
18 the federal government performing official duties relating to
19 enforcement of the provisions of Section 401 et seq. of this title
20 shall constitute prima facie evidence of a violation of the
21 provisions of this subsection.

22 B. Except as otherwise provided by law, the Attorney General
23 shall enforce the provisions of this section.

1 SECTION 7. AMENDATORY 68 O.S. 2011, Section 407, is
2 amended to read as follows:

3 Section 407. It shall be provided by regulations of the Tax
4 Commission the methods of breaking packages, forms and kinds of
5 containers, ~~and methods of affixing stamps,~~ that shall be employed
6 by persons subject to the tax levied by this article which will make
7 possible the enforcement of payment by inspection; and any such
8 person engaging in or permitting such practices as are prohibited by
9 this article, or in any other practice which makes it difficult to
10 enforce the provisions of this article by inspection, and any person
11 or agent thereof who shall upon demand of any officer or agent of
12 the Tax Commission refuse to allow full inspection of the premises
13 or any part thereof, or who shall hinder or in anywise delay or
14 prevent such inspection when demand is made therefor, shall be
15 guilty of a misdemeanor and shall, upon conviction, be fined not
16 more than ~~Two Hundred Dollars (\$200.00)~~ Two Thousand Dollars
17 (\$2,000.00) for each offense, or imprisonment in the county jail for
18 a period not exceeding sixty (60) days or both.

19 SECTION 8. AMENDATORY 68 O.S. 2011, Section 412, as
20 amended by Section 1, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2019,
21 Section 412), is amended to read as follows:

22 Section 412. (a) Every wholesaler, ~~jobber, retailer or~~
23 ~~consumer~~ who purchases or allows to come into his or her possession
24 any ~~unstamped~~ untaxed merchandise coming under the scope of this

1 article shall file with the Oklahoma Tax Commission a surety or
2 collateral or cash bond in the amount of Twenty-five Thousand
3 Dollars (\$25,000.00), payable to the State of Oklahoma and
4 conditioned upon compliance with the provisions of this article and
5 the rules of the Tax Commission.

6 (b) Any consumer who purchases or brings into this state
7 ~~unstamped~~ untaxed cigars or tobacco products whereon the tax would
8 be more than twenty-five cents (\$0.25) is subject to the tax
9 thereon. Upon failure to pay the tax levied in this article, the
10 consumer shall be subject to a fine of not more than Five Hundred
11 Dollars (\$500.00) or not less than Twenty-five Dollars (\$25.00).
12 Provided, any person in possession of more than one thousand small
13 or large cigars or two hundred sixteen (216) ounces of chewing or
14 smoking tobacco products in packages or containers for which the tax
15 required by law has not been paid shall be punished by
16 administrative fines in the manner and amounts provided in
17 subsection D of Section 418 of this title.

18 SECTION 9. AMENDATORY 68 O.S. 2011, Section 413, as
19 amended by Section 7, Chapter 357, O.S.L. 2012 (68 O.S. Supp. 2019,
20 Section 413), is amended to read as follows:

21 Section 413. A. The right of a carrier in this state to carry
22 ~~unstamped~~ untaxed cigars and tobacco products shall not be affected
23 hereby; provided, that carriers delivering untaxed tobacco products
24 to any person in this state other than an Oklahoma-licensed

1 wholesaler for the purpose of selling or consuming untaxed tobacco
2 products in this state in violation of this article shall be subject
3 to seizure of the shipments and forfeiture of the inventory pursuant
4 to the provisions of Section 417 of this title. Provided further,
5 that should any such carrier sell any cigars and tobacco products in
6 this state, such sale shall be subject to the ~~stamp~~ tax and other
7 provisions of this article and to the rules of the Tax Commission.
8 The carrier transporting tobacco products and cigars to a point
9 within this state, or a bonded warehouseman or bailee having in its
10 possession tobacco products and cigars, shall transmit to the Tax
11 Commission a statement of such consignment of tobacco products and
12 cigars, showing the date, point of origin, point of delivery, and to
13 whom delivered. All carriers or bailees or warehousemen shall
14 permit an examination by the Tax Commission, or its agents or
15 legally authorized representatives, of their records relating to the
16 shipment or receipt of tobacco products and cigars. Any person who
17 fails or refuses to transmit to the Tax Commission the aforesaid
18 statement, or who refuses to permit the examination of his or her
19 records by the Tax Commission or its legally authorized agents or
20 representatives, shall be guilty of a misdemeanor and shall be
21 subject to a fine of not to exceed ~~Five Hundred Dollars (\$500.00)~~
22 Two Thousand Dollars (\$2,000.00) and not less than ~~Twenty-five~~
23 ~~Dollars (\$25.00)~~ One Thousand Dollars (\$1,000.00).
24

1 B. Wholesalers shall make a monthly report to the Tax
2 Commission. Such report must be received in the office of the Tax
3 Commission not later than the twentieth day of each month, showing
4 purchases and invoices of all merchandise coming under this article,
5 for the previous month; and the report shall also show the invoice
6 number, the name and address of the consignee and consignor, the
7 date, and such other information as may be requested by the Tax
8 Commission. ~~Retailers or consumers purchasing tobacco products and~~
9 ~~cigars in drop shipments shall be required to make monthly reports~~
10 ~~to the Tax Commission, as are required of wholesalers.~~

11 SECTION 10. AMENDATORY 68 O.S. 2011, Section 414, is
12 amended to read as follows:

13 Section 414. (a) Each truck or vehicle wherefrom cigars or
14 tobacco products are sold shall be considered as a place of business
15 and required to have a wholesale license and a bond of not less than
16 Five Hundred Dollars (\$500.00).

17 (b) Any person operating a truck or vehicle by selling,
18 exchanging, or giving away ~~unstamped~~ untaxed merchandise covered by
19 this article shall be deemed guilty of violation of same and shall
20 be penalized as hereinbefore set forth, and ~~unstamped~~ untaxed
21 merchandise handled by ~~him~~ this person as well as the vehicle used
22 to transport the untaxed tobacco products shall be subject to
23 confiscation by authorized agents of the Tax Commission or duly
24 authorized peace officers.

1 (c) After seizure or confiscation by such agent or officer, the
2 merchandise and property shall be held until all taxes, interest and
3 penalties due have been paid. If not paid within five (5) days
4 after date of seizure, it shall be sold at public sale by the
5 sheriff of the county where confiscated, after being advertised by
6 posting of notice of such sale in five public places in the county
7 where the sale is to occur. The proceeds of the sale shall be
8 applied to taxes, interest and penalties due and to the cost of the
9 sale, and the remainder, if any, shall be paid to the State
10 Treasurer, by the sheriff conducting such sale, to be deposited to
11 the credit of the General Revenue Fund.

12 SECTION 11. AMENDATORY 68 O.S. 2011, Section 415, is
13 amended to read as follows:

14 Section 415. A. Every ~~dealer and~~ wholesaler of tobacco
15 products in this state, as a condition of carrying on such business,
16 shall annually secure from the Oklahoma Tax Commission a written
17 license and shall pay an annual fee of Two Hundred Fifty Dollars
18 (\$250.00); provided, such fee shall not be applicable if paid
19 pursuant to Section 304 of this title. The Tax Commission shall
20 promulgate rules which provide a procedure for the issuance of a
21 joint license for any wholesaler making application pursuant to this
22 section and Section 304 of this title. Application for such
23 license, which shall be made upon such forms as prescribed by the
24 Tax Commission, shall include the following:

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

4 2. The applicant's agreement to abide by the provisions of
5 Section 301 et seq. of this title and the rules promulgated by the
6 Tax Commission with reference thereto. This license, which will be
7 for the ensuing year, must at all times be displayed in a
8 conspicuous place so that it can be seen. Persons operating more
9 than one place of business must secure a license for each place of
10 business. "Place of business" shall be construed to include the
11 place where orders are received, or where tobacco products are sold.
12 If tobacco products are sold on or from any vehicle, the vehicle
13 shall constitute a place of business, and the license fee of Two
14 Hundred Fifty Dollars (\$250.00) shall be paid with respect thereto.
15 However, if the vehicle is owned or operated by a place of business
16 for which the regular license fee is paid, the annual fee for the
17 license with respect to such vehicle shall be only Ten Dollars
18 (\$10.00). The expiration for such vehicle license shall expire on
19 the same date as the current license of the place of business.

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

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

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

7 3. The applicant's agreement that it shall not purchase any
8 tobacco products for resale from a supplier that does not hold a
9 current wholesaler's license issued pursuant to this section; and

10 4. The applicant's agreement to sell tobacco products only to
11 consumers.

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

1 C. Nothing in this section shall be construed to prohibit any
2 person holding a retail license from also holding a wholesaler
3 license.

4 ~~D. Every distributing agent shall, as a condition of carrying~~
5 ~~on such business, pursuant to written application on a form~~
6 ~~prescribed by and in such detailed form as the Tax Commission may~~
7 ~~require, annually secure from the Tax Commission a license, and~~
8 ~~shall pay therefor an annual fee of One Hundred Dollars (\$100.00).~~
9 ~~An application shall be filed and a license obtained for each place~~
10 ~~of business owned or operated by a distributing agent. The license,~~
11 ~~which will be for the ensuing year, shall be consecutively numbered,~~
12 ~~nonassignable and nontransferable, and shall authorize the storing~~
13 ~~and distribution of unstamped tobacco products within this state~~
14 ~~when such distribution is made upon interstate orders only.~~

15 ~~E.~~ 1. All wholesale, or retail, ~~and distributing agents'~~
16 licenses shall be nonassignable and nontransferable from one person
17 to another person. Such licenses may be transferred from one
18 location to another location after an application has been filed
19 with the Tax Commission requesting such transfer and after the
20 approval of the Tax Commission.

21 2. Wholesale, and retail, ~~and distributing agent's~~ licenses
22 shall be applied for on a form prescribed by the Tax Commission.
23 Any person operating as a wholesaler, or retailer, ~~or distributing~~
24 ~~agent~~ must at all times have an effective unexpired license which

1 has been issued by the Tax Commission. If any such person or
2 licensee continues to operate as such on a license issued by the Tax
3 Commission which has expired, or operates without ever having
4 obtained from the Tax Commission such license, such person or
5 licensee shall, after becoming delinquent for a period in excess of
6 fifteen (15) days, pay to the Tax Commission, in addition to the
7 annual license fee, a penalty of ~~twenty-five cents (\$0.25)~~ Ten
8 Dollars (\$10.00) per day on each delinquent license for each day so
9 operated in excess of fifteen (15) days. The penalty provided for
10 herein shall not exceed the annual license fee for such license.

11 ~~F.~~ E. No license may be granted, maintained or renewed if any
12 of the following conditions apply to the applicant. For purposes of
13 this section, "applicant" includes any combination of persons owning
14 directly or indirectly, in the aggregate, more than ten percent
15 (10%) of the ownership interests in the applicant:

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

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

20 3. The applicant has been convicted of a crime relating to
21 stolen or counterfeit tobacco products, or receiving stolen or
22 counterfeit tobacco products.

23 ~~G.~~ F. No person or entity licensed pursuant to the provisions
24 of this section shall purchase tobacco products from or sell tobacco

1 products to a person or entity required to obtain a license unless
2 such person or entity has obtained such license.

3 ~~H.~~ G. In addition to any civil or criminal penalty provided by
4 law, upon a finding that a licensee has violated any provision of
5 Section 301 et seq. of this title, the Tax Commission may revoke or
6 suspend the license or licenses of the licensee pursuant to the
7 procedures applicable to revocation of a license set forth in
8 Section 418 of this title.

9 SECTION 12. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 415.1 of Title 68, unless there
11 is created a duplication in numbering, reads as follows:

12 Retailers shall only purchase tobacco products from an Oklahoma-
13 licensed tobacco wholesaler evidenced by a current listing provided
14 by the Oklahoma Tax Commission. Any purchases of tobacco products
15 from a person who is not holding a current Oklahoma wholesale
16 tobacco license shall be a misdemeanor, punishable by a fine of the
17 greater of One Thousand Dollars (\$1,000.00) or five times the unpaid
18 tax on such products. A second or subsequent offense shall be
19 punishable by revocation of the license. The Oklahoma Tax
20 Commission shall make available for all licensed retailers a list of
21 currently licensed wholesalers at least monthly or through the use
22 of a website maintained by or on behalf of the Oklahoma Tax
23 Commission with updates made as often as practical but no less often
24 than each thirty (30) days.

1 SECTION 13. AMENDATORY 68 O.S. 2011, Section 417, as
2 amended by Section 6, Chapter 66, O.S.L. 2018 (68 O.S. Supp. 2019,
3 Section 417), is amended to read as follows:

4 Section 417. A. All ~~unstamped~~ tobacco products upon which a
5 tax is levied by Section 401 et seq. of this title and all tobacco
6 products ~~stamped~~, sold, offered for sale, or imported into this
7 state in violation of the provisions of Section 403.2 of this title,
8 found in the possession, custody or control of any person for the
9 purpose of being consumed, sold or transported from one place to
10 another in this state, for the purpose of evading or violating the
11 provisions of Section 401 et seq. of this title, or with intent to
12 avoid payment of the tax imposed thereunder, and any vehicle being
13 used in avoidance of such tax may be seized by any authorized agent
14 of the Oklahoma Tax Commission or any sheriff, deputy sheriff or
15 police within the state. Tobacco products from the time of seizure
16 shall be forfeited to the State of Oklahoma. A proper proceeding
17 shall be filed to maintain such seizure and prosecute the forfeiture
18 as herein provided; the provisions of this section shall not apply,
19 however, where the tax on such ~~unstamped~~ tobacco products does not
20 exceed One Dollar (\$1.00).

21 B. All such tobacco products so seized shall first be listed
22 and appraised by the officer making such seizure and turned over to
23 the Tax Commission and a receipt taken therefor.

1 C. The person making such seizure shall immediately make and
2 file a written report thereof to the Tax Commission, showing the
3 name of the person making such seizure, the place where seized, the
4 person from whom seized, the property seized and an inventory and
5 appraisement thereof, which inventory shall be based on the usual
6 and ordinary retail price or value of the articles seized, and the
7 Attorney General, in the case of tobacco products ~~stamped~~, sold,
8 offered for sale, or imported into this state in violation of the
9 provisions of Section 403.2 of this title. Within sixty (60) days
10 of seizure, the person from whom the property was seized may file a
11 request for hearing with the Tax Commission or the Attorney General
12 to show why the seized property should not be forfeited and
13 destroyed. If a hearing is requested, the owner of the tobacco
14 products shall be given at least ten (10) days' notice of the
15 hearing. If no request for hearing is filed within the time
16 provided, the property seized will be forfeited and destroyed.

17 D. The seizure of such tobacco products shall not relieve the
18 person from whom such tobacco products were seized from prosecution
19 or the payment of penalties.

20 E. The forfeiture provisions of Section 401 et seq. of this
21 title shall only apply to persons having possession of or
22 transporting tobacco products with intent to barter, sell or give
23 away the same.
24

1 SECTION 14. AMENDATORY 68 O.S. 2011, Section 418, as
2 amended by Section 2, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2019,
3 Section 418), is amended to read as follows:

4 Section 418. A. It shall be unlawful for any person to
5 transport or possess ~~unstamped~~ tobacco products where the tax on
6 such ~~unstamped~~ tobacco products has not been paid and exceeds the
7 sum of One Dollar (\$1.00).

8 B. Except as otherwise provided in subsections C and D of this
9 section, any person found guilty of violating the provisions of
10 Section 401 et seq. of this title shall be punished by an
11 administrative fine of not more than ~~Five Hundred Dollars (\$500.00)~~
12 One Thousand Dollars (\$1,000.00) for a first offense or not more
13 than Four Thousand Dollars (\$4,000.00) for a second or subsequent
14 offense. Provided, any person in possession of more than one
15 thousand small or large cigars or two hundred sixteen (216) ounces
16 of chewing or smoking tobacco products in packages or containers for
17 which the tax required by law has not been paid shall be punished by
18 administrative fines in the manner and amounts provided in
19 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)~~ Two Thousand
24 Dollars (\$2,000.00);

1 2. For a second offense, be punished by an administrative fine
2 of not more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand
3 Dollars (\$10,000.00); and

4 3. For a third or subsequent offense, be punished by an
5 administrative fine of not more than ~~Ten Thousand Dollars~~
6 ~~(\$10,000.00)~~ Twenty Thousand Dollars (\$20,000.00).

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

9 1. For a first offense, be punished by an administrative fine
10 of not more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand
11 Dollars (\$10,000.00); and

12 2. For a second or subsequent offense, be punished by an
13 administrative fine of not more than Twenty Thousand Dollars
14 (\$20,000.00).

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

18 E. The Oklahoma Tax Commission shall immediately revoke the
19 license of a person punished for a violation pursuant to the
20 provisions of paragraph 3 of subsection C of this section or a
21 person punished for a violation pursuant to the provisions of
22 subsection D of this section. A person whose license is so revoked
23 shall not be eligible to receive another license pursuant to the
24

1 provisions of Section 301 et seq. of this title for a period of ten
2 (10) years.

3 SECTION 15. AMENDATORY 68 O.S. 2011, Section 420.1, is
4 amended to read as follows:

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

15 B. Each retailer of tobacco products, as defined in Section 401
16 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall maintain
17 copies of invoices or equivalent documentation for every transaction
18 in which the retailer receives or purchases tobacco products at each
19 of its facilities. The invoices or documentation shall show the
20 name ~~and~~, address and tobacco license number of the ~~distributor~~
21 wholesaler from whom, or the address of another facility of the same
22 retailer from which, the tobacco products were received, the
23 quantity of each brand style received in such transaction and the
24 retail cigarette license number or sales tax license number.

1 SECTION 16. AMENDATORY 68 O.S. 2011, Section 422, is
2 amended to read as follows:

3 Section 422. All ~~manufacturers,~~ wholesalers, ~~jobbers,~~ or
4 ~~retailers, or other person,~~ selling or distributing such tobacco
5 products under ~~the three preceding sections~~ the provisions of this
6 act shall comply with the provisions of such sections, and the rules
7 and regulations of the Oklahoma Tax Commission as to such sale or
8 distribution, and failure to so comply shall constitute grounds for
9 revocation of any license issued to said ~~manufacturer,~~ wholesaler,
10 ~~jobber,~~ or retailer ~~or other person,~~ by the Tax Commission.

11 SECTION 17. AMENDATORY 68 O.S. 2011, Section 426, is
12 amended to read as follows:

13 Section 426. A. It shall be unlawful for any person knowingly
14 to ship, transport, receive, possess, sell, distribute or purchase
15 contraband tobacco products. Any person who engages in shipping,
16 transporting, receiving, possessing, selling, distributing or
17 purchasing contraband tobacco products shall, upon conviction, be
18 guilty of a misdemeanor punishable by a fine of not more than ~~One~~
19 ~~Thousand Dollars (\$1,000.00)~~ Two Thousand Dollars (\$2,000.00). Any
20 person convicted of a second or subsequent violation hereof shall be
21 guilty of a felony and shall be punishable by a fine of not more
22 than Five Thousand Dollars (\$5,000.00), by a term of imprisonment in
23 the State Penitentiary for not more than two (2) years, or by both
24 such fine and imprisonment.

1 B. Any person who knowingly engages in shipping, transporting,
2 receiving, possessing, selling, distributing or purchasing
3 contraband tobacco products shall be subject to the forfeiture of
4 property as is provided by Section 417 of this title and assessment
5 of penalty as provided thereby and assessment for any delinquent
6 taxes found to be owing.

7 SECTION 18. REPEALER 68 O.S. 2011, Sections 406, 408,
8 409, 411 and 421, are hereby repealed.

9 SECTION 19. This act shall become effective July 1, 2020.

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

14 Passed the House of Representatives the 4th day of March, 2020.

15

16

17

Presiding Officer of the House
of Representatives

18

19

Passed the Senate the ____ day of _____, 2020.

20

21

Presiding Officer of the Senate

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23

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