

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3532

By: Roberts (Dustin)

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 401, 402-1, as amended by Section 4, Chapter 8, 2nd Extraordinary Session, O.S.L. 2018, 403, 403.1, 403.2, 407, 412, as amended by Section 1, Chapter 334, O.S.L. 2013, 413, as amended by Section 7, Chapter 357, O.S.L. 2012, 414, 415, 417, as amended by Section 6, Chapter 66, O.S.L. 2018, 418, as amended by Section 2, Chapter 334, O.S.L. 2013, 420.1, 422 and 426 (68 O.S. Supp. 2019, Sections 402-1, 412, 413, 417 and 418), which relate to tobacco products excise taxation; modifying definitions; eliminating references to certain license holder categories; eliminating references to stamps and stamped tobacco products; imposing requirement with respect to wholesalers in sales transactions involving tobacco products; imposing requirement with respect to retailers in sales transactions involving tobacco products; 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:

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

Section 401. For the purpose of this article:

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

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

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

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

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~~

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

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

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

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

(b) Upon all smoking tobacco including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, the tax shall be fifteen percent (15%) of the factory

1 list price exclusive of any trade discount, special discount or
2 deals; and

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

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

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

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

17 Section 403. (a) The excise taxes levied by this article shall
18 be paid ~~by affixing stamps in the manner and at the time herein set~~
19 ~~forth~~ according to the rules of the Oklahoma Tax Commission for
20 payment of the tax by the wholesaler liable for payment of the tax.
21 ~~In the case of cigars, including five pack and other small packs,~~
22 ~~stogies and cheroots, the stamps shall be affixed to the box, or~~
23 ~~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. Provided that the Tax Commission may, in its discretion,~~
5 ~~where it is practical and reasonable for the enforcement of the~~
6 ~~collection of taxes provided hereunder, promulgate such rules and~~
7 ~~regulations as to permit cigars, stogies, cheroots, and tobacco~~
8 ~~products, to remain unstamped in the hands of the wholesalers and~~
9 ~~jobbers until the original case or crate is broken, unpacked or~~
10 ~~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~~ article ~~to~~ 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. AMENDATORY 68 O.S. 2011, Section 403.1, is
13 amended to read as follows:

14 Section 403.1 The Oklahoma Tax Commission is hereby authorized
15 and empowered, if in its discretion it deems practical and
16 reasonable, to establish procedures for payment of excise taxes
17 levied in Section 401 et seq. of this title, for the collection from
18 a wholesaler of payments in lieu of excise taxes authorized pursuant
19 to a compact entered into by the State of Oklahoma and a federally
20 recognized Indian tribe or nation pursuant to the provisions of
21 subsection C of Section 346 of this title, in respect to articles
22 containing tobacco, pursuant to monthly tobacco products tax reports
23 ~~in lieu of payment by purchasing and affixing stamps,~~
24 ~~notwithstanding the provisions of Section 403 et seq. of this title.~~

1 Provided, exercise by the Tax Commission of the authority granted
2 herein shall be by adoption of rules ~~and regulations~~ necessary to
3 establish procedures for collection of such tax through monthly
4 reporting procedures consistent with the provisions of Section 401
5 et seq. of this title, ~~other than those provisions relating directly~~
6 ~~to payment of such tax by purchasing and affixing stamps.~~

7 In the event the Tax Commission shall determine to collect such
8 tax through monthly reporting procedures and adopt rules and
9 regulations therefor:

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

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

21 3. Any ~~person~~ wholesaler required to report and remit such
22 taxes or payments in lieu of taxes required pursuant to a compact
23 authorized by subsection C of Section 346 of this title to the Tax
24 Commission shall be allowed a discount of two percent (2%) of the

1 tax due for maintaining and collecting such tax or payments for the
2 benefit of the state, if such tax or payment is timely reported and
3 remitted.

4 SECTION 5. AMENDATORY 68 O.S. 2011, Section 403.2, is
5 amended to read as follows:

6 Section 403.2 A. It shall be unlawful ~~to affix a stamp to any~~
7 ~~package or container of tobacco products or~~ for any wholesaler to
8 sell, offer for sale, or import into this state any package or
9 container of tobacco products:

10 1. Which bears any label or notice prescribed by the United
11 States Department of Treasury to identify tobacco products intended
12 for export and exempt from tax by the United States pursuant to
13 Section 5704(b) of Title 26 of the United States Code or any notice
14 or label described in Section 290.185 of Title 27 of the United
15 States Code of Federal Regulations;

16 2. Which is not labeled in conformity with the provisions of
17 the Federal Cigarette Labeling and Advertising Act, or any other
18 federal requirement for the placement of labels, warnings or other
19 information applicable to packages or containers of tobacco products
20 intended for domestic consumption;

21 3. Upon which all federal taxes due have not been paid or which
22 is not in compliance with all federal trademark and copyright laws;
23 or
24

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

5 Possession of more than thirty (30) ounces of tobacco products
6 ~~in packages or containers bearing Oklahoma stamps~~ in violation of
7 this subsection by a person other than an employee of this state or
8 the federal government performing official duties relating to
9 enforcement of the provisions of Section 401 et seq. of this title
10 shall constitute prima facie evidence of a violation of the
11 provisions of this subsection.

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

14 SECTION 6. AMENDATORY 68 O.S. 2011, Section 407, is
15 amended to read as follows:

16 Section 407. It shall be provided by regulations of the Tax
17 Commission the methods of breaking packages, forms and kinds of
18 containers, ~~and methods of affixing stamps,~~ that shall be employed
19 by persons subject to the tax levied by this article which will make
20 possible the enforcement of payment by inspection; and any such
21 person engaging in or permitting such practices as are prohibited by
22 this article, or in any other practice which makes it difficult to
23 enforce the provisions of this article by inspection, and any person
24 or agent thereof who shall upon demand of any officer or agent of

1 the Tax Commission refuse to allow full inspection of the premises
2 or any part thereof, or who shall hinder or in anywise delay or
3 prevent such inspection when demand is made therefor, shall be
4 guilty of a misdemeanor and shall, upon conviction, be fined not
5 more than ~~Two Hundred Dollars (\$200.00)~~ One Thousand Dollars
6 (\$1,000.00) for each offense, or imprisonment in the county jail for
7 a period not exceeding sixty (60) days or both.

8 SECTION 7. AMENDATORY 68 O.S. 2011, Section 412, as
9 amended by Section 1, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2019,
10 Section 412), is amended to read as follows:

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

19 (b) Any consumer who purchases or brings into this state
20 ~~unstamped~~ untaxed cigars or tobacco products whereon the tax would
21 be more than twenty-five cents (\$0.25) is subject to the tax
22 thereon. Upon failure to pay the tax levied in this article, the
23 consumer shall be subject to a fine of not more than Five Hundred
24 Dollars (\$500.00) or not less than Twenty-five Dollars (\$25.00).

1 Provided, any person in possession of more than one thousand small
2 or large cigars or two hundred sixteen (216) ounces of chewing or
3 smoking tobacco products in packages or containers for which the tax
4 required by law has not been paid shall be punished by
5 administrative fines in the manner and amounts provided in
6 subsection D of Section 418 of this title.

7 SECTION 8. AMENDATORY 68 O.S. 2011, Section 413, as
8 amended by Section 7, Chapter 357, O.S.L. 2012 (68 O.S. Supp. 2019,
9 Section 413), is amended to read as follows:

10 Section 413. A. The right of a carrier in this state to carry
11 ~~unstamped~~ untaxed cigars and tobacco products shall not be affected
12 hereby; provided, that carriers delivering untaxed tobacco products
13 to any person in this state for the purpose of selling or consuming
14 untaxed tobacco products in this state in violation of this article
15 shall be subject to seizure of the shipments and forfeiture of the
16 inventory pursuant to the provisions of Section 417 of this title.
17 Provided further, that should any such carrier sell any cigars and
18 tobacco products in this state, such sale shall be subject to the
19 ~~stamp~~ tax and other provisions of this article and to the rules of
20 the Tax Commission. The carrier transporting tobacco products and
21 cigars to a point within this state, or a bonded warehouseman or
22 bailee having in its possession tobacco products and cigars, shall
23 transmit to the Tax Commission a statement of such consignment of
24 tobacco products and cigars, showing the date, point of origin,

1 point of delivery, and to whom delivered. All carriers or bailees
2 or warehousemen shall permit an examination by the Tax Commission,
3 or its agents or legally authorized representatives, of their
4 records relating to the shipment or receipt of tobacco products and
5 cigars. Any person who fails or refuses to transmit to the Tax
6 Commission the aforesaid statement, or who refuses to permit the
7 examination of his or her records by the Tax Commission or its
8 legally authorized agents or representatives, shall be guilty of a
9 misdemeanor and shall be subject to a fine of not to exceed ~~Five~~
10 ~~Hundred Dollars (\$500.00)~~ Two Thousand Dollars (\$2,000.00) and not
11 less than ~~Twenty-five Dollars (\$25.00)~~ Five Hundred Dollars
12 (\$500.00).

13 B. Wholesalers shall make a monthly report to the Tax
14 Commission. Such report must be received in the office of the Tax
15 Commission not later than the twentieth day of each month, showing
16 purchases and invoices of all merchandise coming under this article,
17 for the previous month; and the report shall also show the invoice
18 number, the name and address of the consignee and consignor, the
19 date, and such other information as may be requested by the Tax
20 Commission. ~~Retailers or consumers purchasing tobacco products and~~
21 ~~cigars in drop shipments shall be required to make monthly reports~~
22 ~~to the Tax Commission, as are required of wholesalers.~~

23 SECTION 9. AMENDATORY 68 O.S. 2011, Section 414, is
24 amended to read as follows:

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

5 (b) Any person operating a truck or vehicle by selling,
6 exchanging, or giving away ~~unstamped~~ untaxed merchandise covered by
7 this article shall be deemed guilty of violation of same and shall
8 be penalized as hereinbefore set forth, and ~~unstamped~~ untaxed
9 merchandise handled by him shall be subject to confiscation by
10 authorized agents of the Tax Commission or duly authorized peace
11 officers.

12 (c) After seizure or confiscation by such agent or officer, the
13 merchandise and property shall be held until all taxes, interest and
14 penalties due have been paid. If not paid within five (5) days
15 after date of seizure, it shall be sold at public sale by the
16 sheriff of the county where confiscated, after being advertised by
17 posting of notice of such sale in five public places in the county
18 where the sale is to occur. The proceeds of the sale shall be
19 applied to taxes, interest and penalties due and to the cost of the
20 sale, and the remainder, if any, shall be paid to the State
21 Treasurer, by the sheriff conducting such sale, to be deposited to
22 the credit of the General Revenue Fund.

23 SECTION 10. AMENDATORY 68 O.S. 2011, Section 415, is
24 amended to read as follows:

1 Section 415. A. Every ~~dealer and~~ wholesaler of tobacco
2 products in this state, as a condition of carrying on such business,
3 shall annually secure from the Oklahoma Tax Commission a written
4 license and shall pay an annual fee of Two Hundred Fifty Dollars
5 (\$250.00); provided, such fee shall not be applicable if paid
6 pursuant to Section 304 of this title. The Tax Commission shall
7 promulgate rules which provide a procedure for the issuance of a
8 joint license for any wholesaler making application pursuant to this
9 section and Section 304 of this title. Application for such
10 license, which shall be made upon such forms as prescribed by the
11 Tax Commission, shall include the following:

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

15 2. The applicant's agreement to abide by the provisions of
16 Section 301 et seq. of this title and the rules promulgated by the
17 Tax Commission with reference thereto. This license, which will be
18 for the ensuing year, must at all times be displayed in a
19 conspicuous place so that it can be seen. Persons operating more
20 than one place of business must secure a license for each place of
21 business. "Place of business" shall be construed to include the
22 place where orders are received, or where tobacco products are sold.
23 If tobacco products are sold on or from any vehicle, the vehicle
24 shall constitute a place of business, and the license fee of Two

1 Hundred Fifty Dollars (\$250.00) shall be paid with respect thereto.
2 However, if the vehicle is owned or operated by a place of business
3 for which the regular license fee is paid, the annual fee for the
4 license with respect to such vehicle shall be only Ten Dollars
5 (\$10.00). The expiration for such vehicle license shall expire on
6 the same date as the current license of the place of business.

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

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

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

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

21 4. The applicant's agreement to sell tobacco products only to
22 consumers.

23 Such license, which will be for the ensuing three (3) years,
24 must at all times be displayed in a conspicuous place so that it can

1 be seen. Upon expiration of such license, the retailer to whom such
2 license was issued may obtain a renewal license which shall be valid
3 for three (3) years or until expiration of the retailer's sales tax
4 permit, whichever is earlier, after which a renewal license shall be
5 valid for three (3) years. The manner and prorated fee for renewals
6 shall be prescribed by the Tax Commission. Every person operating
7 under such license as a retailer and who owns or operates more than
8 one place of business must secure a license for each place of
9 business. "Place of business" shall be construed to include places
10 where orders are received or where tobacco products are sold.

11 C. Nothing in this section shall be construed to prohibit any
12 person holding a retail license from also holding a wholesaler
13 license.

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

1 ~~E.~~ 1. All wholesale, or retail, ~~and distributing agents'~~
2 licenses shall be nonassignable and nontransferable from one person
3 to another person. Such licenses may be transferred from one
4 location to another location after an application has been filed
5 with the Tax Commission requesting such transfer and after the
6 approval of the Tax Commission.

7 2. Wholesale, and retail, ~~and distributing agent's~~ licenses
8 shall be applied for on a form prescribed by the Tax Commission.
9 Any person operating as a wholesaler, or retailer, ~~or distributing~~
10 ~~agent~~ must at all times have an effective unexpired license which
11 has been issued by the Tax Commission. If any such person or
12 licensee continues to operate as such on a license issued by the Tax
13 Commission which has expired, or operates without ever having
14 obtained from the Tax Commission such license, such person or
15 licensee shall, after becoming delinquent for a period in excess of
16 fifteen (15) days, pay to the Tax Commission, in addition to the
17 annual license fee, a penalty of ~~twenty-five cents (\$0.25)~~ Ten
18 Dollars (\$10.00) per day on each delinquent license for each day so
19 operated in excess of fifteen (15) days. The penalty provided for
20 herein shall not exceed the annual license fee for such license.

21 ~~F.~~ E. No license may be granted, maintained or renewed if any
22 of the following conditions apply to the applicant. For purposes of
23 this section, "applicant" includes any combination of persons owning
24

1 directly or indirectly, in the aggregate, more than ten percent
2 (10%) of the ownership interests in the applicant:

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

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

7 3. The applicant has been convicted of a crime relating to
8 stolen or counterfeit tobacco products, or receiving stolen or
9 counterfeit tobacco products.

10 ~~G.~~ F. No person or entity licensed pursuant to the provisions
11 of this section shall purchase tobacco products from or sell tobacco
12 products to a person or entity required to obtain a license unless
13 such person or entity has obtained such license.

14 ~~H.~~ G. In addition to any civil or criminal penalty provided by
15 law, upon a finding that a licensee has violated any provision of
16 Section 301 et seq. of this title, the Tax Commission may revoke or
17 suspend the license or licenses of the licensee pursuant to the
18 procedures applicable to revocation of a license set forth in
19 Section 418 of this title.

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

23 No retailer may purchase tobacco products from any entity other
24 than a wholesaler holding a current Oklahoma wholesaler license.

1 The penalty for violation of this section shall be One Thousand
2 Dollars (\$1,000.00) for a first offense and Two Thousand Dollars
3 (\$2,000.00) for all subsequent offenses and revocation of all
4 tobacco and cigarette licenses.

5 SECTION 12. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 415.2 of Title 68, unless there
7 is created a duplication in numbering, reads as follows:

8 No wholesaler shall sell tobacco products to any entity not
9 holding a current Oklahoma retailer tobacco products license. The
10 penalty for a violation of this section shall be One Thousand
11 Dollars (\$1,000.00) for a first offense and Two Thousand Dollars
12 (\$2,000.00) for all subsequent offenses and revocation of the
13 wholesaler tobacco license.

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

17 Section 417. A. All ~~unstamped~~ tobacco products upon which a
18 tax is levied by Section 401 et seq. of this title and all tobacco
19 products ~~stamped~~, sold, offered for sale, or imported into this
20 state in violation of the provisions of Section 403.2 of this title,
21 found in the possession, custody or control of any person for the
22 purpose of being consumed, sold or transported from one place to
23 another in this state, for the purpose of evading or violating the
24 provisions of Section 401 et seq. of this title, or with intent to

1 avoid payment of the tax imposed thereunder, may be seized by any
2 authorized agent of the Oklahoma Tax Commission or any sheriff,
3 deputy sheriff or police within the state. Tobacco products from
4 the time of seizure shall be forfeited to the State of Oklahoma. A
5 proper proceeding shall be filed to maintain such seizure and
6 prosecute the forfeiture as herein provided; the provisions of this
7 section shall not apply, however, where the tax on such ~~unstamped~~
8 tobacco products does not exceed One Dollar (\$1.00).

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

12 C. The person making such seizure shall immediately make and
13 file a written report thereof to the Tax Commission, showing the
14 name of the person making such seizure, the place where seized, the
15 person from whom seized, the property seized and an inventory and
16 appraisement thereof, which inventory shall be based on the usual
17 and ordinary retail price or value of the articles seized, and the
18 Attorney General, in the case of tobacco products ~~stamped~~, sold,
19 offered for sale, or imported into this state in violation of the
20 provisions of Section 403.2 of this title. Within sixty (60) days
21 of seizure, the person from whom the property was seized may file a
22 request for hearing with the Tax Commission or the Attorney General
23 to show why the seized property should not be forfeited and
24 destroyed. If a hearing is requested, the owner of the tobacco

1 products shall be given at least ten (10) days' notice of the
2 hearing. If no request for hearing is filed within the time
3 provided, the property seized will be forfeited and destroyed.

4 D. The seizure of such tobacco products shall not relieve the
5 person from whom such tobacco products were seized from prosecution
6 or the payment of penalties.

7 E. The forfeiture provisions of Section 401 et seq. of this
8 title shall only apply to persons having possession of or
9 transporting tobacco products with intent to barter, sell or give
10 away the same.

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

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

18 B. Except as otherwise provided in subsections C and D of this
19 section, any person found guilty of violating the provisions of
20 Section 401 et seq. of this title shall be punished by an
21 administrative fine of not more than ~~Five Hundred Dollars (\$500.00)~~
22 One Thousand Dollars (\$1,000.00) for a first offense or not more
23 than Four Thousand Dollars (\$4,000.00) for a second or subsequent
24 offense. Provided, any person in possession of more than one

1 thousand small or large cigars or two hundred sixteen (216) ounces
2 of chewing or smoking tobacco products in packages or containers for
3 which the tax required by law has not been paid shall be punished by
4 administrative fines in the manner and amounts provided in
5 subsection D of this section.

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

8 1. For a first offense, be punished by an administrative fine
9 of not more than ~~One Thousand Dollars (\$1,000.00)~~ Two Thousand
10 Dollars (\$2,000.00);

11 2. For a second offense, punished by an administrative fine of
12 not more than ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand Dollars
13 (\$10,000.00); and

14 3. For a third or subsequent offense, be punished by an
15 administrative fine of not more than ~~Ten Thousand Dollars~~
16 ~~(\$10,000.00)~~ Twenty Thousand Dollars (\$20,000.00).

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

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

22 2. For a second or subsequent offense, be punished by an
23 administrative fine of not more than Twenty Thousand Dollars
24 (\$20,000.00).

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

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

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

14 Section 420.1 A. Each ~~distributor~~ wholesaler of tobacco
15 products, as defined in Section 401 of ~~Title 68 of the Oklahoma~~
16 ~~Statutes~~ this title, shall maintain copies of invoices or equivalent
17 documentation for each of its facilities for every transaction in
18 which the ~~distributor~~ wholesaler is the seller, purchaser,
19 consignor, consignee, or recipient of tobacco products. The
20 invoices or documentation shall contain the ~~distributor's~~
21 wholesaler's tobacco license number and the retailer's tobacco
22 license number if the sale is to a retailer and the quantity by
23 brand style of the tobacco products involved in the transaction.
24

1 B. Each retailer of tobacco products, as defined in Section 401
2 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall maintain
3 copies of invoices or equivalent documentation for every transaction
4 in which the retailer receives or purchases tobacco products at each
5 of its facilities. The invoices or documentation shall show the
6 name and address, and tobacco license number of the ~~distributor~~
7 wholesaler from whom, or the address of another facility of the same
8 retailer from which, the tobacco products were received, the
9 quantity of each brand style received in such transaction and the
10 retail cigarette license number or sales tax license number.

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

13 Section 422. All ~~manufacturers, wholesalers, jobbers, or~~
14 ~~retailers, or other person,~~ selling or distributing such tobacco
15 products under ~~the three preceding sections~~ the provisions of this
16 act shall comply with the provisions of such sections, and the rules
17 and regulations of the Oklahoma Tax Commission as to such sale or
18 distribution, and failure to so comply shall constitute grounds for
19 revocation of any license issued to said ~~manufacturer, wholesaler,~~
20 ~~jobber, or~~ retailer or other person, by the Tax Commission.

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

23 Section 426. A. It shall be unlawful for any person knowingly
24 to ship, transport, receive, possess, sell, distribute or purchase

1 contraband tobacco products. Any person who engages in shipping,
2 transporting, receiving, possessing, selling, distributing or
3 purchasing contraband tobacco products shall, upon conviction, be
4 guilty of a misdemeanor punishable by a fine of not more than ~~One~~
5 ~~Thousand Dollars (\$1,000.00)~~ Two Thousand Dollars (\$2,000.00). Any
6 person convicted of a second or subsequent violation hereof shall be
7 guilty of a felony and shall be punishable by a fine of not more
8 than Five Thousand Dollars (\$5,000.00), by a term of imprisonment in
9 the State Penitentiary for not more than two (2) years, or by both
10 such fine and imprisonment.

11 B. Any person who knowingly engages in shipping, transporting,
12 receiving, possessing, selling, distributing or purchasing
13 contraband tobacco products shall be subject to the forfeiture of
14 property as is provided by Section 417 of this title and assessment
15 of penalty as provided thereby and assessment for any delinquent
16 taxes found to be owing.

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

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

20 SECTION 20. It being immediately necessary for the preservation
21 of the public peace, health or safety, an emergency is hereby
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23
24

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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