

An Act

ENROLLED HOUSE
BILL NO. 2292

By: Roberts (Dustin), Lawson
and Caldwell (Chad) of the
House

and

Bullard, Pederson and
Montgomery of the Senate

An Act relating to tobacco products enforcement; creating the Tobacco Products Tax Enforcement Act of 2021; authorizing establishment of Tobacco Products Tax Enforcement Unit by Oklahoma Tax Commission and enumerating duties; requiring submission of annual report containing specified information; establishing specified requirements and procedures for remittance and reporting of tobacco products tax by a wholesaler; providing for collection of tobacco products tax by specified parties other than wholesaler when tax is not remitted by wholesaler; establishing liability of certain vendors under specified circumstances; clarifying status of certain vendors with respect to assessment of fines; establishing specified requirements and procedures for remittance and reporting of tobacco products tax by a retailer or consumer under specified circumstances; requiring retailers to purchase products from licensed wholesalers and providing penalty for noncompliance; providing for deposit of penalties and fines; requiring Tax Commission to make list of licensed wholesalers available in certain manner; creating the Tobacco Products Tax Enforcement Unit Revolving Fund; providing for deposit and expenditure of funds; providing for transfer of monies under certain circumstances; directing Tax Commission to make administrative changes for specified purpose; providing enforcement of act based on contingency of funds; 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, 421, 422 and 426 (68 O.S. Supp. 2020, Sections 402-1, 412, 413, 417 and 418), which relate to tobacco products excise tax compliance and enforcement; modifying definitions; deleting definitions; defining term; deleting requirement for stamps as evidence of tax; modifying manner in which tobacco products tax is levied with respect to use of stamps and deleting associated procedures and penalties; imposing requirements on wholesalers in sales transactions involving tobacco products and deleting requirements on certain other parties; modifying specified terms and procedures related to taxation of certain sales subject to tribal compacts; deleting reference to tax stamps for certain products imported into the state; increasing penalty for certain practices to deter enforcement by inspection; conforming language; increasing penalty for certain noncompliant carriers and specifying that certain penalty is administrative; deleting requirement for certain monthly reports; authorizing Tax Commission or peace officer to confiscate certain vehicles used to transport untaxed products; deleting certain application requirement and procedures related to distributing agents; increasing penalty for wholesaler and retailer operating without a license; authorizing Tax Commission, sheriff or police to seize vehicle used in avoidance of tax; increasing penalties for specified licensees for transporting or possessing untaxed product; modifying requirements related to maintenance of invoices or other documentation; clarifying reference; increasing penalty for sale of product subject to certain exemption; providing for applicability of certain compliance requirement; increasing penalty for certain acts related to contraband products; repealing 68 O.S. 2011, Sections 406, 408, 409 and 411, which relate to tobacco products excise tax procedures; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

SUBJECT: Tobacco products enforcement

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 400 of Title 68, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Tobacco Products Tax Enforcement Act of 2021".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 400.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of enforcing the tobacco tax laws of this state, the Oklahoma Tax Commission is authorized, contingent upon the availability of funds, to establish and maintain a unit to be known as the "Tobacco Products Tax Enforcement Unit". The unit shall enforce the tobacco tax laws of this state and ensure that all taxes are paid on tobacco products by:

1. Confirming that all entities selling tobacco products in this state are properly licensed as provided in Section 400 et seq. of Title 68 of the Oklahoma Statutes;

2. Verifying that all retailers are only purchasing tobacco products from wholesalers licensed by the Tax Commission;

3. Providing a dedicated telephone line and email address for licensed wholesalers, licensed retailers and the general public to report suspected violations of tobacco tax laws; provided, no entity, individual or those who report violations on behalf of a licensed wholesaler or retailer shall be required to disclose their identity;

4. Auditing licensed wholesalers and retailers to ensure all tobacco product taxes are paid;

5. Issuing fines for violations as provided in Section 400 et seq. of Title 68 of the Oklahoma Statutes;

6. Conducting wholesale and retail tobacco inspections to find and confiscate untaxed tobacco products;

7. Establishing data-sharing programs with tax departments in surrounding states related to tobacco product taxes;

8. Creating an industry advisory committee including licensed wholesalers and retailers who may represent the entity related to tobacco products tax enforcement concerns and suggestions. The Oklahoma Tax Commission shall promulgate rules establishing the membership and minimum requirements as may be deemed necessary to carry out the purposes of the committee; and

9. Working with law enforcement and conducting investigations to stop illegal acquisition and shipment of tobacco products by persons not licensed to sell tobacco products in this state.

B. The Tax Commission shall annually submit a report to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives listing the number of wholesale and retail tobacco inspections conducted, the amount of untaxed tobacco products confiscated, the number of tobacco products tax audits conducted, the amount of taxes assessed and the amount of taxes collected as the result of audits and confiscations, the number of suspected violations reported and the actions taken in response, and the number of fines issued and the amount of fines collected.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 400.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The excise tax imposed pursuant to the provisions of Section 400 et seq. of Title 68 of the Oklahoma Statutes upon the sale, distribution, use, exchange, barter or possession of tobacco products within the state shall be due and payable on the first day of each month by the wholesaler. For the purpose of ascertaining the amount of the tax payable by the wholesaler, the wholesaler shall file electronically with the Oklahoma Tax Commission, on or before the twentieth day of each month and upon a form prescribed and furnished by the Commission, a tobacco products tax report signed by the wholesaler under oath. The report shall include:

1. All purchases and deliveries including invoices detailing purchases and shipments from manufacturers to the wholesaler and from the wholesaler to the licensed retailer for the previous calendar month;

2. The taxes due under Section 400 et seq. of Title 68 of the Oklahoma Statutes during the preceding calendar month; and

3. Any other information required by the Commission for the purposes of correctly computing and collecting the tax levied herein. In addition to the information required on reports, the Tax Commission may request, and the taxpayer must furnish, any information deemed necessary to enforce the provisions of Section 400 et seq. of Title 68 of the Oklahoma Statutes. Such tax remitter shall compute and remit to the Tax Commission the required tax due for the preceding calendar month, the remittance or remittances of the tax to accompany the reports herein required. If not filed or paid on or before the twentieth day of such month, the tax shall be delinquent from such date. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the date the report is actually filed.

B. It shall not be necessary for any person or entity to purchase stamps or affix stamps to tobacco products in order to comply with the requirements of Section 400 et seq. of Title 68 of the Oklahoma Statutes or the provisions of this act.

C. If the tobacco products tax report or payment of taxes is due on any day specified in Section 82.1 of Title 25 of the Oklahoma Statutes or on a date when the Federal Reserve Banks are closed, such requirements may be performed on the next succeeding business day and no liability shall result from the delay.

D. The monthly reports shall be filed electronically in the format prescribed by the Tax Commission and the tax shall be remitted to the Tax Commission by electronic funds transfer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 400.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. In the event the tax imposed by Section 400 et seq. of Title 68 of the Oklahoma Statutes is not otherwise paid by the wholesaler as provided in Section 3 of this act, the tax shall be collected as a backup tax upon the first receipt of tobacco products by any retailer or end user when received from a source outside of the state or upon the first sale or use when the product is manufactured in this state. Such tax is imposed upon, and shall be the liability of, any such retailer or consumer who first received the tobacco products in the state.

B. The ultimate vendor of tobacco products shall be jointly and severally liable for the backup tax levied by subsection A of this section if the ultimate vendor knows or has reason to know that the tobacco products tax imposed by Section 400 et seq. of Title 68 of the Oklahoma Statutes has not been paid.

C. The payment of the tax as provided in this section shall not absolve any person from payment of fines assessed under this article.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 400.4 of Title 68, unless there is created a duplication in numbering, reads as follows:

In the event the tax imposed by this act is not paid by the wholesaler as provided in Section 3 of this act and must be collected as a backup tax from the retailer or consumer in accordance with Section 4 of this act, the tax is due and payable by the retailer or consumer on the first day of each month for the preceding calendar month, and if not paid on or before the twentieth day of the following month, shall be delinquent. The retailer or consumer shall file with the Oklahoma Tax Commission, on forms furnished by the Tax Commission, a return verified by affidavit showing in detail the total purchase price of the tobacco products, the location of the purchase of the tobacco products and any other information the Tax Commission may deem reasonably necessary. With each return, the retailer or consumer shall remit to the Tax Commission the amount of tax shown on the return to be due. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the date the report is actually filed.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 400.5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Retailers shall only purchase tobacco products from an Oklahoma-licensed tobacco wholesaler evidenced by a current listing provided by the Oklahoma Tax Commission. All purchase invoices shall contain the license number of the wholesaler and shall be made available for inspection by the Tax Commission. Any purchases of tobacco products from a person who is not holding a current Oklahoma wholesale tobacco license shall be punishable by a fine of the greater of One Thousand Dollars (\$1,000.00) or five times the unpaid

tax on such products. The fine shall be in addition to payment of any unpaid tobacco products tax. A second or subsequent offense shall be punishable by revocation of the license. If the retailer fails to pay a fine within thirty (30) days, the retailer's license shall be suspended until the fine is paid in full.

B. The Oklahoma Tax Commission shall make available for all licensed retailers a list of currently licensed wholesalers at least monthly or through the use of a website maintained by or on behalf of the Oklahoma Tax Commission with updates made as often as practical but no less than every thirty (30) days.

C. Fines collected pursuant to the provisions of subsection A of this section shall be deposited in the Tobacco Products Tax Enforcement Unit Revolving Fund created in Section 7 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 400.6 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Tax Commission, to be designated the "Tobacco Products Tax Enforcement Unit Revolving Fund". The fund shall be a continuing fund, not subject to fiscal limitations, and shall consist of any monies designated to the fund by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Commission for the purposes of enforcing the provisions of the Tobacco Products Tax Enforcement Act of 2021. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

B. At the end of each fiscal year, if the balance of the fund exceeds Two Million Dollars (\$2,000,000.00), any amount in excess of Two Million Dollars (\$2,000,000.00) shall be transferred to the General Revenue Fund of the State Treasury.

SECTION 8. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Oklahoma Tax Commission is hereby directed, contingent upon the availability of funds, to provide sufficient staff to comply with the Tobacco Products Tax Enforcement Act of 2021. The Tax Commission may employ unclassified personnel to staff the Tobacco

Products Tax Enforcement Unit provided for in Section 2 of this act, compensate the employees of the unit for working overtime, develop alternative work schedules for members of the Enforcement Unit to investigate reported tobacco products tax evasion and expend funds for employees to participate in tobacco products tax enforcement training provided by the Federation of Tax Administrators.

The Tax Commission is also directed to enhance agency efforts to discover and reduce tobacco products tax evasion. Such efforts may include increased inspections of tobacco products retailers including inspections after normal business hours; enhanced tobacco products tax auditing including the auditing of out-of-state licensed wholesalers; the acquisition and use of technology systems designed to identify underreporting of tobacco products taxes; and analysis of data from the electronic reporting of invoices by tobacco products wholesalers.

SECTION 9. AMENDATORY 68 O.S. 2011, Section 401, is amended to read as follows:

Section 401. For the purpose of this article:

~~(a)~~ 1. 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)~~ 2. The term "Tax Commission" shall mean the Oklahoma Tax Commission.

~~(c)~~ 3. 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)~~ 4. The word "retailer" shall include every dealer, other than a ~~wholesale dealer~~ wholesaler 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.~~

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

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

~~(g) 7. The words "tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing), however prepared; and shall include any other articles or products made of tobacco or any substitute therefor.~~

~~(h) The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigars and tobacco products in interstate commerce and storing such items subject to distribution or delivery, upon order from said person outside the state, to distributors, wholesale dealers and retail dealers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigars and tobacco products to be 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) 8.~~ 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.~~

9. The term "untaxed" means that the full amount of tax has not been paid as required by Section 400 et seq. of this title.

SECTION 10. 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. 2020, 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) 1.~~ 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)~~ 2. 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 list price exclusive of any trade discount, special discount or deals; and

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

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

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

SECTION 11. AMENDATORY 68 O.S. 2011, Section 403, is amended to read as follows:

Section 403. ~~(a)~~ A. The excise taxes levied by this article shall be paid by ~~affixing stamps in the manner and at the time herein set forth. In the case of cigars, including five (5) pack and other small packs, stogies and cheroots, the stamps shall be affixed to the box, or container, in which or from which normally sold at wholesale. Wholesalers and jobbers shall affix the required stamps within seventy two (72) hours after such tobacco products are received by them. Any retailer shall have twenty four (24) hours within which to affix the stamps after such tobacco products are received by him, or them~~ the wholesaler liable for payment of the tax. Provided, that the Tax Commission may, in its discretion, where it is practical and reasonable for the enforcement of the collection of taxes provided hereunder, promulgate such rules ~~and regulations~~ as to permit cigars, stogies, cheroots, and tobacco products, to remain ~~unstamped~~ untaxed in the hands of the wholesalers ~~and jobbers~~ until the original case or crate is broken, unpacked or sold.

~~(b)~~ ~~In the case of tobacco products wrapped in packages of two (2) pounds or less, the stamps shall be affixed to the containers in~~

~~which or from which the individual packages are normally sold at wholesale and the stamps shall be affixed by wholesalers and jobbers within seventy-two (72) hours after such products are received by them, and by any retailer within the twenty-four (24) hours of receipt by him or them of any such products. Such goods must be stamped before being sold. All retail dealers in manufactured tobacco products, purchasing or receiving such commodities from without the state, whether the same shall have been ordered through a wholesaler or jobber in this state and/or by drop shipment and/or otherwise, shall within five (5) days after receipt of same, mail a duplicate invoice of all such purchases or receipts to the Tax Commission. Failure to furnish duplicate invoices as required shall be deemed a misdemeanor, and, upon conviction, be punishable by a fine of not more than One Hundred Dollars (\$100.00) for each offense, or imprisonment in the county jail for a period not exceeding thirty (30) days.~~

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

SECTION 12. AMENDATORY 68 O.S. 2011, Section 403.1, is amended to read as follows:

Section 403.1 A. The Oklahoma Tax Commission is hereby authorized and empowered, if in its discretion it deems practical and reasonable, to establish procedures for payment of excise taxes levied in Section ~~401~~ 400 et seq. of this title, for the collection from a wholesaler of payments in lieu of excise 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, in respect to articles containing tobacco, pursuant to monthly tobacco products tax reports ~~in lieu of payment by purchasing and affixing stamps, notwithstanding the provisions of Section 403 et seq. of this title.~~ Provided, exercise by the Tax Commission of the authority granted herein shall be by adoption of rules ~~and regulations~~ necessary to establish procedures for collection of such tax through monthly reporting procedures consistent with the provisions of Section ~~401~~

~~400 et seq. of this title, other than those provisions relating directly to payment of such tax by purchasing and affixing stamps.~~

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

1. All provisions of Section ~~401~~ 400 et seq. of this title relating to ~~unstamped~~ untaxed tobacco products shall be interpreted to include and shall be applicable to all tobacco products for which the tax required by law has not been paid;

2. No person, ~~dealer, distributing agent~~ retailer or wholesaler, as defined in Section ~~401~~ 400 of this title, shall possess, sell, use, exchange, barter, give away or in any manner deal with any tobacco products within this state upon which such tax is levied and unpaid, ~~unless such person, dealer, retailer, distributing agent or wholesaler holds a valid tobacco license issued pursuant to Section 415 of this title; and~~

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

SECTION 13. AMENDATORY 68 O.S. 2011, Section 403.2, is amended to read as follows:

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

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

2. Which is not labeled in conformity with the provisions of the Federal Cigarette Labeling and Advertising Act, or any other

federal requirement for the placement of labels, warnings or other information applicable to packages or containers of tobacco products intended for domestic consumption;

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

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

Possession of more than thirty (30) ounces of tobacco products ~~in packages or containers bearing Oklahoma stamps~~ in violation of this subsection by a person other than an employee of this state or the federal government performing official duties relating to enforcement of the provisions of Section ~~401~~ 400 et seq. of this title shall constitute prima facie evidence of a violation of the provisions of this subsection.

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

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

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

SECTION 15. AMENDATORY 68 O.S. 2011, Section 412, as amended by Section 1, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2020, Section 412), is amended to read as follows:

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

~~(b)~~ B. Any consumer who purchases or brings into this state ~~unstamped~~ untaxed cigars or tobacco products whereon the tax would be more than twenty-five cents (\$.25) is subject to the tax thereon. Upon failure to pay the tax levied in this article, the consumer shall be subject to a fine of not more than Five Hundred Dollars (\$500.00) or not less than Twenty-five Dollars (\$25.00) to be deposited in the Tobacco Products Tax Enforcement Unit Revolving Fund created in Section 7 of this act. Provided, any person in possession of more than one thousand small or large cigars or two hundred sixteen (216) ounces of chewing or smoking tobacco products in packages or containers for which the tax required by law has not been paid shall be punished by administrative fines in the manner and amounts provided in subsection D of Section 418 of this title.

SECTION 16. AMENDATORY 68 O.S. 2011, Section 413, as amended by Section 7, Chapter 357, O.S.L. 2012 (68 O.S. Supp. 2020, Section 413), is amended to read as follows:

Section 413. ~~A.~~ The right of a carrier in this state to carry ~~unstamped~~ untaxed cigars and tobacco products shall not be affected hereby; provided, that carriers delivering untaxed tobacco products to any person in this state other than an Oklahoma-licensed wholesaler for the purpose of selling or consuming untaxed tobacco products in this state in violation of this article shall be subject to seizure of the shipments and forfeiture of the inventory pursuant to the provisions of Section 417 of this title. Provided further, that should any such carrier sell any cigars and tobacco products in this state, such sale shall be subject to the ~~stamp~~ tax and other provisions of this article and to the rules of the Tax Commission. The carrier transporting tobacco products and cigars to a point within this state, or a bonded warehouseman or bailee having in its possession tobacco products and cigars, shall transmit to the Tax

Commission a statement of such consignment of tobacco products and cigars, showing the date, point of origin, point of delivery, and to whom delivered. All carriers or bailees or warehousemen shall permit an examination by the Tax Commission, or its agents or legally authorized representatives, of their records relating to the shipment or receipt of tobacco products and cigars. Any person who fails or refuses to transmit to the Tax Commission the aforesaid statement, or who refuses to permit the examination of his or her records by the Tax Commission or its legally authorized agents or representatives, shall be guilty of a misdemeanor and shall be subject to ~~a~~ an administrative fine of not to exceed ~~Five Hundred Dollars (\$500.00)~~ Two Thousand Dollars (\$2,000.00) and not less than ~~Twenty five Dollars (\$25.00)~~ One Thousand Dollars (\$1,000.00) to be deposited in the Tobacco Products Tax Enforcement Unit Revolving Fund created in Section 7 of this act.

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

SECTION 17. AMENDATORY 68 O.S. 2011, Section 414, is amended to read as follows:

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

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

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

SECTION 18. AMENDATORY 68 O.S. 2011, Section 415, is amended to read as follows:

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

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

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

(\$10.00). The expiration for such vehicle license shall expire on the same date as the current license of the place of business.

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

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

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

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

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

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

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

~~D. Every distributing agent shall, as a condition of carrying on such business, pursuant to written application on a form prescribed by and in such detailed form as the Tax Commission may require, annually secure from the Tax Commission a license, and~~

~~shall pay therefor an annual fee of One Hundred Dollars (\$100.00). An application shall be filed and a license obtained for each place of business owned or operated by a distributing agent. The license, which will be for the ensuing year, shall be consecutively numbered, nonassignable and nontransferable, and shall authorize the storing and distribution of unstamped tobacco products within this state when such distribution is made upon interstate orders only.~~

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

2. Wholesale, and retail, ~~and distributing agent's~~ licenses shall be applied for on a form prescribed by the Tax Commission. Any person operating as a wholesaler, or retailer, ~~or distributing agent~~ must at all times have an effective unexpired license which has been issued by the Tax Commission. If any such person or licensee continues to operate as such on a license issued by the Tax Commission which has expired, or operates without ever having obtained from the Tax Commission such license, such person or licensee shall, after becoming delinquent for a period in excess of fifteen (15) days, pay to the Tax Commission, in addition to the annual license fee, a penalty of ~~twenty-five cents (\$0.25)~~ Ten Dollars (\$10.00) per day on each delinquent license for each day so operated in excess of fifteen (15) days. The penalty provided for herein shall not exceed the annual license fee for such license. The penalties collected pursuant to the provisions of this paragraph shall be deposited in the Tobacco Products Tax Enforcement Unit Revolving Fund created in Section 7 of this act.

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

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

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

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

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

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

SECTION 19. AMENDATORY 68 O.S. 2011, Section 417, as amended by Section 6, Chapter 66, O.S.L. 2018 (68 O.S. Supp. 2020, Section 417), is amended to read as follows:

Section 417. A. All ~~unstamped~~ tobacco products upon which a tax is levied by Section ~~401~~ 400 et seq. of this title and all tobacco products ~~stamped,~~ sold, offered for sale, or imported into this state in violation of the provisions of Section 403.2 of this title, found in the possession, custody or control of any person for the purpose of being consumed, sold or transported from one place to another in this state, for the purpose of evading or violating the provisions of Section ~~401~~ 400 et seq. of this title, or with intent to avoid payment of the tax imposed thereunder, and any vehicle being used in avoidance of such tax may be seized by any authorized agent of the Oklahoma Tax Commission or any sheriff, deputy sheriff or police within the state. Tobacco products from the time of seizure shall be forfeited to the State of Oklahoma. A proper proceeding shall be filed to maintain such seizure and prosecute the forfeiture as herein provided; the provisions of this section shall not apply, however, where the tax on such ~~unstamped~~ tobacco products does not exceed One Dollar (\$1.00).

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

C. The person making such seizure shall immediately make and file a written report thereof to the Tax Commission, showing the name of the person making such seizure, the place where seized, the

person from whom seized, the property seized and an inventory and appraisement thereof, which inventory shall be based on the usual and ordinary retail price or value of the articles seized, and the Attorney General, in the case of tobacco products ~~stamped~~, sold, offered for sale, or imported into this state in violation of the provisions of Section 403.2 of this title. Within sixty (60) days of seizure, the person from whom the property was seized may file a request for hearing with the Tax Commission or the Attorney General to show why the seized property should not be forfeited and destroyed. If a hearing is requested, the owner of the tobacco products shall be given at least ten (10) days' notice of the hearing. If no request for hearing is filed within the time provided, the property seized will be forfeited and destroyed.

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

E. The forfeiture provisions of Section ~~401~~ 400 et seq. of this title shall only apply to persons having possession of or transporting tobacco products with intent to barter, sell or give away the same.

SECTION 20. AMENDATORY 68 O.S. 2011, Section 418, as amended by Section 2, Chapter 334, O.S.L. 2013 (68 O.S. Supp. 2020, Section 418), is amended to read as follows:

Section 418. A. It shall be unlawful for any person to transport or possess ~~unstamped~~ tobacco products where the tax on such ~~unstamped~~ tobacco products has not been paid and exceeds the sum of ~~One Dollar (\$1.00)~~ One Hundred Dollars (\$100.00).

B. Except as otherwise provided in subsections C and D of this section, any person found guilty of violating the provisions of Section ~~401~~ 400 et seq. of this title shall be punished by an administrative fine of not more than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) for a first offense or not more than Four Thousand Dollars (\$4,000.00) for a second or subsequent offense. Provided, any person in possession of more than one thousand small or large cigars or two hundred sixteen (216) ounces of chewing or smoking tobacco products in packages or containers for which the tax required by law has not been paid shall be punished by administrative fines in the manner and amounts provided in subsection D of this section.

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

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

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

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

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

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

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

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

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

F. Fines collected pursuant to the provisions of subsections B, C and D of this section shall be deposited in the Tobacco Products Tax Enforcement Unit Revolving Fund created in Section 7 of this act.

SECTION 21. AMENDATORY 68 O.S. 2011, Section 420.1, is amended to read as follows:

Section 420.1 A. Each ~~distributor~~ wholesaler of tobacco products, as defined in Section ~~401~~ 400 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall maintain copies of invoices or equivalent documentation for each of its facilities for every transaction in which the ~~distributor~~ wholesaler is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation shall contain the ~~distributor's~~ wholesaler's tobacco license number and the retailer's tobacco license number if the sale is to a retailer and the quantity by brand style of the tobacco products involved in the transaction. Each wholesaler shall maintain the documents required by this subsection for a period of three (3) years.

B. Each retailer of tobacco products, as defined in Section ~~401~~ 400 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall maintain copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The invoices or documentation shall show the name and, address and tobacco license number of the ~~distributor~~ wholesaler from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction, the date the tobacco products were received and the retail cigarette license number or sales tax license number. Each retailer shall maintain the documents required by this subsection for a period of one (1) year.

SECTION 22. AMENDATORY 68 O.S. 2011, Section 421, is amended to read as follows:

Section 421. The sale of such tobacco products under ~~the two~~ (2) preceding Sections paragraph 1 of Section 419 and Section 420 of this title shall be restricted to sales or distribution to inmates of such ~~Veterans' Hospitals~~ veterans hospitals, or residents of such ~~state-operated~~ state-operated domiciliary homes for ~~Veterans~~ veterans, as shown by the records thereof, for their own personal use and consumption. Possession of tobacco products taxed under this ~~Article~~ article, which have been purchased or received from any such ~~Veterans' Hospital~~ veterans hospital or any such home by any person other than an inmate or resident thereof, shall be deemed a misdemeanor and punishable by a fine of ~~Two Hundred Dollars~~ Five Hundred Dollars (\$500.00) for each offense.

SECTION 23. AMENDATORY 68 O.S. 2011, Section 422, is amended to read as follows:

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

SECTION 24. AMENDATORY 68 O.S. 2011, Section 426, is amended to read as follows:

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

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

SECTION 25. REPEALER 68 O.S. 2011, Sections 406, 408, 409 and 411, are hereby repealed.

SECTION 26. This act shall become effective July 1, 2021.

SECTION 27. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby

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

Passed the House of Representatives the 27th day of April, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 19th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____