

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3971

By: Echols

AS INTRODUCED

An Act relating to vapor products; amending 63 O.S. 2021, Section 1-229.35, as amended by Section 1, Chapter 95, O.S.L. 2022 (63 O.S. Supp. 2023, Section 1-229.35), which relates to vapor product manufacturer attestation, material change, directory of manufacturers and products and unlawful acts; directing attestations be filed with the Attorney General; clarifying attestation information; directing filing of certain reports; clarifying material change information; establishing certain fines for certain violations; providing for criminal penalties; amending 68 O.S. 2021, Section 400.1, as amended by Section 3, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2023, Section 400.1), which relates to tobacco products tax enforcement unit, duties, creation of industry advisory committee, and annual report; adding vapor products; amending 68 O.S. 2021, Section 400.5, as amended by Section 4, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2023, Section 400.5), which relates to purchase regulations, fines, and list of licensed retailers; adding vapor products; amending 68 O.S. 2021, Section 401, which relates to definitions; amending definitions; adding a definition; amending 68 O.S. 2021, Section 412, which relates to untaxed merchandise, bond, and penalties; changing untaxed merchandise to tobacco products; amending 68 O.S. 2021, Section 414, which relates to trucks and vehicles, and untaxed merchandise; adding vapor products; changing untaxed merchandise to tobacco products; amending 68 O.S. 2021, Section 415, as amended by Section 2, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2023, Section 415), which relates to Tax Commission licenses and fees, and penalties; adding vapor products; amending 68 O.S. 2021, Section 420.1, which relates to tobacco product distributors and

1 retailers, required record-keeping, adding vapor
2 products; amending 68 O.S. 2021, Section 422, which
3 relates to sellers; adding vapor products; and
4 providing for an effective date.

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

7 SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-229.35, as
8 amended by Section 1, Chapter 95, O.S.L. 2022 (63 O.S. Supp. 2023,
9 Section 1-229.35), is amended to read as follows:

10 Section 1-229.35 A. Beginning July 1, 2023, and annually
11 thereafter, every manufacturer of a vapor product that is sold or
12 intended to be sold in this state, whether directly or through a
13 ~~distributor~~ wholesaler, retailer, or similar intermediary or
14 intermediaries, shall execute and deliver an attestation under
15 penalty of perjury to the ~~Oklahoma Alcoholic Beverage Laws~~
16 ~~Enforcement (ABLE) Commission~~ Attorney General certifying that, as
17 of the date of such attestation, such manufacturer, has completed
18 all necessary registrations required pursuant to Section 376 of
19 Title 15 of the United States Code, and either of the following:

20 1. The vapor product was ~~available for purchase~~ on the market
21 in the United States as of August 8, 2016, and the manufacturer has
22 applied for a marketing order pursuant to Section 387j of Title 21
23 of the United States Code for the vapor product by submitting a
24 Premarket Tobacco Product Application on or before September 9,

1 2020, to the United States Food and Drug Administration (FDA); ~~or~~
2 and either of the following is true:

3 a. the premarket tobacco product application for the
4 product remains under review by the FDA, and neither a
5 marketing authorization nor a marketing denial order
6 has been issued, or

7 b. the FDA has issued a marketing denial order for the
8 vapor product from the FDA; however, the agency or a
9 federal court has issued a stay order or injunction.

10 2. The manufacturer has received a marketing order or other
11 authorization for the vapor product from the FDA pursuant to Section
12 387j of Title 21 of the United States Code.

13 B. In addition to the requirements in subsection A of this
14 section, each manufacturer shall provide the following:

15 1. Copies of monthly reports filed pursuant to the federal
16 Prevent All Cigarette Trafficking (PACT) Act, and;

17 2. A copy of the cover page of the Premarket Tobacco
18 Application with evidence of receipt of the application by the FDA
19 or a copy of the cover page of the marketing order or other
20 authorization issued pursuant to Section 387j of Title 21 of the
21 United States Code, whichever is applicable.

22 C. The manufacturer shall notify the ~~ABLE Commission~~ Attorney
23 General within thirty (30) days of any material change to the
24 attestation, including whether the FDA has issued ~~or not issued a~~

1 ~~market order or other authorization or has ordered the manufacturer~~
2 ~~to remove the vapor product, either temporarily or permanently, from~~
3 ~~the United States market~~ any of the following:

4 1. A marketing authorization pursuant to Section 387j of Title
5 21 of the United States Code;

6 2. An order revoking a marketing authorization with respect to
7 a manufacturer or a product; or

8 3. Any notice of action taken by the FDA affecting the ability
9 of the new product to be introduced or delivered into interstate
10 commerce for commercial distribution.

11 ~~C. D.~~ The ABLE Commission Attorney General shall develop a
12 directory listing all of the manufacturers that have provided
13 attestations that comply with subsection A of this section and all
14 vapor products that are listed in such attestations. The ~~ABLE~~
15 ~~Commission~~ Attorney General shall:

16 1. Make the directory available for public inspection on its
17 website on or before October 1, 2023; ~~and~~

18 2. Update the directory as necessary to correct mistakes and to
19 add or remove manufacturers or vapor products on a monthly basis to
20 maintain the directory in conformity with the requirements of this
21 section; and

22 3. Send monthly notifications to each wholesaler and retailer
23 that has qualified or registered with the Attorney General, by
24 electronic communication, containing a list of all changes that have
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1 been made to the directory in the previous month. The Attorney
2 General shall also make the information available in a prominent
3 place on the Attorney General's public website.

4 ~~D. It shall be unlawful for any person, directly or indirectly,~~
5 ~~to knowingly manufacture, distribute, sell, barter, or furnish in~~
6 ~~this state any vapor product that is not included in the directory.~~

7 E. The Attorney General shall provide manufacturers notice and
8 an opportunity to cure deficiencies before removing manufacturers or
9 products from the directory.

10 1. The Attorney General may not remove the manufacturer or its
11 vapor products from the directory until at least fifteen (15) days
12 after the manufacturer has been given notice of an intended action.
13 Notice shall be sufficient and be deemed immediately received by a
14 manufacturer if the notice is sent either electronically or by
15 facsimile to an electronic mail address or facsimile number, as the
16 case may be, provided by the manufacturer in its most recent
17 attestation filed under subsection A of this section.

18 2. The manufacturer of vapor products shall have fifteen (15)
19 business days from the date of service of the notice of the Attorney
20 General's intended action to establish that the manufacturer should
21 be included in the directory.

22 3. A determination by the Attorney General to not include or to
23 remove from the directory a manufacturer or a manufacturer's vapor
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1 product shall be subject to review by the filing of a civil action
2 for prospective declaratory or injunctive relief.

3 F. Each certifying manufacturer of vapor products shall pay an
4 initial fee of Five Thousand Dollars (\$5,000.00) to offset the costs
5 incurred by the Attorney General for processing the attestations and
6 operating the directory. The Attorney General shall collect an
7 annual renewal fee of Two Thousand Five Hundred Dollars (\$2,500.00)
8 to offset the costs associated with maintaining the directory and
9 satisfying the requirements of this section. The fees received
10 under this section by the Attorney General shall be used by the
11 Attorney General exclusively for processing the attestations and
12 operating and maintaining the directory.

13 G. Beginning October 1, 2023, or on the date that the Attorney
14 General first makes the directory available for public inspection on
15 its website as provided in subsection D of this section, whichever
16 is later, a manufacturer of vapor products who offers for sale a
17 vapor product not listed on the directory is subject to a daily fine
18 of One Thousand Dollars (\$1,000.00) for each vapor product offered
19 for sale in violation of this section until the offending vapor
20 product is removed from the market or until the offending vapor
21 product is properly listed on the directory.

22 H. If there is a material change to the status of a vapor
23 product requiring it to be removed from the directory established
24 and maintained by the Attorney General pursuant to subsection D of
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1 this section, each wholesaler shall have twenty-one (21) days, and
2 each retailer shall have forty-two (42) days, from the day such
3 vapor product is removed from the directory to remove such vapor
4 products from its inventory and return such vapor products to the
5 manufacturer of such vapor products for disposal. The Attorney
6 General or its agents, which shall include the Oklahoma Alcoholic
7 Beverage Laws (ABLE) Commission and local law enforcement, shall
8 have the power to confiscate and destroy any vapor products that are
9 not listed on the directory established and maintained by the
10 Attorney General pursuant to subsection D of this section, and which
11 are in possession of a wholesaler or retailer. The cost of such
12 confiscation and destruction shall be borne by the person from whom
13 the products are confiscated.

14 I. Beginning October 1, 2023, or on the date that the Attorney
15 General first makes the directory available for public inspection on
16 its website as provided in subsection D of this section, whichever
17 is later, no retailer or wholesaler of vapor products may sell,
18 offer for sale, or otherwise distribute a vapor product not listed
19 on the directory.

20 J. If a retailer or wholesaler violates subsection I of this
21 section, the retailer or wholesaler is subject to the following
22 penalties:

23 1. For a first violation, a civil penalty of not more than Five
24 Hundred Dollars (\$500.00).

1 2. For a second violation within a twelve-month period, a civil
2 penalty of at least Two Thousand Five Hundred Dollars (\$2,500.00),
3 but not more than Five Thousand Dollars (\$5,000.00). The Attorney
4 General shall instruct the Oklahoma Tax Commission to suspend the
5 license of the retailer or wholesaler for fourteen (14) days.

6 3. For a third or any subsequent violation within a twelve-
7 month period, a civil penalty of at least Five Thousand Dollars
8 (\$5,000.00). The Attorney General shall instruct the Oklahoma Tax
9 Commission to revoke the license of the retailer or wholesaler.

10 L. Any manufacturer that falsely represents any of the
11 information required by subsection A or B of this section shall be
12 guilty of a misdemeanor for each false representation.

13 M. Any other violation of this section shall result in a fine
14 of Five Hundred Dollars (\$500.00) per offense. In any action
15 brought by the state to enforce this section, the state shall be
16 entitled to recover the costs of investigation, costs of action, and
17 reasonable attorney fees.

18 N. Each wholesaler and retailer shall be subject to at least
19 two unannounced compliance checks by the Attorney General or its
20 agents, which shall include ABLE or local law enforcement, annually
21 for purposes of enforcing this section, and such compliance checks
22 may be conducted at any time during normal operating hours.

23 Unannounced follow-up compliance checks of all noncompliant
24 tobacco wholesalers and tobacco retailers are required within thirty
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1 (30) days after any violation of this article. The Attorney General
2 shall publish the results of all compliance checks at least annually
3 and shall make the results available to the public on request.

4 O. The Attorney General shall adopt rules for the
5 implementation and enforcement of this section.

6 SECTION 2. AMENDATORY 68 O.S. 2021, Section 400.1, as
7 amended by Section 3, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2023,
8 Section 400.1), is amended to read as follows:

9 Section 400.1 A. For the purpose of enforcing the tobacco tax
10 laws of this state, the Oklahoma Tax Commission is authorized,
11 contingent upon the availability of funds, to establish and maintain
12 a unit to be known as the "Tobacco Products Tax Enforcement Unit".
13 The unit shall enforce the tobacco tax laws of this state and ensure
14 that all taxes are paid on tobacco products or vapor products by:

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

18 2. Verifying that all retailers are only purchasing tobacco
19 products or vapor products from wholesalers licensed by the Tax
20 Commission;

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

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

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

7 6. Conducting wholesale and retail tobacco inspections to find
8 and confiscate untaxed tobacco products or vapor products;

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

11 8. Creating an industry advisory committee including licensed
12 wholesalers and retailers who may represent the entity related to
13 tobacco products tax enforcement concerns and suggestions. The
14 industry advisory committee shall be composed of five (5) members as
15 follows:

16 a. two members who are licensed wholesalers to be
17 appointed by the Governor,

18 b. one member who is a licensed retailer to be appointed
19 by the President Pro Tempore of the Oklahoma State
20 Senate,

21 c. one member who is a licensed retailer to be appointed
22 by the Speaker of the Oklahoma House of
23 Representatives, and
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1 d. one member who is a licensed wholesaler to be
2 appointed by the four members provided for in
3 subparagraphs a through c of this paragraph.

4 The committee shall meet quarterly. The Oklahoma Tax Commission
5 shall promulgate rules establishing minimum requirements as may be
6 deemed necessary to carry out the purposes of the committee; and

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

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

21 SECTION 3. AMENDATORY 68 O.S. 2021, Section 400.5, as
22 amended by Section 4, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2023,
23 Section 400.5), is amended to read as follows:

1 Section 400.5 A. Retailers shall only purchase tobacco
2 products or vapor products from an Oklahoma-licensed ~~tobacco~~
3 wholesaler evidenced by a current listing provided by the Oklahoma
4 Tax Commission. All purchase invoices shall contain the license
5 number of the wholesaler and shall be made available for inspection
6 by the Tax Commission. Any purchases of tobacco products or vapor
7 products from a person who is not holding a current Oklahoma
8 wholesale ~~tobacco~~ license shall be punishable by a fine of the
9 greater of One Thousand Dollars (\$1,000.00) or five times the unpaid
10 tax on such products. The fine shall be in addition to payment of
11 any unpaid tobacco products tax and the forfeiture of any tobacco
12 products or vapor products to the State of Oklahoma as provided by
13 Section 414 of this title. A second or subsequent offense shall be
14 punishable by revocation of the license. If the retailer fails to
15 pay a fine within thirty (30) days, the retailer's license shall be
16 suspended until the fine is paid in full.

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

22 C. Fines collected pursuant to the provisions of subsection A
23 of this section shall be deposited in the Tobacco Products Tax
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1 Enforcement Unit Revolving Fund created in Section 400.6 of this
2 title.

3 SECTION 4. AMENDATORY 68 O.S. 2021, Section 401, is
4 amended to read as follows:

5 Section 401. For the purpose of this article:

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

12 2. The term "Tax Commission" shall mean the Oklahoma Tax
13 Commission;

14 3. The word "wholesaler" shall include dealers whose principal
15 business is that of a wholesale dealer, and who is known to the
16 trade as such, who shall sell any tobacco products or vapor products
17 to licensed retail dealers only for the purpose of resale;

18 4. The word "retailer" shall include every dealer, other than a
19 wholesaler as defined above, whose principal business is that of
20 selling merchandise at retail, who shall sell, or offer for sale,
21 tobacco products or vapor products;

22 5. The word "consumer" shall mean a person who comes into
23 possession of tobacco or vapor products for the purpose of consuming
24 it;

1 6. The words "first sale" shall mean and include the first
2 sale, or distribution, of tobacco products in intrastate commerce,
3 or the first use or consumption of tobacco products within this
4 state;

5 7. The words "tobacco products" shall mean any cigars, smoking
6 tobacco and smokeless tobacco;

7 8. The term "cigars" shall include any roll of tobacco for
8 smoking, irrespective of size or shape and irrespective of the
9 tobacco being flavored, adulterated or mixed with any other
10 ingredients, where such roll has a wrapper made chiefly of tobacco;

11 9. The term "smokeless tobacco" shall mean all smokeless
12 tobacco including snuff and chewing tobacco;

13 10. The term "snuff" shall mean any finely cut, ground or
14 powdered tobacco that is not intended to be smoked;

15 11. The term "chewing tobacco" means any leaf tobacco that is
16 not intended to be smoked;

17 12. The term "smoking tobacco" shall mean any pipe tobacco or
18 roll-your-own tobacco;

19 13. The term "pipe tobacco" means any tobacco which, because of
20 its appearance, type, packaging or labeling, is suitable for use and
21 likely to be offered to, or purchased by, consumers as tobacco to be
22 smoked in a pipe;

23 14. The term "roll-your-own tobacco" means any tobacco which,
24 because of its appearance, type, packaging or labeling, is suitable
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1 for use and likely to be offered to, or purchased by, consumers as
2 tobacco for making cigarettes or cigars, or for use as wrappers
3 thereof; ~~and~~

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

6 16. The term "vapor product" means noncombustible products,
7 that may or may not contain nicotine, that employ a mechanical
8 heating element, battery, electronic circuit or other mechanism,
9 regardless of shape or size, that can be used to produce a vapor
10 from a solution. Vapor products shall include any vapor cartridge
11 or other container with or without nicotine or other form that is
12 intended to be used with an electronic cigarette, electronic cigar,
13 electronic cigarillo, electronic pipe or similar product or device,
14 and any vapor cartridge or other container of a solution that may or
15 may not contain nicotine, that is intended to be used with or in an
16 electronic cigarette, electronic cigar, electronic cigarillo, or
17 electronic device. Vapor products do not include any products
18 regulated by the United States Food and Drug Administration under
19 Chapter V of the Food, Drug, and Cosmetic Act.

20 SECTION 5. AMENDATORY 68 O.S. 2021, Section 412, is
21 amended to read as follows:

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

5 B. Any consumer who purchases or brings into this state untaxed
6 tobacco products whereon the tax would be more than twenty-five
7 cents (\$0.25) is subject to the tax thereon. Upon failure to pay
8 the tax levied in this article, the consumer shall be subject to a
9 fine of not more than Five Hundred Dollars (\$500.00) or not less
10 than Twenty-five Dollars (\$25.00) to be deposited in the Tobacco
11 Products Tax Enforcement Unit Revolving Fund created in Section 7 of
12 Enrolled House Bill No. 2292 of the 1st Session of the 58th Oklahoma
13 Legislature. Provided, any person in possession of more than one
14 thousand small or large cigars or two hundred sixteen (216) ounces
15 of smokeless or smoking tobacco in packages or containers for which
16 the tax required by law has not been paid shall be punished by
17 administrative fines in the manner and amounts provided in
18 subsection D of Section 418 of this title.

19 SECTION 6. AMENDATORY 68 O.S. 2021, Section 414, is
20 amended to read as follows:

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

1 B. Any person operating a truck or vehicle by selling,
2 exchanging or giving away untaxed ~~merchandise covered by this~~
3 ~~article~~ tobacco products shall be deemed guilty of violation of same
4 and shall be penalized as hereinbefore set forth, and untaxed
5 ~~merchandise~~ tobacco products handled by this person as well as the
6 vehicle used to transport the untaxed tobacco products shall be
7 subject to confiscation by authorized agents of the Tax Commission
8 or duly authorized peace officers.

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

20 SECTION 7. AMENDATORY 68 O.S. 2021, Section 415, as
21 amended by Section 2, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2023,
22 Section 415), is amended to read as follows:

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

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

13 2. The applicant's agreement to abide by the provisions of
14 Section 301 et seq. of this title and the rules promulgated by the
15 Tax Commission with reference thereto. This license, which will be
16 for the ensuing year, must at all times be displayed in a
17 conspicuous place so that it can be seen. Persons operating more
18 than one place of business must secure a license for each place of
19 business. "Place of business" shall be construed to include the
20 place where orders are received, or where tobacco products or vapor
21 products are sold. A "place of business" cannot be a location with
22 a physical residential address. The Tax Commission shall not issue
23 a license for a place of business with a physical residential
24 address. If tobacco products or vapor products are sold on or from

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

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

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

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

20 3. The applicant's agreement that it shall not purchase any
21 tobacco products or vapor products for resale from a supplier that
22 does not hold a current wholesaler's license issued pursuant to this
23 section; and
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1 4. The applicant's agreement to sell tobacco products or vapor
2 products only to consumers.

3 Such license, which will be for the ensuing three (3) years,
4 must at all times be displayed in a conspicuous place so that it can
5 be seen. Upon expiration of such license, the retailer to whom such
6 license was issued may obtain a renewal license which shall be valid
7 for three (3) years or until expiration of the retailer's sales tax
8 permit, whichever is earlier, after which a renewal license shall be
9 valid for three (3) years. The manner and prorated fee for renewals
10 shall be prescribed by the Tax Commission. Every person operating
11 under such license as a retailer and who owns or operates more than
12 one place of business must secure a license for each place of
13 business. "Place of business" shall be construed to include places
14 where orders are received or where tobacco products or vapor
15 products are sold. A "place of business" cannot be a location with
16 a physical residential address. The Tax Commission shall not issue
17 a license for a place of business with a physical residential
18 address.

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

22 D. 1. All wholesale or retail licenses shall be nonassignable
23 and nontransferable from one person to another person. Such
24 licenses may be transferred from one location to another location
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1 after an application has been filed with the Tax Commission
2 requesting such transfer and after the approval of the Tax
3 Commission.

4 2. Wholesale and retail licenses shall be applied for on a form
5 prescribed by the Tax Commission. Any person operating as a
6 wholesaler or retailer must at all times have an effective unexpired
7 license which has been issued by the Tax Commission. If any such
8 person or licensee continues to operate as such on a license issued
9 by the Tax Commission which has expired, or operates without ever
10 having obtained from the Tax Commission such license, such person or
11 licensee shall, after becoming delinquent for a period in excess of
12 fifteen (15) days, pay to the Tax Commission, in addition to the
13 annual license fee, a penalty of Ten Dollars (\$10.00) per day on
14 each delinquent license for each day so operated in excess of
15 fifteen (15) days. The penalty provided for herein shall not exceed
16 the annual license fee for such license. The penalties collected
17 pursuant to the provisions of this paragraph shall be deposited in
18 the Tobacco Products Tax Enforcement Unit Revolving Fund created in
19 Section 400.6 of this title.

20 E. No license may be granted, maintained or renewed if any of
21 the following conditions apply to the applicant. For purposes of
22 this section, "applicant" includes any combination of persons owning
23 directly or indirectly, in the aggregate, more than ten percent
24 (10%) of the ownership interests in the applicant:
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1 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
2 delinquent tobacco products taxes;

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

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

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

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

19 SECTION 8. AMENDATORY 68 O.S. 2021, Section 420.1, is
20 amended to read as follows:

21 Section 420.1 A. Each wholesaler of tobacco products or vapor
22 products, as defined in Section 400 of this title, shall maintain
23 copies of invoices or equivalent documentation for each of its
24 facilities for every transaction in which the wholesaler is the
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1 seller, purchaser, consignor, consignee or recipient of tobacco
2 products or vapor products. The invoices or documentation shall
3 contain the wholesaler's ~~tobacco~~ license number and the retailer's
4 ~~tobacco~~ license number if the sale is to a retailer and the quantity
5 by brand style of the tobacco products involved in the transaction.
6 Each wholesaler shall maintain the documents required by this
7 subsection for a period of three (3) years.

8 B. Each retailer of tobacco products or vapor products, as
9 defined in Section 400 of this title, shall maintain copies of
10 invoices or equivalent documentation for every transaction in which
11 the retailer receives or purchases tobacco products or vapor
12 products at each of its facilities. The invoices or documentation
13 shall show the name, address, and ~~tobacco~~ license number of the
14 wholesaler from whom, or the address of another facility of the same
15 retailer from which, the tobacco products or vapor products were
16 received, the quantity of each brand style received in such
17 transaction, the date the tobacco products or vapor products were
18 received and the retail cigarette license number or sales tax
19 license number. Each retailer shall maintain the documents required
20 by this subsection for a period of one (1) year.

21 SECTION 9. AMENDATORY 68 O.S. 2021, Section 422, is
22 amended to read as follows:

23 Section 422. All wholesalers or retailers selling or
24 distributing such tobacco products or vapor products under the
..

1 provisions of this act shall comply with the provisions of such
2 sections, and the rules and regulations of the Oklahoma Tax
3 Commission as to such sale or distribution, and failure to so comply
4 shall constitute grounds for revocation of any license issued to the
5 wholesaler or retailer by the Tax Commission.

6 SECTION 10. This act shall become effective November 1, 2024.

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