

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend House Bill No. 2097, Page 4, Line 6½, as follows:

By inserting new SECTIONS 2 through 16 to read as attached; and
by renumbering subsequent sections.

Submitted by:

Senator Johnson (Rob)

JohnsonR-JCR-FA-HB2097
4/15/2013 3:55 PM

1 “SECTION 2. AMENDATORY 37 O.S. 2011, Section 600.2, is
2 amended to read as follows:

3 Section 600.2 As used in the Prevention of Youth Access to
4 Tobacco Act:

5 1. "Person" means any individual, firm, fiduciary,
6 partnership, corporation, trust, or association, however formed;

7 2. "Proof of age" means a driver license, license for
8 identification only, or other generally accepted means of
9 identification that describes the individual as eighteen (18) years
10 of age or older and contains a photograph or other likeness of the
11 individual and appears on its face to be valid;

12 3. "Sample" means a tobacco product, tobacco-derived product,
13 or vapor product distributed to members of the public at no cost
14 for the purpose of promoting the product;

15 4. "Sampling" means the distribution of samples to members of
16 the public in a public place;

17 5. "Tobacco-derived product" means any noncombustible product
18 derived from tobacco that contains nicotine and is intended for
19 human consumption, whether chewed, absorbed, dissolved, or ingested
20 by any other means, but does not include a vapor product or any
21 product regulated by the United States Food and Drug Administration
22 under Chapter V of the Federal Food, Drug, and Cosmetic Act;

23 6. "Tobacco product" means any product that contains tobacco
24 and is intended for human consumption, including any tobacco-
25 derived product or vapor product;

1 ~~6.~~ 7. "Transaction scan" means the process by which a seller
2 checks, by means of a transaction scan device, the validity of a
3 driver license or other government-issued photo identification; ~~and~~

4 ~~7.~~ 8. "Transaction scan device" means any commercial device or
5 combination of devices used at a point of sale or entry that is
6 capable of deciphering in an electronically readable format the
7 information encoded on the magnetic strip or bar code of a driver
8 license or other government-issued photo identification; and

9 9. "Vapor product" means a noncombustible product containing
10 nicotine that employs a mechanical heating element, battery, or
11 electronic circuit, regardless of shape or size, that can be used
12 to heat a liquid nicotine solution contained in a vapor cartridge
13 as well as any vapor cartridge containing liquid nicotine solution
14 that can be used with or in a vapor product and electronic
15 cigarettes, electronic cigars, electronic cigarillos and electronic
16 pipes. "Vapor product" does not include any product regulated by
17 the United States Food and Drug Administration under Chapter V of
18 the Federal Food, Drug, and Cosmetic Act.

19 SECTION 3. AMENDATORY 37 O.S. 2011, Section 600.3, is
20 amended to read as follows:

21 Section 600.3 A. It is unlawful for any person to sell, give
22 or furnish in any manner any tobacco product, tobacco-derived
23 product or vapor product to another person who is under eighteen
24 (18) years of age, or to purchase in any manner a tobacco product,
25 tobacco-derived product or vapor product on behalf of any such
26 person. It shall not be unlawful for an employee under eighteen

1 (18) years of age to handle tobacco products, tobacco-derived
2 products or vapor products when required in the performance of the
3 employee's duties.

4 B. A person engaged in the sale or distribution of tobacco
5 products, tobacco-derived products or vapor products shall demand
6 proof of age from a prospective purchaser or recipient if an
7 ordinary person would conclude on the basis of appearance that the
8 prospective purchaser may be under eighteen (18) years of age.

9 If an individual engaged in the sale or distribution of tobacco
10 products, tobacco-derived products or vapor products has demanded
11 proof of age from a prospective purchaser or recipient who is not
12 under eighteen (18) years of age, the failure to subsequently
13 require proof of age shall not constitute a violation of this
14 subsection ~~B of this section~~.

15 C. 1. When a person violates subsection A or B of this
16 section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission
17 shall impose an administrative fine of:

- 18 a. not more than One Hundred Dollars (\$100.00) for the
19 first offense,
- 20 b. not more than Two Hundred Dollars (\$200.00) for the
21 second offense within a two-year period following the
22 first offense,
- 23 c. not more than Three Hundred Dollars (\$300.00) for a
24 third offense within a two-year period following the
25 first offense. In addition to any other penalty, the
26 store's license to sell tobacco products, tobacco-

1 derived products or vapor products may be suspended
2 for a period not exceeding thirty (30) days, or
3 d. not more than Three Hundred Dollars (\$300.00) for a
4 fourth or subsequent offense within a two-year period
5 following the first offense. In addition to any
6 other penalty, the store's license to sell tobacco
7 products, tobacco-derived products or vapor products
8 may be suspended for a period not exceeding sixty
9 (60) days.

10 2. When it has been determined that a penalty shall include a
11 license suspension, the ABLE Commission shall notify the Oklahoma
12 Tax Commission, and the Tax Commission shall suspend the store's
13 license to sell tobacco products, tobacco-derived products or vapor
14 products at the location where the offense occurred for the period
15 of time prescribed by the ABLE Commission.

16 3. Proof that the defendant demanded, was shown, and
17 reasonably relied upon proof of age shall be a defense to any
18 action brought pursuant to this section. A person cited for
19 violating this section shall be deemed to have reasonably relied
20 upon proof of age, and such person shall not be found guilty of
21 ~~such~~ the violation if such person proves that:

22 a. the individual who purchased or received the tobacco
23 product, tobacco-derived product or vapor product
24 presented a driver license or other government-issued
25 photo identification purporting to establish that

1 such individual was eighteen (18) years of age or
2 older, and

3 b. the person cited for the violation confirmed the
4 validity of the driver license or other government-
5 issued photo identification presented by such
6 individual by performing a transaction scan by means
7 of a transaction scan device.

8 Provided, that this defense shall not relieve from liability
9 any person cited for a violation of this section if ~~such~~ the person
10 failed to exercise reasonable diligence to determine whether the
11 physical description and picture appearing on the driver license or
12 other government-issued photo identification was that of the
13 individual who presented it. The availability of the defense
14 described in this subsection does not affect the availability of
15 any other defense under any other provision of law.

16 D. If the sale is made by an employee of the owner of a store
17 at which tobacco products, tobacco-derived products or vapor
18 products are sold at retail, the employee shall be guilty of the
19 violation and shall be subject to the fine. Each violation by any
20 employee of an owner of a store licensed to sell tobacco products, tobacco-derived products or vapor products shall be deemed a
21 violation against the owner for purposes of a license suspension
22 pursuant to subsection C of this section. An owner of a store
23 licensed to sell tobacco products, tobacco-derived products or
24 vapor products shall not be deemed in violation of the provisions
25 of the Prevention of Youth Access to Tobacco Act for any acts
26

1 constituting a violation by any person, when the violation occurs
2 prior to actual employment of the person by the store owner or the
3 violation occurs at a location other than the owner's retail store.
4 For purposes of determining the liability of a person controlling
5 franchises or business operations in multiple locations, for any
6 violations of subsection A or B of this section, each individual
7 franchise or business location shall be deemed a separate entity.

8 E. On or before December 15, 1997, the ABLE Commission shall
9 adopt rules establishing a method of notification of storeowners
10 when one of their employees has been determined to be in violation
11 of this section by the ABLE Commission or convicted of a violation
12 by a municipality.

13 F. 1. Upon failure of the employee to pay the administrative
14 fine within ninety (90) days of the day of the assessment of such
15 fine, the ABLE Commission shall notify the Department of Public
16 Safety and the Department shall suspend or not issue a driver
17 license to the employee until proof of payment has been furnished
18 to the Department of Public Safety.

19 2. Upon failure of a storeowner to pay the administrative fine
20 within ninety (90) days of the assessment of the fine, the ABLE
21 Commission shall notify the Tax Commission and the Tax Commission
22 shall suspend the store's license to sell tobacco products,
23 tobacco-derived products or vapor products until proof of payment
24 has been furnished to the Oklahoma Tax Commission.

25 G. Cities and towns may enact and municipal police officers
26 may enforce ordinances prohibiting and penalizing conduct under

1 provisions of this section, but the provisions of municipal
2 ordinances shall be the same as provided for in this section, and
3 the penalty provisions under such ordinances shall not be more
4 stringent than those of this section.

5 H. County sheriffs may enforce the provisions of the
6 Prevention of Youth Access to Tobacco Act.

7 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.4, is
8 amended to read as follows:

9 Section 600.4 A. It is unlawful for a person who is under
10 eighteen (18) years of age to purchase, receive, or have in their
11 possession a tobacco product, tobacco-derived product or vapor
12 product, or to present or offer to any person any purported proof
13 of age which is false or fraudulent, for the purpose of purchasing
14 or receiving any tobacco product, tobacco-derived product or vapor
15 product. It shall not be unlawful for an employee under eighteen
16 (18) years of age to handle tobacco products, tobacco-derived
17 products or vapor products when required in the performance of the
18 employee's duties.

19 B. When a person violates subsection A of this section, the
20 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
21 an administrative fine of:

22 1. Not to exceed One Hundred Dollars (\$100.00) for a first
23 offense; and

24 2. Not to exceed Two Hundred Dollars (\$200.00) for a second or
25 subsequent offense within a one-year period following the first
26 offense.

1 Upon failure of the individual to pay the administrative fine
2 within ninety (90) days of the day of the fine, the ABLE Commission
3 shall notify the Department of Public Safety and the Department
4 shall suspend or not issue a driver license to the individual until
5 proof of payment has been furnished to the Department of Public
6 Safety.

7 C. The ABLE Commission shall establish rules to provide for
8 notification to a parent or guardian of any minor cited for a
9 violation of this section.

10 D. Cities and towns may enact and municipal police officers
11 may enforce ordinances prohibiting and penalizing conduct under
12 provisions of this section, but the provisions of such ordinances
13 shall be the same as provided for in this section, and the
14 enforcement provisions under such ordinances shall not be more
15 stringent than those of this section.

16 SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.5, is
17 amended to read as follows:

18 Section 600.5 A. Every person who sells or displays tobacco
19 products, tobacco-derived products or vapor products at retail
20 shall post conspicuously and keep so posted at the place of
21 business a sign, as specified by the Alcoholic Beverage Laws
22 Enforcement (ABLE) Commission, stating the following: "IT'S THE
23 LAW. WE DO NOT SELL TOBACCO PRODUCTS, TOBACCO-DERIVED PRODUCTS OR
24 VAPOR PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE". The sign shall
25 also provide the toll-free number operated by the Alcoholic
26 Beverage Laws Enforcement (ABLE) Commission for the purpose of

1 reporting violations of the Prevention of Youth Access to Tobacco
2 Act.

3 B. When a person violates subsection A of this section, the
4 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
5 an administrative fine of not more than Fifty Dollars (\$50.00) for
6 each day a violation occurs. Each day a violation is continuing
7 shall constitute a separate offense. The notice required by
8 subsection A of this section shall be the only notice required to
9 be posted or maintained in any store that sells tobacco products,
10 tobacco-derived products or vapor products at retail.

11 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.6, is
12 amended to read as follows:

13 Section 600.6 A. Every person engaged in the business of
14 selling tobacco products, tobacco-derived products or vapor
15 products at retail shall notify each individual employed by that
16 person as a retail sales clerk that state law:

17 1. Prohibits the sale or distribution of tobacco products,
18 tobacco-derived products or vapor products to any person under
19 eighteen (18) years of age and the purchase or receipt of tobacco
20 products, tobacco-derived products or vapor products by any person
21 under eighteen (18) years of age; and

22 2. Requires that proof of age be demanded from a prospective
23 purchaser or recipient if an ordinary person would conclude on the
24 basis of appearance that the prospective purchaser or recipient may
25 be under eighteen (18) years of age.

1 B. This notice shall be provided before the individual
2 commences work as a retail sales clerk. The individual shall
3 signify that he or she has received the notice required by this
4 section by signing a form stating as follows:
5 "I understand that state law prohibits the sale or distribution of
6 tobacco products, tobacco-derived products or vapor products to
7 persons under eighteen (18) years of age and out-of-package sales,
8 and requires proof of age of purchaser or recipient if an ordinary
9 person would conclude on the basis of appearance that the
10 prospective purchaser or recipient may be under eighteen (18) years
11 of age. I promise, as a condition of my employment, to obey the
12 law. I understand that violations by me may be punishable by
13 fines, suspension or nonissuance of my driver license. In
14 addition, I understand that violations by me may subject the
15 storeowner to fines or license suspension."

16 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.7, is
17 amended to read as follows:

18 Section 600.7 It shall be unlawful for any person to sell
19 tobacco products, tobacco-derived products or vapor products
20 through a vending machine unless the vending machine is located:

21 1. In areas of factories, businesses, offices or other places
22 that are not open to the public; and

23 2. In places that are open to the public, but to which persons
24 under eighteen (18) years of age are not admitted.

25 SECTION 8. AMENDATORY 37 O.S. 2011, Section 600.8, is
26 amended to read as follows:

1 Section 600.8 A. It shall be unlawful for any person or
2 retailer to distribute tobacco products, tobacco-derived products,
3 vapor products or product samples to any person under eighteen (18)
4 years of age.

5 B. No person shall distribute tobacco products, tobacco-
6 derived products, vapor products or product samples in or on any
7 public street, sidewalk, or park that is within three hundred (300)
8 feet of any playground, school, or other facility when the facility
9 is being used primarily by persons under eighteen (18) years of
10 age.

11 C. When a person violates any provision of subsection A or B
12 of this section, the Alcoholic Beverage Laws Enforcement (ABLE)
13 Commission shall impose an administrative fine of:

14 1. Not more than One Hundred Dollars (\$100.00) for the first
15 offense;

16 2. Not more than Two Hundred Dollars (\$200.00) for the second
17 offense; and

18 3. Not more than Three Hundred Dollars (\$300.00) for a third
19 or subsequent offense.

20 D. Upon failure of any person to pay an administrative fine
21 within ninety (90) days of the assessment of the fine, the ABLE
22 Commission shall notify the Department of Public Safety, and the
23 Department shall suspend or not issue a driver license to the
24 person until proof of payment has been furnished to the Department
25 of Public Safety.

1 E. Cities and towns may enact and municipal police officers
2 may enforce ordinances prohibiting and penalizing conduct under
3 provisions of this section, but the provisions of municipal
4 ordinances shall be the same as provided for in this section, and
5 the penalty provisions under such ordinances shall not be more
6 stringent than those of this section.

7 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.10, is
8 amended to read as follows:

9 Section 600.10 No agency or other political subdivision of the
10 state, including, but not limited to, municipalities, counties or
11 any agency thereof, may adopt any order, ordinance, rule or
12 regulation concerning the sale, purchase, distribution,
13 advertising, sampling, promotion, display, possession, licensing,
14 or taxation of tobacco products, tobacco-derived products or vapor
15 products, except as provided in Section 1511 of Title 68 of the
16 Oklahoma Statutes, Section 1-1521 et seq. of Title 63 of the
17 Oklahoma Statutes and Section 1247 of Title 21 of the Oklahoma
18 Statutes. Provided, however, nothing in this section shall
19 preclude or preempt any agency or political subdivision from
20 exercising its lawful authority to regulate zoning or land use or
21 to enforce a fire code regulation regulating smoking or tobacco
22 products to the extent that such regulation is substantially
23 similar to nationally recognized standard fire codes.

24 SECTION 10. AMENDATORY 37 O.S. 2011, Section 600.10A,
25 is amended to read as follows:

1 Section 600.10A A. It is unlawful for any person or retail
2 store to display or offer for sale tobacco products, tobacco-
3 derived products or vapor products in any manner that allows public
4 access to the tobacco product, tobacco-derived product or vapor
5 product without assistance from the person displaying the tobacco
6 product, tobacco-derived product or vapor product or an employee or
7 the owner of the store. The provisions of this subsection shall
8 not apply to retail stores which do not admit into the store
9 persons under eighteen (18) years of age.

10 B. When a person violates subsection A of this section, the
11 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
12 an administrative fine of not more than Two Hundred Dollars
13 (\$200.00) for each offense.

14 C. Cities and towns may enact and municipal police officers
15 may enforce ordinances prohibiting and penalizing conduct under
16 provisions of this section, but the provisions of municipal
17 ordinances shall be the same as provided for in this section and
18 the penalty provisions under such ordinances shall not be more
19 stringent than those of this section.

20 SECTION 11. AMENDATORY 37 O.S. 2011, Section 600.11, is
21 amended to read as follows:

22 Section 600.11 A. The Alcoholic Beverage Laws Enforcement
23 (ABLE) Commission is authorized and empowered to enforce the
24 provisions of Sections 600.1 et seq. of this title. The ABLE
25 Commission shall enforce those provisions in a manner that can
26 reasonably be expected to reduce the extent to which tobacco

1 products, tobacco-derived products or vapor products are sold or
2 distributed to persons under eighteen (18) years of age.

3 B. The ABLE Commission may consider mitigating or aggravating
4 circumstances involved with the violation of the Prevention of
5 Youth Access to Tobacco Act when assessing penalties.

6 C. Any conviction for a violation of a municipal ordinance
7 authorized by the Prevention of Youth Access to Tobacco Act and any
8 compliance checks by a municipal police officer or a county sheriff
9 pursuant to subsection E of this section shall be reported in
10 writing to the ABLE Commission within thirty (30) days of such
11 conviction or compliance check. Such reports shall be compiled in
12 the manner prescribed by the ABLE Commission.

13 D. For the purpose of determining second or subsequent
14 violations, both the offenses penalized by the ABLE Commission as
15 administrative fines and the offenses penalized by municipalities
16 and towns and reported to the ABLE Commission, shall be considered
17 together in such determination.

18 E. Persons under eighteen (18) years of age may be enlisted by
19 the ABLE Commission, a municipality or town, or a county to assist
20 in compliance checks and enforcement; provided, such persons may be
21 used to test compliance only if written parental consent has been
22 provided and the testing is conducted under the direct supervision
23 of the ABLE Commission or conducted by another law enforcement
24 agency if such agency has given written notice to the ABLE
25 Commission in the manner prescribed by the ABLE Commission.
26 Municipalities which have enacted municipal ordinances in

1 accordance with the Prevention of Youth Access to Tobacco Act may
2 conduct, pursuant to rules of the ABLE Commission, compliance
3 checks without prior notification to the ABLE Commission and shall
4 be exempt from the written notice requirement in this subsection.
5 This subsection shall not apply to the use of persons under
6 eighteen (18) years of age to test compliance if the compliance
7 test is being conducted by or on behalf of a retailer of
8 cigarettes, as defined in Section 301 of Title 68 of the Oklahoma
9 Statutes, at any location the retailer of cigarettes is authorized
10 to sell cigarettes. Any other use of persons under eighteen (18)
11 years of age to test compliance shall be unlawful and punishable by
12 the ABLE Commission by assessment of an administrative fine of One
13 Hundred Dollars (\$100.00).

14 F. At the beginning of each month, the Oklahoma Tax
15 Commission, pursuant to Section 205 of Title 68 of the Oklahoma
16 Statutes, shall provide to the ABLE Commission and to each
17 municipality which has ordinances concerning the Prevention of
18 Youth Access to Tobacco Act, the location, name, and address of
19 each licensee licensed to sell tobacco products, tobacco-derived
20 products or vapor products at retail or otherwise furnish tobacco
21 products, tobacco-derived products or vapor products. Upon
22 violation of an employee at a location, the ABLE Commission shall
23 notify the storeowner for that location of the latest and all
24 previous violations when one of their employees has been determined
25 to be in violation of the Prevention of Youth Access to Tobacco Act
26 by the ABLE Commission or convicted of a violation by a

1 municipality. If the ABLE Commission fails to notify the licensee
2 of a violation by an employee, that violation shall not apply
3 against the licensee for the purpose of determining a license
4 suspension pursuant to Section 600.3 of this title. For purposes
5 of this subsection, notification shall be deemed given if the ABLE
6 Commission mails, by mail with delivery confirmation, the
7 notification to the address which is on file with the Oklahoma Tax
8 Commission of the licensee of the location at which the violation
9 occurred and the ABLE Commission receives delivery confirmation
10 from the U.S. Postal Service.

11 G. Upon request of a storeowner or a municipality which has
12 enacted ordinances in accordance with the Prevention of Youth
13 Access to Tobacco Act, the ABLE Commission is hereby authorized to
14 provide information on any Prevention of Youth Access to Tobacco
15 Act offense of any applicant for employment or employee of the
16 storeowner.

17 H. The ABLE Commission shall prepare for submission annually
18 to the Secretary of the United States Department of Health and
19 Human Services, the report required by Section 1926 of the federal
20 Public Health Service Act (42 U.S.C. 300-26), and otherwise shall
21 be responsible for ensuring the state's compliance with that
22 provision of federal law and any implementing of regulations
23 promulgated by the United States Department of Health and Human
24 Services.

25 SECTION 12. AMENDATORY 37 O.S. 2011, Section 600.13, is
26 amended to read as follows:

1 Section 600.13 A. It is unlawful for any person to sell, give
2 or furnish in any manner to another person who is under eighteen
3 (18) years of age any material or device used in the smoking,
4 chewing, or other method of consumption of tobacco, tobacco-derived
5 products or vapor products, including cigarette papers, pipes,
6 holders of smoking materials of all types, and other items designed
7 primarily for the smoking or ingestion of tobacco products,
8 tobacco-derived products or vapor products.

9 B. When a person violates subsection A of this section, the
10 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
11 an administrative fine of not more than One Hundred Dollars
12 (\$100.00) for each offense.

13 SECTION 13. AMENDATORY 68 O.S. 2011, Section 401, is
14 amended to read as follows:

15 Section 401. For the purpose of this article:

16 ~~(a)~~ 1. The word "person" shall mean any individual, company,
17 limited liability company, corporation, partnership, association,
18 joint adventure, estate, trust, or any other group, or combination
19 acting as a unit, and the plural as well as the singular, unless
20 the intention to give a more limited meaning is disclosed by the
21 context~~;~~;

22 ~~(b)~~ 2. The term "Tax Commission" shall mean the Oklahoma Tax
23 Commission~~;~~;

24 ~~(c)~~ 3. The word "wholesaler" shall include dealers whose
25 principal business is that of a wholesale dealer or jobber, and who
26 is known to the trade as such, who shall sell any cigars ~~or,~~,

1 tobacco products, tobacco-derived products or vapor products to
2 licensed retail dealers only for the purpose of resale, or giving
3 them away, or exposing the same where they may be taken or
4 purchased, or otherwise acquired by the retailer-;

5 ~~(d)~~ 4. The word "retailer" shall include every dealer, other
6 than a wholesale dealer as defined above, whose principal business
7 is that of selling merchandise at retail, who shall sell, or offer
8 for sale, cigars ~~or~~, tobacco products, tobacco-derived products or
9 vapor products, irrespective of quantity, number of sales, giving
10 the same away or exposing the same where they may be taken, or
11 purchased, or otherwise acquired by the consumer-;

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

16 ~~(f)~~ 6. The words "first sale" shall mean and include the first
17 sale, or distribution, of cigars ~~or~~, tobacco products, tobacco-
18 derived products or vapor products in intrastate commerce, or the
19 first use or consumption of cigars, ~~or~~ tobacco products, tobacco-
20 derived products or vapor products within this state-;

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

1 include tobacco-derived products or vapor products or any other
2 articles or products made of tobacco or any substitute therefor~~;~~;

3 ~~(h)~~ 8. The term "distributing agent" shall mean and include
4 every person in this state who acts as an agent of any person
5 outside the state by receiving cigars ~~and,~~ tobacco products,
6 tobacco-derived products and vapor products in interstate commerce
7 and storing such items subject to distribution or delivery, upon
8 order from said person outside the state, to distributors,
9 wholesale dealers and retail dealers, or to consumers. The term
10 "distributing agent" shall also mean and include any person who
11 solicits or takes orders for cigars ~~and,~~ tobacco products, tobacco-
12 derived products—and vapor products to be shipped in interstate
13 commerce to a person in this state by a person residing outside of
14 Oklahoma, the tax not having been paid on such cigars ~~and,~~ tobacco
15 products~~;~~, tobacco-derived products, and vapor products;

16 ~~(i)~~ 9. The term "stamp" shall mean the stamp or stamps by use
17 of which:

18 ~~1.—The~~

19 a. the tax levied pursuant to the provisions of Section
20 401 et seq. of this title is paid~~;~~ ;

21 ~~2.—The~~

22 b. the tax levied pursuant to the provisions of Section
23 426 of this title is paid~~;~~ ; or

24 ~~3.—The~~

25 c. the payment in lieu of taxes authorized pursuant to a
26 compact entered into by the State of Oklahoma and a

1 federally recognized Indian tribe or nation pursuant
2 to the provisions of subsection C of Section 346 of
3 this title is paid-;

4 ~~(j)~~ 10. The term "drop shipment" shall mean and include any
5 delivery of cigars ~~or~~, tobacco products, tobacco-derived products
6 or vapor products received by any person within the state when
7 payment for such cigars ~~or~~, tobacco products, tobacco-derived
8 products or vapor products is made to the shipper or seller by or
9 through a person other than the consignee-;

10 ~~(k)~~ 11. The term "cigars" shall include any roll of tobacco
11 for smoking, irrespective of size or shape and irrespective of the
12 tobacco being flavored, adulterated or mixed with any other
13 ingredients, where such roll has a wrapper made chiefly of
14 tobacco-;

15 ~~(l)~~ 12. The word "dealer" shall include every person, firm,
16 corporation, or association of persons, who manufactures cigars ~~or~~,
17 tobacco products, tobacco-derived products or vapor products for
18 distribution, sale, use or consumption in the State of Oklahoma.
19 The word "dealer" is also further defined to mean any person, firm,
20 corporation or association of persons, who imports cigars ~~or~~,
21 tobacco products, tobacco-derived products or vapor products from
22 any state or foreign country, for distribution, sale, use or
23 consumption in the State of Oklahoma;

24 13. The words "tobacco-derived products" shall mean any
25 noncombustible products derived from tobacco that contain nicotine
26 and are intended for human consumption, whether chewed, absorbed,

dissolved or ingested by any other means, but do not include vapor products or any products regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

14. The words "vapor products" shall mean noncombustible products containing nicotine that employ a mechanical heating element, battery or electronic circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in a vapor cartridge as well as any vapor cartridges containing liquid nicotine solution that can be used with or in a vapor product and electronic cigarettes, electronic cigars, electronic cigarillos and electronic pipes. "Vapor products" do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act;

15. The words "vapor product unit" shall mean all amounts of consumable material in a vapor product up to and including five one-hundredths (.05) of a fluid ounce;

16. The words "tobacco-derived product unit" shall mean any package of tobacco-derived products intended to be sold in such package at retail the net weight of which is any amount up to and including one (1) ounce;

17. The words "consumable material" shall mean any liquid nicotine solution or other material containing nicotine that is depleted as a vapor product is used; and

1 18. The word "manufacturer" shall mean a person within or
2 outside of this state who produces cigarettes, tobacco products,
3 tobacco-derived products or vapor products or a person who
4 contracts with another person to produce cigarettes, tobacco
5 products, tobacco-derived products or vapor products.

6 SECTION 14. AMENDATORY 68 O.S. 2011, Section 402, is
7 amended to read as follows:

8 Section 402. There shall be levied, assessed, collected, and
9 paid in respect to the articles containing tobacco enumerated in
10 Section 401 et seq. of this title, a tax in the following amounts:

11 1. Little Cigars. Upon cigars of all descriptions made of
12 tobacco, or any substitute therefor, and weighing not more than
13 three (3) pounds per thousand, four (4) mills for each cigar.
14 Provided, that the tax levied on the products coming under this
15 paragraph shall not apply if the tax on such products is reported
16 and paid as cigarette tax under Sections 301 through 325 of this
17 title;

18 2. Cigars. Upon cigars of all descriptions made of tobacco,
19 or any substitute therefor, weighing more than three (3) pounds per
20 thousand and having a manufacturer's recommended retail selling
21 price, under the Federal Code, of not exceeding four cents (\$0.04)
22 per cigar, one cent (\$0.01) for each cigar;

23 3. Cigars. Upon all other cigars of all descriptions made of
24 tobacco, or any substitute therefor, and weighing more than three
25 (3) pounds per thousand, Twenty Dollars (\$20.00) per thousand. For

1 the purpose of computing the tax, cheroots, stogies, etc., are
2 hereby classed as cigars;

3 4. Smoking Tobacco. Upon all smoking tobacco including
4 granulated, plug cut, crimp cut, ready rubbed and other kinds and
5 forms of tobacco prepared in such manner as to be suitable for
6 smoking in a pipe or cigarette, the tax shall be twenty-five
7 percent (25%) of the factory list price exclusive of any trade
8 discount, special discount or deals; ~~and~~

9 5. Chewing Tobacco. Upon chewing tobacco, smokeless tobacco,
10 and snuff, the tax shall be twenty percent (20%) of the factory
11 list price exclusive of any trade discount, special discount or
12 deals;

13 6. Vapor products. Upon all vapor products, the tax shall be
14 five cents (\$0.05) per vapor product unit and a proportionate tax
15 at the like rate on all fractional parts of a vapor product unit in
16 excess of a single vapor product unit. At no time shall the rate
17 levied upon a vapor product unit exceed one-tenth (0.10) the rate
18 of tax imposed on a pack of cigarettes in this state; and

19 7. Tobacco-derived products. Upon all tobacco-derived
20 products, the tax shall be five cents (\$0.05) per tobacco-derived
21 product unit and a proportionate tax at the like rate on all
22 fractional parts of a tobacco-derived product unit in excess of a
23 single tobacco-derived product unit. At no time shall the rate
24 levied upon a tobacco-derived product unit exceed one-tenth (0.10)
25 the rate of tax imposed on a pack of cigarettes in this state.

1 It shall not be permissible for a retailer to advertise that
2 the retailer will absorb the tax due on the taxable merchandise
3 described herein. Such tax shall be paid by the consumer.

4 Notwithstanding any other provision of law, the tax levied
5 pursuant to the provisions of Section 401 et seq. of this title
6 shall be part of the gross proceeds or gross receipts from the sale
7 of cigars or tobacco products, or both, as those terms are defined
8 in paragraph 7 of Section 1352 of this title.

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

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

1 ~~(b)~~ B. In the case of tobacco products wrapped in packages of
2 two (2) pounds or less, the stamps shall be affixed to the
3 containers in which or from which the individual packages are
4 normally sold at wholesale and the stamps shall be affixed by
5 wholesalers and jobbers within seventy-two (72) hours after such
6 products are received by them, and by any retailer within the
7 twenty-four (24) hours of receipt by him or them of any such
8 products. Such goods must be stamped before being sold. All
9 retail dealers in manufactured tobacco products, purchasing or
10 receiving such commodities from without the state, whether the same
11 shall have been ordered through a wholesaler or jobber in this
12 state and/or by drop shipment and/or otherwise, shall within five
13 (5) days after receipt of same, mail a duplicate invoice of all
14 such purchases or receipts to the Tax Commission. Failure to
15 furnish duplicate invoices as required shall be deemed a
16 misdemeanor, and, upon conviction, be punishable by a fine of not
17 more than One Hundred Dollars (\$100.00) for each offense, or
18 imprisonment in the county jail for a period not exceeding thirty
19 (30) days.

20 ~~(c)~~ C. It is the intent and purpose of this section to require
21 all manufacturers within this state, wholesale dealers, jobbers,
22 distributors and retail dealers, to affix the stamps provided for
23 in this section to taxable commodities, but when the stamps have
24 been affixed as required herein, no further or other stamp shall be
25 required regardless of how often such articles may be sold or
26 resold within this state.

1 D. All invoices for tobacco-derived products or vapor products
2 issued by manufacturers shall include the actual pounds or ounces
3 of tobacco-derived products or the actual fluid ounces of the
4 consumable material contained in vapor products, if available.

5 E. Copies of all invoices for the purchase or sale of any
6 tobacco products, tobacco-derived products or vapor products shall
7 be retained by each wholesale dealer, retailer, distributor,
8 jobber, and subjobber for a period of three (3) years, subject to
9 the examination of the Oklahoma Tax Commission.

10 SECTION 16. AMENDATORY 68 O.S. 2011, Section 415, is
11 amended to read as follows:

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

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

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

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

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

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

4 3. The applicant's agreement that it shall not purchase any
5 tobacco products, tobacco-derived products or vapor products for
6 resale from a supplier that does not hold a current wholesaler's
7 license issued pursuant to this section; and

8 4. The applicant's agreement to sell tobacco products, tobacco-derived products or vapor products only to consumers.

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

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

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

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

19 2. Wholesale, retail, and distributing agent's licenses shall
20 be applied for on a form prescribed by the Tax Commission. Any
21 person operating as a wholesaler, retailer, or distributing agent
22 must at all times have an effective unexpired license which has
23 been issued by the Tax Commission. If any such person or licensee
24 continues to operate as such on a license issued by the Tax
25 Commission which has expired, or operates without ever having
26 obtained from the Tax Commission such license, such person or

1 licensee shall, after becoming delinquent for a period in excess of
2 fifteen (15) days, pay to the Tax Commission, in addition to the
3 annual license fee, a penalty of twenty-five cents (\$0.25) per day
4 on each delinquent license for each day so operated in excess of
5 fifteen (15) days. The penalty provided for herein shall not
6 exceed the annual license fee for such license.

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

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

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

16 3. The applicant has been convicted of a crime relating to
17 stolen or counterfeit tobacco products, tobacco-derived products or
18 vapor products, or receiving stolen or counterfeit tobacco
19 products, tobacco-derived products or vapor products.

20 G. No person or entity licensed pursuant to the provisions of
21 this section shall purchase tobacco products, tobacco-derived
22 products or vapor products from or sell tobacco products, tobacco-
23 derived products or vapor products to a person or entity required
24 to obtain a license unless such person or entity has obtained such
25 license.

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

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