

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB601 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: John Pfeiffer _____

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 PROPOSED
4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 601

By: Rader of the Senate

and

Pfeiffer of the House

7
8
9 PROPOSED COMMITTEE SUBSTITUTE

10 An Act relating to cigarette and tobacco products;
11 amending 68 O.S. 2021, Sections 304 and 415, which
12 relate to licenses; modifying definition; amending 68
13 O.S. 2021, Section 400.1, which relates to
14 enforcement of tobacco tax laws; providing for
15 membership of industry advisory committee; amending
16 68 O.S. 2021, Section 400.5, which relates to the
17 purchase of tobacco products; clarifying certain
18 enforcement procedure; amending 68 O.S. 2021, Section
19 417, which relates to seizure of untaxed tobacco
20 products; clarifying certain enforcement procedure;
21 providing an effective date; and declaring an
22 emergency.

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

24 SECTION 1. AMENDATORY 68 O.S. 2021, Section 304, is
amended to read as follows:

Section 304. A. Every manufacturer and wholesaler of
cigarettes 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 therefor an annual fee of Two Hundred

1 Fifty Dollars (\$250.00). Application for such license, which shall
2 be made upon such forms as prescribed by the Oklahoma Tax
3 Commission, shall include the following:

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

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

10 3. The wholesaler applicant's agreement to sell cigarettes only
11 to licensed retailers or Indian tribal entities or licensees of
12 Indian tribal entities; and

13 4. The manufacturer applicant's agreement to sell cigarettes
14 only to a licensed wholesaler.

15 This license, which will be for the ensuing year, must at all
16 times be displayed in a conspicuous place so that it can be seen.
17 Persons operating more than one place of business must secure a
18 license for each place of business. "Place of business" shall be
19 construed to include the place where orders are received, or where
20 cigarettes are sold. A "place of business" cannot be a location
21 with a physical residential address. The Tax Commission shall not
22 issue a license for a place of business with a physical residential
23 address. If cigarettes are sold on or from any vehicle, the vehicle
24 shall constitute a place of business and the regular license fee

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

7 Provided, that the Tax Commission shall not authorize the use of
8 a stamp-metering device by any manufacturer or wholesaler who does
9 not maintain a warehouse or wholesale establishment or place of
10 business within the State of Oklahoma from which cigarettes are
11 received, stocked and sold and where such metering device is kept
12 and used; but the Tax Commission may, in its discretion, permit the
13 use of such metering device by manufacturers and wholesalers of
14 cigarettes residing wholly within another state where such state
15 permits a licensed Oklahoma resident, manufacturer or wholesaler of
16 cigarettes the use of the metering device of such state without
17 first requiring that such manufacturer or wholesaler establish a
18 place of business in such other state. The provisions of this
19 subsection relating to metering devices shall not apply to states
20 which do not require the affixing of tax stamps to packages of
21 cigarettes before same are offered for sale in such states.

22 B. Every retailer in this state, except Indian tribal entities
23 or licenses of Indian tribal entities, as a condition of carrying on
24 such business, shall secure from the Tax Commission a license and

1 shall pay therefor a fee of Thirty Dollars (\$30.00). Application
2 for such license, which shall be made upon such forms as prescribed
3 by the Tax Commission, shall include the following:

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

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

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

13 4. The applicant's agreement to sell cigarettes only to
14 consumers.

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

1 business" cannot be a location with a physical residential address.
2 The Tax Commission shall not issue a license for a place of business
3 with a physical residential address.

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

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

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

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

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

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

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

21 3. The applicant has been convicted of a crime relating to
22 stolen or counterfeit cigarettes, or receiving stolen or counterfeit
23 cigarettes or has been convicted of or has entered a plea of guilty
24 or nolo contendere to any felony;

1 4. If the applicant is a cigarette manufacturer, the applicant
2 is neither:

3 a. a participating manufacturer as defined in Section II
4 (jj) of the Master Settlement Agreement as defined in
5 Section 600.22 of Title 37 of the Oklahoma Statutes,
6 nor

7 b. in full compliance with the provisions of paragraph 2
8 of subsection A of Section 600.23 of Title 37 of the
9 Oklahoma Statutes;

10 5. If the applicant is a cigarette manufacturer, if any
11 cigarette imported by such applicant is imported into the United
12 States in violation of 19 U.S.C., Section 1681a; or

13 6. If the applicant is a cigarette manufacturer, if any
14 cigarette imported or manufactured by the applicant does not fully
15 comply with the Federal Cigarette Labeling and Advertising Act, 15
16 U.S.C., Section 1331 et seq.

17 F. No person or entity licensed pursuant to the provisions of
18 this section shall purchase cigarettes from or sell cigarettes to a
19 person or entity required to obtain a license unless such person or
20 entity has obtained such license.

21 G. No person licensed as a retailer in this state shall:

22 1. Sell any cigarettes to any other person licensed as a
23 retailer in this state unless such sale is for the purpose of moving
24 inventory between stores which are part of the same company; or

1 2. Purchase any cigarettes from any person or entity other than
2 a wholesaler licensed pursuant to Section 301 et seq. of this title.

3 H. In addition to any civil or criminal penalty provided by
4 law, upon a finding that a licensee has violated any provision of
5 Section 301 et seq. of this title, the Tax Commission may revoke or
6 suspend the license or licenses of the licensee pursuant to the
7 procedures applicable to revocation of a license set forth in
8 Section 316 of this title.

9 I. The Tax Commission shall create and maintain a web site
10 setting forth all current valid licenses and the identity of
11 licensees holding such licenses, and shall update the site no less
12 frequently than once per month.

13 SECTION 2. AMENDATORY 68 O.S. 2021, Section 415, is
14 amended to read as follows:

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

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

6 2. The applicant's agreement to abide by the provisions of
7 Section 301 et seq. of this title and the rules promulgated by the
8 Tax Commission with reference thereto. This license, which will be
9 for the ensuing year, must at all times be displayed in a
10 conspicuous place so that it can be seen. Persons operating more
11 than one place of business must secure a license for each place of
12 business. "Place of business" shall be construed to include the
13 place where orders are received, or where tobacco products are sold.
14 A "place of business" cannot be a location with a physical
15 residential address. The Tax Commission shall not issue a license
16 for a place of business with a physical residential address. If
17 tobacco products are sold on or from any vehicle, the vehicle shall
18 constitute a place of business, and the license fee of Two Hundred
19 Fifty Dollars (\$250.00) shall be paid with respect thereto.
20 However, if the vehicle is owned or operated by a place of business
21 for which the regular license fee is paid, the annual fee for the
22 license with respect to such vehicle shall be only Ten Dollars
23 (\$10.00). The expiration for such vehicle license shall expire on
24 the same date as the current license of the place of business.

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

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

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

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

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

17 Such license, which will be for the ensuing three (3) years,
18 must at all times be displayed in a conspicuous place so that it can
19 be seen. Upon expiration of such license, the retailer to whom such
20 license was issued may obtain a renewal license which shall be valid
21 for three (3) years or until expiration of the retailer's sales tax
22 permit, whichever is earlier, after which a renewal license shall be
23 valid for three (3) years. The manner and prorated fee for renewals
24 shall be prescribed by the Tax Commission. Every person operating

1 under such license as a retailer and who owns or operates more than
2 one place of business must secure a license for each place of
3 business. "Place of business" shall be construed to include places
4 where orders are received or where tobacco products are sold. A
5 "place of business" cannot be a location with a physical residential
6 address. The Tax Commission shall not issue a license for a place
7 of business with a physical residential address.

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

11 D. 1. All wholesale or retail licenses shall be nonassignable
12 and nontransferable from one person to another person. Such
13 licenses may be transferred from one location to another location
14 after an application has been filed with the Tax Commission
15 requesting such transfer and after the approval of the Tax
16 Commission.

17 2. Wholesale and retail licenses shall be applied for on a form
18 prescribed by the Tax Commission. Any person operating as a
19 wholesaler or retailer must at all times have an effective unexpired
20 license which has been issued by the Tax Commission. If any such
21 person or licensee continues to operate as such on a license issued
22 by the Tax Commission which has expired, or operates without ever
23 having obtained from the Tax Commission such license, such person or
24 licensee shall, after becoming delinquent for a period in excess of

1 fifteen (15) days, pay to the Tax Commission, in addition to the
2 annual license fee, a penalty of Ten Dollars (\$10.00) per day on
3 each delinquent license for each day so operated in excess of
4 fifteen (15) days. The penalty provided for herein shall not exceed
5 the annual license fee for such license. The penalties collected
6 pursuant to the provisions of this paragraph shall be deposited in
7 the Tobacco Products Tax Enforcement Unit Revolving Fund created in
8 Section 7 400.6 of this ~~act~~ title.

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

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

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

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

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

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

7 SECTION 3. AMENDATORY 68 O.S. 2021, Section 400.1, is
8 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 by:

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

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

20 3. Providing a dedicated telephone line and email address for
21 licensed wholesalers, licensed retailers and the general public to
22 report suspected violations of tobacco tax laws; provided, no
23 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;

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 Senate,

20 c. one member who is a licensed retailer to be appointed
21 by the Speaker of the Oklahoma House of
22 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 ~~the membership and~~ minimum
6 requirements as may be deemed necessary to carry out the purposes of
7 the committee; and

8 9. Working with law enforcement and conducting investigations
9 to stop illegal acquisition and shipment of tobacco products by
10 persons not licensed to sell tobacco 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 confiscated, the number of tobacco products tax audits
16 conducted, the amount of taxes assessed and the amount of taxes
17 collected as the result of audits and confiscations, the number of
18 suspected violations reported and the actions taken in response, and
19 the number of fines issued and the amount of fines collected.

20 SECTION 4. AMENDATORY 68 O.S. 2021, Section 400.5, is
21 amended to read as follows:

22 Section 400.5 A. Retailers shall only purchase tobacco
23 products from an Oklahoma-licensed tobacco wholesaler evidenced by a
24 current listing provided by the Oklahoma Tax Commission. All

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

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

18 C. Fines collected pursuant to the provisions of subsection A
19 of this section shall be deposited in the Tobacco Products Tax
20 Enforcement Unit Revolving Fund created in Section 7 400.6 of this
21 ~~act~~ title.

22 SECTION 5. AMENDATORY 68 O.S. 2021, Section 417, is
23 amended to read as follows:

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1 Section 417. A. All tobacco products upon which a tax is
2 levied by Section 400 et seq. of this title and all tobacco products
3 sold, offered for sale or imported into this state in violation of
4 the provisions of Section 403.2 of this title, found in the
5 possession, custody or control of any person for the purpose of
6 being consumed, sold or transported from one place to another in
7 this state, for the purpose of evading or violating the provisions
8 of Section 400 et seq. of this title, or with intent to avoid
9 payment of the tax imposed thereunder, and any vehicle being used in
10 avoidance of such tax may be seized by any authorized agent of the
11 Oklahoma Tax Commission or any sheriff, deputy sheriff or police
12 within the state. Tobacco products from the time of seizure shall
13 be forfeited to the State of Oklahoma and assessment of penalty as
14 provided thereby and assessment for any delinquent taxes found to be
15 owing. A proper proceeding shall be filed to maintain such seizure
16 and prosecute the forfeiture as herein provided; the provisions of
17 this section shall not apply, however, where the tax on such tobacco
18 products does not exceed One Dollar (\$1.00).

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

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

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

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

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

21 SECTION 6. This act shall become effective July 1, 2023.

22 SECTION 7. It being immediately necessary for the preservation
23 of the public peace, health or safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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4 59-1-8151 AQH 04/10/23

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