

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

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

By: Rader of the Senate

and

Pfeiffer of the House

7
8
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10 COMMITTEE SUBSTITUTE

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

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

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

1 business, shall annually secure from the Oklahoma Tax Commission a
2 written license, and shall pay therefor an annual fee of Two Hundred
3 Fifty Dollars (\$250.00). Application for such license, which shall
4 be made upon such forms as prescribed by the Oklahoma Tax
5 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 the purpose of
8 enforcement 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 wholesaler applicant's agreement to sell cigarettes only
13 to licensed retailers or Indian tribal entities or licensees of
14 Indian tribal entities; and

15 4. The manufacturer applicant's agreement to sell cigarettes
16 only to a licensed wholesaler.

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

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

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

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

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

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

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

16 4. The applicant's agreement to sell cigarettes only to
17 consumers.

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

1 place of business must secure a license for each place of business.
2 "Place of business" shall be construed to include places where
3 orders are received or where cigarettes are sold. A "place of
4 business" cannot be a location with a physical residential address.
5 The Tax Commission shall not issue a license for a place of business
6 with a physical residential address.

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

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

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

15 E. No license may be granted, maintained or renewed if any of
16 the following conditions applies to the applicant. For purposes of
17 this section, "applicant" includes any combination of persons owning
18 directly or indirectly, in the aggregate, more than ten percent
19 (10%) of the ownership interests in the applicant:

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

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

1 3. The applicant has been convicted of a crime relating to
2 stolen or counterfeit cigarettes, or receiving stolen or counterfeit
3 cigarettes or has been convicted of or has entered a plea of guilty
4 or nolo contendere to any felony;

5 4. If the applicant is a cigarette manufacturer, the applicant
6 is neither:

7 a. a participating manufacturer as defined in Section II
8 (jj) of the Master Settlement Agreement as defined in
9 Section 600.22 of Title 37 of the Oklahoma Statutes,
10 nor

11 b. in full compliance with the provisions of paragraph 2
12 of subsection A of Section 600.23 of Title 37 of the
13 Oklahoma Statutes;

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

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

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

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

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

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

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

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

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

19 Section 415. A. Every wholesaler of tobacco products in this
20 state, as a condition of carrying on such business, shall annually
21 secure from the Oklahoma Tax Commission a written license and shall
22 pay an annual fee of Two Hundred Fifty Dollars (\$250.00); provided,
23 such fee shall not be applicable if paid pursuant to Section 304 of
24 this title. The Tax Commission shall promulgate rules which provide

1 a procedure for the issuance of a joint license for any wholesaler
2 making application pursuant to this section and Section 304 of this
3 title. Application for such license, which shall be made upon such
4 forms as prescribed by the Tax Commission, shall include the
5 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; and

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. This license, which will be
12 for the ensuing year, must at all times be displayed in a
13 conspicuous place so that it can be seen. Persons operating more
14 than one place of business must secure a license for each place of
15 business. "Place of business" shall be construed to include the
16 place where orders are received, or where tobacco products are sold.
17 A "place of business" cannot be a location with a physical
18 residential address. The Tax Commission shall not issue a license
19 for a place of business with a physical residential address. If
20 tobacco products are sold on or from any vehicle, the vehicle shall
21 constitute a place of business, and the license fee of Two Hundred
22 Fifty Dollars (\$250.00) shall be paid with respect thereto.
23 However, if the vehicle is owned or operated by a place of business
24 for which the regular license fee is paid, the annual fee for the

1 license with respect to such vehicle shall be only Ten Dollars
2 (\$10.00). The expiration for such vehicle license shall expire on
3 the same date as the current license of the place of business.

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

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

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

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

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

20 Such license, which will be for the ensuing three (3) years,
21 must at all times be displayed in a conspicuous place so that it can
22 be seen. Upon expiration of such license, the retailer to whom such
23 license was issued may obtain a renewal license which shall be valid
24 for three (3) years or until expiration of the retailer's sales tax

1 permit, whichever is earlier, after which a renewal license shall be
2 valid for three (3) years. The manner and prorated fee for renewals
3 shall be prescribed by the Tax Commission. Every person operating
4 under such license as a retailer and who owns or operates more than
5 one place of business must secure a license for each place of
6 business. "Place of business" shall be construed to include places
7 where orders are received or where tobacco products are sold. A
8 "place of business" cannot be a location with a physical residential
9 address. The Tax Commission shall not issue a license for a place
10 of business with a physical residential address.

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

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

20 2. Wholesale and retail licenses shall be applied for on a form
21 prescribed by the Tax Commission. Any person operating as a
22 wholesaler or retailer must at all times have an effective unexpired
23 license which has been issued by the Tax Commission. If any such
24 person or licensee continues to operate as such on a license issued

1 by the Tax Commission which has expired, or operates without ever
2 having obtained from the Tax Commission such license, such person or
3 licensee shall, after becoming delinquent for a period in excess of
4 fifteen (15) days, pay to the Tax Commission, in addition to the
5 annual license fee, a penalty of Ten Dollars (\$10.00) per day on
6 each delinquent license for each day so operated in excess of
7 fifteen (15) days. The penalty provided for herein shall not exceed
8 the annual license fee for such license. The penalties collected
9 pursuant to the provisions of this paragraph shall be deposited in
10 the Tobacco Products Tax Enforcement Unit Revolving Fund created in
11 Section 7 400.6 of this ~~act~~ title.

12 E. No license may be granted, maintained or renewed if any of
13 the following conditions apply to the applicant. For purposes of
14 this section, "applicant" includes any combination of persons owning
15 directly or indirectly, in the aggregate, more than ten percent
16 (10%) of the ownership interests in the applicant:

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

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

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

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

5 G. In addition to any civil or criminal penalty provided by law,
6 upon a finding that a licensee has violated any provision of Section
7 301 et seq. of this title, the Tax Commission may revoke or suspend
8 the license or licenses of the licensee pursuant to the procedures
9 applicable to revocation of a license set forth in Section 418 of
10 this title.

11 SECTION 3. AMENDATORY 68 O.S. 2021, Section 400.1, is
12 amended to read as follows:

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

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

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

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

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

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

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

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

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

20 a. two members who are licensed wholesalers to be
21 appointed by the Governor,

22 b. one member who is a licensed retailer to be appointed
23 by the President Pro Tempore of the Oklahoma Senate,
24

1 c. one member who is a licensed retailer to be appointed
2 by the Speaker of the Oklahoma House of
3 Representatives, and

4 d. one member who is a licensed wholesaler to be
5 appointed by the four members provided for in
6 subparagraphs a through c of this paragraph.

7 The committee shall meet quarterly. The Oklahoma Tax Commission
8 shall promulgate rules establishing ~~the membership and~~ minimum
9 requirements as may be deemed necessary to carry out the purposes of
10 the committee; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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6 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 04/12/2023 - DO PASS,
7 As Amended.

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