An Act

ENROLLED HOUSE
BILL NO. 2361

By: Cox and Pittman of the House

and

David of the Senate

An Act relating to cigarette tax; amending 68 O.S. 2011, Section 317.8, which relates to actions to prevent or restrain violations; updating statutory citations; prohibiting the mailing, shipping or delivery of cigarettes to persons in this state; providing exceptions for certain types of persons and entities; defining certain terms; making it illegal for a common or contract carrier to knowingly transport cigarettes to nonexempt persons; allowing a certain number of cigarettes to be transported to a home or residence by certain persons; providing penalties for violations; making each illegal shipment or transport a separate violation; providing for deposit of civil penalties in the Attorney General's Evidence Fund; amending 68 O.S. 2011, Section 349.1, which relates to tobacco taxes on noncompacting tribes or nations; clarifying statutory citations; prohibiting traders from selling tobacco, cigars or cigarettes to persons under certain age; repealing 68 O.S. 2011, Sections 317.2, 317.3, 317.4, 317.5, as amended by Section 6, Chapter 357, O.S.L. 2012, 317.6 and 317.7 (68 O.S. Supp. 2013, Section 317.5), which relate to the requirements for the shipping and delivery of cigarettes; providing for codification; and providing an effective date.

SUBJECT: Cigarettes

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 317.8, is amended to read as follows:

Section 317.8 The Attorney General or his or her designee, or any person who holds a permit under 26 U.S.C., Section 5712, may bring an action in the appropriate court in the State of Oklahoma to prevent or restrain violations of Section ~~6, 7, 8, 9, 10 or 11~~ 317.1 of this ~~act~~ title by any person or any person controlling such person.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.9 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. No person or entity engaged in the business of selling or distributing cigarettes that is not a manufacturer, wholesaler, or distributor of cigarettes or other tobacco products licensed by the Oklahoma Tax Commission shall mail, ship or otherwise deliver cigarettes to any person in this state that is not:

1. A distributor or wholesaler of cigarettes licensed by the Oklahoma Tax Commission under Section 304 of Title 68 of the Oklahoma Statutes;

2. An export warehouse proprietor pursuant to Chapter 52 of the Internal Revenue Code or the operator of a customs bonded warehouse pursuant to 19 U.S.C., Section 1311 or 1555; or

3. A person who is an officer, employee or agent of the United States government, this state or a department, agency, instrumentality or political subdivision of the United States or this state when the person is acting in accordance with the official duties of the person.

B. For purposes of this section, "cigarette" shall have the same definition as that found in Section 600.22 of Title 37 of the Oklahoma Statutes and "distributor", "wholesaler" and "retailer" shall have the same definitions that are found in Section 301 of Title 68 of the Oklahoma Statutes.

C. It shall be illegal for any common or contract carrier to knowingly transport cigarettes to any person in this state reasonably believed by the carrier to be a person other than

described in paragraph 1, 2 or 3 of subsection A of this section. For purposes of this subsection, cigarettes may be transported to a home or residence in this state by persons other than common and contract carriers in quantities that do not exceed one thousand cigarettes at any one time.

D. 1. A person that violates the provisions of subsection A or C of this section shall be subject to:

a. a civil penalty of Two Thousand Five Hundred Dollars ($2,500.00) for each violation or Twenty-five Dollars ($25.00) for each pack of cigarettes shipped or transported, whichever is greater,

b. an injunction to restrain a threatened or actual violation of this section,

c. the costs of any investigation conducted by the state related to a violation of this section, and

d. attorney fees and costs.

2. Any cigarettes that are shipped or transported into this state in violation of this section shall be forfeited to the state and destroyed.

3. Each shipment, transport, or attempted shipment or transport of cigarettes or tobacco products in violation of this section shall constitute a separate violation.

E. All civil penalties obtained as a result of an action brought under this section shall be deposited into the Attorney General's Evidence Fund.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 349.1, is amended to read as follows:

Section 349.1 A. Sales of cigarettes and other tobacco products by retailers licensed by noncompacting federally recognized Indian tribes or nations (hereinafter "tribe or nation") shall be subject to the cigarette excise tax imposed by Section 302 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title and the excise tax on other tobacco products imposed by Section 402 et seq. of ~~Title 68 of the Oklahoma Statutes~~ this title.

B. 1. Members of noncompacting federally recognized Indian tribes or nations may purchase cigarettes and other tobacco products, without payment of Oklahoma cigarette excise tax or Oklahoma other tobacco products excise tax, subject to the following conditions:

a. the member of the noncompacting federally recognized Indian tribe (hereinafter "purchaser") is purchasing for his or her personal use, and not for sale, transfer or other disposition to another person or entity,

b. the purchaser is purchasing from a retailer licensed by the federally recognized Indian tribe or nation of which the purchaser is a member,

c. the licensed retailer of purchaser's federally recognized Indian tribe or nation is located upon "Indian country" of that licensing tribe or nation, as that term is defined by 18 USC ~~§~~ Section 1151(a) and paragraph 3 of Section ~~348.3~~ 348 of ~~Title 68 of the Oklahoma Statutes~~ this title.

2. Members of noncompacting federally recognized tribes or nations are not entitled to purchase cigarettes or other tobacco products, free of Oklahoma excise tax, from retailers licensed by any other tribe or nation, compacting or not, but have a right to purchase cigarettes and other tobacco products, free of Oklahoma excise tax, upon the "Indian country" of the tribe or nation of which the purchaser is a member, per the United States Supreme Court decision "Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma", 498 U.S. 505 (1991).

C. Cigarettes held for sale to members of a noncompacting tribe or nation by licensed retailers of that tribe or nation, which are located on the "Indian country" of that tribe or nation, as defined by 18 USC ~~§~~ Section 1151(a) and paragraph 3 of Section ~~348.3~~ 348 of ~~Title 68 of the Oklahoma Statutes~~ this title, must bear a stamp issued by the Oklahoma Tax Commission evidencing that cigarettes are purchased free of Oklahoma cigarette excise tax. The following procedures shall apply to said stamps (hereafter, "Native American tax free stamps"):

1. The probable demand for Native American tax free stamps for each noncompacting tribe or nation shall be determined by the Tax

Commission by ascertaining the total membership in Oklahoma of the tribe or nation from the Bureau of Indian Affairs or other reliable source of public information regarding such membership, and multiplying that number by the percentage of smokers in Oklahoma or in the United States, whichever is greater, based on the most recent data available from the State Department of Health and/or other reliable source of public information. The product of that calculation shall be multiplied by the average yearly consumption of cigarettes by smokers in Oklahoma or the United States, whichever is greater, based on the most recent data available from the State Department of Health and/or other reliable source of public information. The resulting number shall be deemed to constitute the probable demand for Native American tax free stamps of such noncompacting tribe or nation for a calendar year.

2. A preliminary determination of probable demand shall be furnished to the governing authorities of each noncompacting tribe or nation which may submit, for consideration by the Tax Commission, any verifiable information in its possession regarding such probable demand, including, but not limited to, a verifiable record of previous sales to tribal members or other statistical evidence.

3. After consideration of all verifiable information furnished by a noncompacting tribe or nation pursuant to paragraph 2 of this subsection, the Tax Commission shall make its final determination of probable demand, and furnish such determination to the subject noncompacting tribe or nation and to all Oklahoma-licensed cigarette wholesalers.

4. Each calendar year, the Tax Commission shall establish, as to any and all Oklahoma-licensed cigarette wholesalers supplying cigarettes to tribally licensed or owned retailers of each noncompacting tribe or nation an allocation of the probable demand for such tribe or nation, based upon each wholesaler's previous year's reported sales of cigarettes to the tribally licensed or owned retailers of such tribe or nation. In making such allocation, the Tax Commission shall consider such other verifiable information as may be submitted by a licensed wholesaler or such tribe or nation. Upon reaching a final determination of allocation, the Tax Commission shall advise the affected wholesaler and the tribe or nation.

5. Oklahoma-licensed wholesalers may request and receive from the Tax Commission, at the beginning of each quarter of the year, their allocated share of Native American tax free stamps for the

tribally licensed or owned retailers of each noncompacting tribe or nation. Once a wholesaler has received its allocated share of Native American tax free stamps for the tribally licensed or owned retailers of a noncompacting tribe or nation for the quarter, that wholesaler may not receive any further Native American tax free stamps for tribally licensed or owned retailers of that tribe or nation during the quarter, absent good cause shown by verifiable information submitted by the wholesaler and/or that tribe or nation, which shall be considered and determined by the Tax Commission on a case-by-case basis.

6. The Tax Commission is empowered and authorized to promulgate such rules and regulations as, in its discretion, shall be deemed necessary to implement and enforce the provisions of this section.

7. The sale of cigarettes bearing the Native American tax-free stamp to a nonmember of the tribe or nation which licensed the tribally owned or licensed retailer shall, in accordance with the United States Supreme Court decision "Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma", 498 U.S. 505 (1991), obligate that tribal retailer for payment of the applicable Oklahoma cigarette excise tax, together with the costs and attorney fees associated with any civil action brought to collect the unpaid Oklahoma cigarette excise tax. Such actions may be instituted in the district court in and for the county in which the tribal retailer is located.

D. The Oklahoma excise tax on all tobacco products other than cigarettes (hereafter "other tobacco products") held for sale by Oklahoma-licensed wholesalers shall be paid by the wholesaler and stamps affixed thereto by the wholesaler pursuant to Section 403 of ~~Title 68 of the Oklahoma Statutes~~ this title, including those other tobacco products which may be purchased by members of noncompacting tribes and nations on the "Indian country" of such tribe or nation from a retailer licensed or owned by such tribe or nation. The following procedures shall apply to the tax-free sale of other tobacco products:

1. The probable demand for the tax-free consumption of other tobacco products by members of each noncompacting tribe or nation shall be determined by the Tax Commission by ascertaining the total membership in Oklahoma of the tribe or nation from the Bureau of Indian Affairs or other reliable source of public information regarding such membership, and multiplying that number by the percentage of users of such other tobacco products in Oklahoma or

the United States, whichever is greater, based on the most recent data available from the State Department of Health and/or other reliable source of public information. The product of that calculation shall be multiplied by the average yearly consumption of users of such other tobacco products in Oklahoma or the United States, whichever is greater, based on the most recent data available from the State Department of Health and/or other reliable source of public information. The resulting number shall be deemed to constitute the probable demand for the tax-free consumption of other tobacco products by members of such noncompacting tribes or nations for a calendar year.

2. A preliminary determination of probable demand shall be furnished to the governing authorities of each noncompacting tribe or nation, which may submit, for consideration by the Tax Commission, any verifiable information in its possession regarding such probable demand, including, but not limited to, a verifiable record of previous sales to tribal members or other statistical evidence.

3. After consideration of all verifiable information furnished by a noncompacting tribe or nation pursuant to paragraph 2 of this subsection, the Tax Commission shall make its final determination of probable demand and furnish such determination to the subject noncompacting tribe or nation and to all Oklahoma-licensed other tobacco product wholesalers.

4. Each calendar year, the Tax Commission shall establish, as to any and all Oklahoma-licensed other tobacco product wholesalers supplying other tobacco products to the tribally licensed or owned retailers of each noncompacting tribe or nation an allocation of the probable demand for such tribe or nation, based upon each wholesaler's previous year's reported sales of other tobacco products to the tribally licensed or owned retailers of such tribe or nation. In making such allocation, the Tax Commission shall consider such other verifiable information as may be submitted by a licensed wholesaler or such tribe or nation. Upon reaching a final determination of allocation, the Tax Commission shall advise the affected wholesaler and the tribe or nation.

5. Oklahoma-licensed wholesalers may request and receive from the Tax Commission, on the 30th of each month, a refund and/or credit for the previous month's tax-free sales of other tobacco products, equal to the lesser of: one twelfth (1/12) of their allocated share of tax-free sales of other tobacco products to the

tribally licensed or owned retailers of each noncompacting tribe or nation or verifiable tax-free sales to the licensed or owned tribal retailers of such tribe or nation. Once a wholesaler has received such refund and/or credit for a previous month's tax-free sales to the tribally licensed or owned retailers of each noncompacting tribe or nation, that wholesaler may not receive any further refund and/or credit for said previous month, absent good cause shown by verifiable information submitted by the wholesaler and/or the noncompacting tribe or nation, which shall be considered and determined by the Tax Commission on a case-by-case basis.

6. The Tax Commission is empowered and authorized to promulgate such rules and regulations as, in its discretion, shall be deemed necessary to implement and enforce the provisions of this section.

7. The tax-free sale of other tobacco products to a nonmember of the noncompacting tribe or nation which licenses the tribally owned or licensed retailer shall, in accordance with the United States Supreme Court decision "Oklahoma Tax Commission v. Citizen Potawatomi Indian Tribe of Oklahoma", 498 U.S. 505 (1991), obligate that tribal retailer for payment of the applicable Oklahoma other tobacco product excise tax, together with the costs and attorney fees associated with any civil action brought to collect the unpaid Oklahoma other tobacco product excise tax. Such actions may be instituted in the district court in and for the county in which the tribal retailer is located.

E. The provisions of this section are intended to, and shall be construed to apply only to, sales of cigarettes and other tobacco products on the "Indian country" of noncompacting federally recognized Indian tribes or nations to the members of such tribes or nations. In the event that a noncompacting tribe or nation enters into an agreement with the State of Oklahoma, pursuant to Section 346 of ~~Title 68 of the Oklahoma Statutes~~ this title, the terms of such compact shall take precedence over the provisions of this section, which shall have no application to any tribe or nation, while any compact between the State of Oklahoma and that tribe or nation is in force and effect.

F. All cigarettes which are sold or held for sale at tribally owned or licensed stores shall have affixed thereto a stamp or stamps evidencing payment or nonpayment of the Oklahoma cigarette excise tax, as required by the provisions in this section.

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

H. Any person who knowingly engages in shipping, transporting, receiving, processing, selling, distributing or purchasing contraband cigarettes shall be subject to the forfeiture of property as is provided by Section 305 of ~~Title 68 of the Oklahoma Statutes~~ this title and assessment of penalty as provided thereby and assessment for any delinquent taxes found to be owing.

I. Pursuant to 25 C.F.R., Section 140.17, no trader shall sell tobacco, cigars or cigarettes to any Indian or other person under eighteen (18) years of age.

SECTION 4. REPEALER 68 O.S. 2011, Sections 317.2, 317.3, 317.4, 317.5, as amended by Section 6, Chapter 357, O.S.L. 2012, 317.6 and 317.7 (68 O.S. Supp. 2013, Section 317.5), are hereby repealed.

SECTION 5. This act shall become effective November 1, 2014.

Passed the House of Representatives the 20th day of May, 2014.

Presiding Officer of the House
of Representatives

Passed the Senate the 14th day of April, 2014.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 21st
day of May, 20 14, at 12:07 o'clock P M.
By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 28th
day of May, 20 14, at 1:17 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 28th
day of May, 20 14, at 2:54 o'clock P. M.
By: C. Benge