An Act

ENROLLED SENATE
BILL NO. 601

By: Rader of the Senate

and

Pfeiffer of the House

An Act relating to cigarette and tobacco products; amending 68 O.S. 2021, Sections 304 and 415, which relate to licenses; modifying definition; amending 68 O.S. 2021, Section 400.1, which relates to enforcement of tobacco tax laws; providing for membership of industry advisory committee; amending 68 O.S. 2021, Section 400.5, which relates to the purchase of tobacco products; clarifying certain enforcement procedure; amending 68 O.S. 2021, Section 417, which relates to seizure of untaxed tobacco products; clarifying certain enforcement procedure; providing an effective date; and declaring an emergency.

SUBJECT: Cigarette and tobacco products

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 business, shall annually secure from the Oklahoma Tax Commission a written license, and shall pay therefor an annual fee of Two Hundred Fifty Dollars ($250.00). Application for such license, which shall

be made upon such forms as prescribed by the Oklahoma Tax Commission, shall include the following:

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

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

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

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

This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include the place where orders are received, or where cigarettes are sold. A "place of business" cannot be a location with a physical residential address. The Tax Commission shall not issue a license for a place of business with a physical residential address. If cigarettes are sold on or from any vehicle, the vehicle shall constitute a place of business and the regular license fee shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular fee is paid, the annual fee for the license with respect to such vehicle shall be only Ten Dollars ($10.00). The expiration for such vehicle license shall expire on the same date as the current license of the place of business.

Provided, that the Tax Commission shall not authorize the use of a stamp-metering device by any manufacturer or wholesaler who does not maintain a warehouse or wholesale establishment or place of business within the State of Oklahoma from which cigarettes are received, stocked and sold and where such metering device is kept and used; but the Tax Commission may, in its discretion, permit the use of such metering device by manufacturers and wholesalers of

cigarettes residing wholly within another state where such state permits a licensed Oklahoma resident, manufacturer or wholesaler of cigarettes the use of the metering device of such state without first requiring that such manufacturer or wholesaler establish a place of business in such other state. The provisions of this subsection relating to metering devices shall not apply to states which do not require the affixing of tax stamps to packages of cigarettes before same are offered for sale in such states.

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

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

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

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

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

Such license, which will be for the ensuing three (3) years, must at all times be displayed in a conspicuous place so that it can be seen. Upon expiration of such license, the retailer to whom such license was issued may obtain a renewal license which shall be valid for three (3) years. The manner and prorated fee for renewals shall be prescribed by the Tax Commission. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include places where orders are received or where cigarettes are sold. A "place of business" cannot be a location with a physical residential address.

The Tax Commission shall not issue a license for a place of business with a physical residential address.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 415. A. Every wholesaler of tobacco products 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 an annual fee of Two Hundred Fifty Dollars ($250.00); provided, such fee shall not be applicable if paid pursuant to Section 304 of this title. The Tax Commission shall promulgate rules which provide a procedure for the issuance of a joint license for any wholesaler making application pursuant to this section and Section 304 of this title. Application for such license, which shall be made upon such forms as prescribed by the Tax Commission, shall include the following:

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

2. The applicant's agreement to abide by the provisions of Section 301 et seq. of this title and the rules promulgated by the Tax Commission with reference thereto. This license, which will be for the ensuing year, must at all times be displayed in a

conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include the place where orders are received, or where tobacco products are sold. A "place of business" cannot be a location with a physical residential address. The Tax Commission shall not issue a license for a place of business with a physical residential address. If tobacco products are sold on or from any vehicle, the vehicle shall constitute a place of business, and the license fee of Two Hundred Fifty Dollars ($250.00) shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular license fee is paid, the annual fee for the license with respect to such vehicle shall be only Ten Dollars ($10.00). The expiration for such vehicle license shall expire on the same date as the current license of the place of business.

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

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

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

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

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

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

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

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

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

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

E. No license may be granted, maintained or renewed if any of the following conditions apply to the applicant. For purposes of this section, "applicant" includes any combination of persons owning

directly or indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the applicant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The committee shall meet quarterly. The Oklahoma Tax Commission shall promulgate rules establishing ~~the membership and~~ minimum

requirements as may be deemed necessary to carry out the purposes of the committee; and

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

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

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

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

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

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

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

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

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

C. The person making such seizure shall immediately make and file a written report thereof to the Tax Commission, showing the name of the person making such seizure, the place where seized, the person from whom seized, the property seized and an inventory and appraisement thereof, which inventory shall be based on the usual and ordinary retail price or value of the articles seized, and the Attorney General, in the case of tobacco products sold, offered for sale or imported into this state in violation of the provisions of Section 403.2 of this title. Within sixty (60) days of seizure, the person from whom the property was seized may file a request for hearing with the Tax Commission or the Attorney General to show why

the seized property should not be forfeited and destroyed. If a hearing is requested, the owner of the tobacco products shall be given at least ten (10) days' notice of the hearing. If no request for hearing is filed within the time provided, the property seized will be forfeited and destroyed.

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

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

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

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

Passed the Senate the 18th day of May, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 19th

day of May, 20 23, at 10:16 o'clock a. M.

By: Turner Curry

Approved by the Governor of the State of Oklahoma this 25th

day of May, 20 23, at 8:50 o'clock a. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 25th

day of May, 20 23, at 11:24 o'clock a M.

By: Brian Bingman