

## **SENATE FLOOR VERSION**

February 27, 2025

SENATE BILL NO. 1102

By: Coleman of the Senate

and

## Roe of the House

An Act relating to vapor products; amending 63 O.S. 2021, Section 1-229.35, as amended by Section 1, Chapter 95, O.S.L. 2022 (63 O.S. Supp. 2024, Section 1-229.35), which relates to vapor product manufacturer attestation; defining terms; modifying and adding requirements for certain attestation; transferring certain duties to the Office of the Attorney General; updating statutory language; providing certain exemptions; requiring certain notice; directing seizure of certain products; providing date of certain withdrawal; prohibiting certain sales; establishing certain penalties and remedies for violations; imposing certain requirements on nonresident of foreign manufacturer; allowing certain compliance checks; promulgating certain rules; directing certain funds; requiring certain report; amending 68 O.S. 2021, Sections 400.1, as amended by Section 3, Chapter 285, O.S.L. 2023, 400.5, as amended by Section 4, Chapter 285, O.S.L. 2023, 401, 414, 415, as amended by Section 2, Chapter 285, O.S.L. 2023, 417, as amended by Section 5, Chapter 285, O.S.L. 2023, 420.1, and 422 (68 O.S. Supp. 2024, Sections 400.1, 400.5, 415, and 417), which relate to tobacco and vapor products; requiring certain enforcement; updating statutory language; updating statutory references; modifying certain definitions; and declaring an emergency.

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

1 SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-229.35, as  
2 amended by Section 1, Chapter 95, O.S.L. 2022 (63 O.S. Supp. 2024,  
3 Section 1-229.35), is amended to read as follows:

4 Section 1-229.35. A. As used in this section:

5 1. "FDA" means the United States Food and Drug Administration;

6 2. "Timely filed premarket tobacco product application" means

7 an application pursuant to 21 U.S.C., Section 387j, for a vapor

8 product containing nicotine derived from tobacco marketed in the

9 United States as of August 8, 2016, that was submitted to the FDA on

10 or before September 9, 2020, and accepted for filing; and

11 3. "Vapor product" means a noncombustible product that contains

12 nicotine and that employs a mechanical heating element, battery,

13 electronic circuit, or other mechanism, regardless of shape or size,

14 that can be used to produce a vapor from a solution. Vapor product

15 includes any cartridge or other container with nicotine that is

16 intended to be used with an electronic cigarette, electronic cigar,

17 electronic cigarillo, electronic pipe, or other similar product or

18 device. Vapor product does not include any products regulated by

19 the FDA under Chapter V of the Federal Food, Drug, and Cosmetic Act.

20 B. Beginning July 1, 2023 2025, and annually thereafter, every

21 manufacturer of a vapor product that is sold or intended to be sold

22 for retail sale or to a consumer in this state, whether directly or

23 through a wholesaler, distributor, retailer, or similar intermediary

24 or intermediaries, shall execute and deliver an attestation under

1      penalty of perjury to the Oklahoma Alcoholic Beverage Laws  
2      Enforcement (ABLE) Commission Attorney General certifying that, as  
3      of the date of such attestation form:

4      1. ~~The vapor product was available for purchase in the United~~  
5      States as of August 8, 2016, and the manufacturer has applied for a  
6      marketing order for the vapor product by submitting a Premarket  
7      Tobacco Product Application on or before September 9, 2020, to the  
8      United States Food and Drug Administration (FDA) The manufacturer  
9      submitted a timely filed premarket tobacco product application for  
10     the vapor product to the FDA pursuant to 21 U.S.C., Section 387j,  
11     and the application either remains under review by the FDA or has  
12     received a denial order that has been and remains stayed by the FDA  
13     or a court order, rescinded by the FDA, or vacated by a court; or

14     2. The manufacturer has received a marketing granted order or  
15     ~~other authorization~~ for the vapor product from the FDA pursuant to  
16     Section 387j of Title 21 of the United States Code.

17        B. The C. The manufacturer is not required to submit an  
18     additional marketing granted order or premarket tobacco product  
19     application for the vapor product because a change to the vapor  
20     product merely reflects change to the name, brand style, or  
21     packaging of a vapor product that is covered under paragraph 1 or 2  
22     of subsection B of this section.

23        D. The attestation form shall separately list each brand name,  
24     product name, flavor, and category including e-liquid, power unit,

1    disposable vapor product, device, e-liquid cartridge, or e-liquid  
2    pod for each vapor product that is sold in this state.

3    E. Each annual attestation form shall be accompanied by:

4    1. A copy of:

- 5    a. the marketing granted order issued by the FDA pursuant  
6    to 21 C.F.R. 1114.31,
- 7    b. the acceptance letter issued by the FDA pursuant to 21  
8    C.F.R. 1114.27, for a timely filed premarket tobacco  
9    product application, or
- 10    c. the document issued by the FDA or by a court  
11    confirming that the premarket tobacco product  
12    application has received a denial order that has been  
13    and remains stayed by the FDA or a court order,  
14    rescinded by the FDA, or vacated by a court; and

15    2. A payment of Five Thousand Dollars (\$5,000.00) the first time

16    the manufacturer submits an attestation form and a payment of Two  
17    Thousand Five Hundred Dollars (\$2,500.00) for each annual renewal  
18    submission.

19    F. The information submitted by the manufacturer pursuant to

20    subsection C of this section shall be considered confidential  
21    commercial or financial information for purposes of Section 24A.1 et  
22    seq of Title 51 of the Oklahoma Statutes. The manufacturer may  
23    redact certain confidential or commercial information provided under  
24    paragraph 1 of subsection E and paragraph 2 of subsection J of this

1    section. The Attorney General shall not disclose such information  
2    except as required or authorized by law.

3    G. A manufacturer required to submit an attestation form  
4    pursuant to this section shall notify the ABLE Commission Attorney  
5    General within thirty (30) days of any material change to the  
6    attestation form, including whether the FDA has issued or not issued  
7    a market order or other authorization or has ordered the  
8    manufacturer to remove the vapor product, either temporarily or  
9    permanently, from the United States market the issuance or denial of  
10   a marketing authorization or other order by the FDA pursuant to 21  
11   U.S.C., Section 387j, or any other order or action by the FDA or any  
12   court that affects the ability of the vapor product to be introduced  
13   or delivered into interstate commerce for commercial distribution in  
14   the United States.

15   C. The ABLE Commission

16   H. 1. No later than September 1, 2026, the Attorney General  
17   shall develop a directory listing all of the manufacturers that have  
18   provided attestations that comply with subsection A of this section  
19   and all vapor products that are listed in such attestations. The  
20   ABLE Commission shall:

21   1. Make the directory available for public inspection on its  
22   website on or before October 1, 2023; and

23   2. Update the directory as necessary to correct mistakes and to  
24   add or remove manufacturers or vapor products to maintain the

1 ~~directory in conformity with the requirements of this section~~  
2 maintain and make publicly available on the Attorney General's  
3 official website a directory that lists all vapor product  
4 manufacturers and all vapor products including brand names, product  
5 names, flavor, and categories to include e-liquid, power unit,  
6 disposable vapor product, device, e-liquid cartridge, or e-liquid  
7 pod for which certification forms have been submitted and approved  
8 by the Attorney General.

9 2. The Attorney General shall update the directory at least  
10 monthly to ensure accuracy, and shall establish a process to provide  
11 retailers, distributors, and wholesalers and other relevant parties  
12 notice of the initial publication of the directory and changes made  
13 to the directory in the prior month.

14 ~~D. It shall be unlawful for any person, directly or indirectly,~~  
15 ~~to knowingly manufacture, distribute, sell, barter, or furnish in~~  
16 ~~this state any vapor product that is not included in the directory~~

17 I. No manufacturer or the manufacturer's vapor products shall  
18 be included or retained in the directory if the Attorney General  
19 determines that any of the following apply:

20 1. The manufacturer failed to provide a complete and accurate  
21 attestation form as required by this section;

22 2. The manufacturer submitted an attestation form that does not  
23 comply with the requirements of subsections D and E of this section;

1       3. The manufacturer failed to include with its certification  
2       the payment required by subsection E of this section;

3       4. The manufacturer sold vapor products in this state required  
4       to be certified under this act during a period when either the  
5       manufacturer or the vapor product had not been certified and listed  
6       on the directory; or

7       5. The information provided by the manufacturer in its  
8       certification is determined by the Attorney General to contain false  
9       information or contains material misrepresentations or omissions.

10      J. The Attorney General shall provide manufacturers notice and  
11      an opportunity to cure deficiencies before removing manufacturers or  
12      vapor products from the directory.

13      1. The Attorney General may not remove a manufacturer or its  
14      vapor products from the directory until at least thirty (30) days  
15      after the manufacturer has been given notice of an intended action.  
16      Notice shall be sufficient and be deemed immediately received by a  
17      manufacturer if the notice is sent either electronically or by  
18      facsimile to an electronic mail address or facsimile number,  
19      provided by the manufacturer in its most recent certification filed  
20      under this section.

21      2. A manufacturer shall have fifteen (15) days from the date of  
22      service of notice of the Attorney General's intended action to cure  
23      the deficiencies or establish that the vapor product manufacturer or  
24      its vapor products should be included in the directory.

1       3. Retailers shall have thirty (30) days following the removal  
2 of a manufacturer or its vapor products from the directory to sell  
3 such vapor products that were in the retailer's inventory as of the  
4 date of removal.

5       4. After thirty (30) days following removal from the directory,  
6 the vapor products of a manufacturer identified in the notice of  
7 removal and intended for retail sale in this state or to a consumer  
8 in this state are subject to seizure from distributors and  
9 retailers, forfeiture from distributors and retailers, and  
10 destruction or disposal, and may not be purchased or sold for retail  
11 sale in this state. The cost of such seizure, forfeiture, and  
12 destruction or disposal shall be borne by the person from whom the  
13 vapor products are confiscated.

14       5. The directory developed by the Alcoholic Beverage Laws  
15 Enforcement (ABLE) Commission and published prior to the date of  
16 enactment of this act shall be withdrawn on September 1, 2026, or on  
17 the date the Attorney General first makes the new directory  
18 available for public inspection on its website as provided in  
19 subsection H of this section.

20       K. 1. Except as provided in paragraphs 2 and 3 of this  
21 subsection, beginning September 1, 2026, or on the date that the  
22 Attorney General first makes the directory available for public  
23 inspection on its official website, whichever is later, vapor  
24 products not included in the directory may not be sold for retail

1   sale in this state or to a consumer in this state, either directly  
2   or through an importer, distributor, wholesaler, retailer, or  
3   similar intermediary or intermediaries.

4   2. Each retailer shall have sixty (60) days from the date that  
5   the Attorney General first makes the directory available for  
6   inspection on its public website to sell vapor products that were in  
7   its inventory but not included in the directory or to remove those  
8   vapor products from inventory.

9   3. Each distributor or wholesaler shall have sixty (60) days  
10   from the date that the Attorney General first makes the directory  
11   available for inspection on its public website to remove those vapor  
12   products intended for retail sale in the state from its inventory.

13   4. After sixty (60) days following publication of the  
14   directory, vapor products not listed in the directory and intended  
15   for retail sale in this state or to a consumer in this state are  
16   subject to seizure, forfeiture, and destruction or disposal, and may  
17   not be purchased or sold for retail sale in this state except as  
18   provided in this subsection and subsection J of this section. The  
19   cost of such seizure, forfeiture, and destruction or disposal shall  
20   be borne by the person from whom the products are confiscated.

21   L. The following penalties and remedies shall apply to  
22   violations of this section:

23   1. A retailer, distributor, wholesaler, or importer who sells  
24   or offers for sale a vapor product for retail sale in this state or

1   to a consumer in this state that is not included in the directory  
2   shall be subject to a civil penalty of Five Hundred Dollars  
3   (\$500.00) for each individual vapor product offered for sale in  
4   violation of this section;

5   2. For a second violation of this type within a twelve-month  
6   period, the administrative fine established by the Attorney General  
7   shall be at least Two Thousand Five Hundred Dollars (\$2,500.00) but  
8   not more than Five Thousand Dollars (\$5,000.00) for each individual  
9   vapor product offered for sale in violation of this section;

10   3. For a third or any subsequent violation within a twelve-  
11   month period, there shall be an administrative fine of at least Five  
12   Thousand Dollars (\$5,000.00) for each individual vapor product  
13   offered for sale in violation of this section;

14   4. A manufacturer whose vapor products are not listed in the  
15   directory and who causes the vapor products that are not listed to  
16   be sold for retail sale or to a consumer in this state, whether  
17   directly or through an importer, distributor, wholesaler, retailer,  
18   or similar intermediary or intermediaries, is subject to a civil  
19   penalty of Ten Thousand Dollars (\$10,000.00) for each individual  
20   vapor product offered for sale in violation of this section until  
21   the offending vapor product is removed from the market or until the  
22   offending vapor product is properly listed on the directory. In  
23   addition, any manufacturer that falsely represents any information

1 required by a certification form shall be guilty of a misdemeanor  
2 for each false representation;

3       5. In an action to enforce this act, this state shall be  
4       entitled to recover costs, including the costs of investigation,  
5       expert witness fees, and reasonable attorney fees; and

6       6. A second or subsequent violation of this section shall  
7       constitute a deceptive trade practice for purposes of the Oklahoma  
8       Deceptive Trade Practices Act and, in addition to the remedies  
9       provided for in this section, shall be subject to the remedies  
10      provided in Section 54 of Title 78 of the Oklahoma Statutes.

11       M. 1. Any nonresident or foreign manufacturer that has not  
12      registered to do business in this state as a foreign corporation or  
13      business entity shall appoint and continually engage without  
14      interruption, as a condition precedent to having its vapor products  
15      included or retained in the directory, the services of an agent in  
16      this state to act as an agent for the service of process on whom all  
17      process, and any action or proceeding against it concerning or  
18      arising out of the enforcement of this section, may be served in any  
19      manner authorized by law. The service shall constitute legal and  
20      valid service of process on the manufacturer. The manufacturer  
21      shall provide the name, address, phone number, and proof of the  
22      appointment and availability of the agent to perform the duties of  
23      an agent to the satisfaction of the Attorney General.

1       2. The manufacturer shall provide notice to the Attorney  
2       General thirty (30) days prior to termination of the authority of an  
3       agent and shall further provide proof to the satisfaction of the  
4       Attorney General of the appointment of a new agent no less than five  
5       (5) days prior to the termination of an existing agent appointment.  
6       If an agent terminates an agency appointment, the manufacturer shall  
7       notify the Attorney General of the termination within five (5) days  
8       and shall include proof to the satisfaction of the Attorney General  
9       of the appointment of a new agent.

10      3. Any nonresident or foreign manufacturer whose vapor products  
11     are sold for retail sale in this state, who has not appointed and  
12     engaged an agent as required by this section, shall be deemed to  
13     have appointed the Secretary of State as its agent and may be  
14     proceeded against in courts of this state by service of process upon  
15     the Secretary of State. However, the appointment of the Secretary  
16     of State as the agent shall not satisfy the condition precedent for  
17     having the vapor products of the manufacturer included or retained  
18     in the directory.

19      N. 1. Any nonresident or foreign manufacturer that has not  
20     registered to do business in the state as a foreign corporation or  
21     business entity shall, as a condition precedent to having its name  
22     or its vapor products listed and retained in the directory, submit  
23     to the Attorney General a surety bond or other cash security payable  
24     to the State of Oklahoma in the amount of Twenty-five Thousand

1 Dollars (\$25,000.00). The bond shall be posted by a corporate  
2 surety located within the United States.

3       2. The bond shall be conditioned on the performance by the  
4 manufacturer of all requirements and obligations imposed by this  
5 section. A surety on a manufacturer's bond shall be liable up to  
6 the amount of the bond, and the state may execute on such surety  
7 bond for the payment of fines and penalties imposed on the  
8 manufacturer under this section and for the costs of seizure and  
9 destruction of vapor products sold in violation of this section. If  
10 the state executes on the surety bond, it may require the  
11 manufacturer to provide an additional bond as a condition precedent  
12 for retaining the manufacturer or its vapor products in the  
13 directory.

14       3. A surety on a bond furnished by a manufacturer as provided  
15 in this section shall be released and discharged from liability to  
16 the state accruing on the bond after expiration of sixty (60) days  
17 from the date upon which such surety shall have lodged with the  
18 Attorney General a written request to be released and discharged.  
19 This provision shall not operate to relieve, release, or discharge  
20 the surety from liability already accrued or which shall accrue  
21 before the expiration of the sixty-day period. The Attorney General  
22 shall, upon receiving any such request, notify the manufacturer who  
23 furnished the bond. Unless the manufacturer, on or before the  
24 expiration of the sixty-day period, files with the Attorney General

1 a new bond, with the surety approved by and acceptable to the  
2 Attorney General, the Attorney General shall remove the manufacturer  
3 and its vapor products from the directory.

4 O. Each wholesaler and retailer of vapor products shall be  
5 subject to at least two unannounced compliance checks by the  
6 Attorney General or its agents, which shall include the ABLE  
7 Commission or local law enforcement, annually for purposes of  
8 enforcing this section, and such compliance checks may be conducted  
9 at any time during normal operating hours. Unannounced follow-up  
10 compliance checks of all noncompliant wholesalers and retailers are  
11 required within thirty (30) days after any violation of this act.

12 The Attorney General shall publish the results of all compliance  
13 checks at least annually and shall make the results available to the  
14 public on request.

15 P. The Attorney General shall adopt rules for the implementation  
16 and enforcement of this section.

17 Q. All fees and penalties collected pursuant to this section  
18 shall be used for administration and enforcement of this section.

19 R. Starting January 31, 2026, and annually thereafter, the  
20 Attorney General shall electronically submit a report to the  
21 Governor, the President Pro Tempore of the Senate, and the Speaker  
22 of the House of Representatives regarding the status of the  
23 directory, manufacturers and vapor products included in the  
24 directory, revenue and expenditures related to administration of

1    this section, and enforcement activities undertaken pursuant to this  
2    section.

3                 SECTION 2.            AMENDATORY            68 O.S. 2021, Section 400.1, as  
4    amended by Section 3, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2024,  
5    Section 400.1), is amended to read as follows:

6                 Section 400.1. A. For the purpose of enforcing the tobacco tax  
7    laws of this state, the Oklahoma Tax Commission is authorized,  
8    contingent upon the availability of funds, to establish and maintain  
9    a unit to be known as the "Tobacco Products Tax Enforcement Unit".  
10   The unit shall enforce the tobacco tax laws of this state and ensure  
11   that all taxes are paid on tobacco products and ensure compliance  
12   with the provisions of Section 1-229.35 of Title 63 of the Oklahoma  
13   Statutes for tobacco products and vapor products by:

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

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

20                 3. Verifying that all retailers are only purchasing vapor  
21   products listed in the directory created pursuant to subsection H of  
22   Section 1-229.35 of Title 63 of the Oklahoma Statutes;

23                 3. 4. Providing a dedicated telephone line and email address  
24   for licensed wholesalers, licensed retailers and the general public

1 to report suspected violations of tobacco tax laws; provided, no  
2 entity, individual or those who report violations on behalf of a  
3 licensed wholesaler or retailer shall be required to disclose their  
4 identity;

5 4. 5. Auditing licensed wholesalers and retailers to ensure all  
6 tobacco product taxes are paid;

7 5. 6. Issuing fines for violations as provided in Section 400  
8 et seq. of Title 68 of the Oklahoma Statutes;

9 6. 7. Conducting wholesale and retail tobacco inspections to  
10 find and confiscate untaxed tobacco products or vapor products that  
11 may not be sold legally in this state;

12 7. 8. Establishing data-sharing programs with tax departments  
13 in surrounding states related to tobacco product taxes and illicit  
14 trade in tobacco products or vapor products;

15 8. 9. Creating an industry advisory committee including  
16 licensed wholesalers and retailers who may represent the entity  
17 related to tobacco products tax enforcement concerns and  
18 suggestions. The industry advisory committee shall be composed of  
19 five (5) members as 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,

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

10                 9. 10. Working with law enforcement and conducting  
11                 investigations to stop illegal acquisition and shipment of tobacco  
12                 products or vapor products by persons not licensed to sell tobacco  
13                 products or vapor 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 or illicit  
18                 tobacco products or vapor products confiscated, the number of  
19                 tobacco products tax audits conducted, the amount of taxes assessed  
20                 and the amount of taxes collected as the result of audits and  
21                 confiscations, the number of suspected violations reported and the  
22                 actions taken in response, and the number of fines issued and the  
23                 amount of fines collected.

1 SECTION 3. AMENDATORY 68 O.S. 2021, Section 400.5, as  
2 amended by Section 4, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2024,  
3 Section 400.5), is amended to read as follows:

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

21 B. The Oklahoma Tax Commission shall make available for all  
22 licensed retailers a list of currently licensed wholesalers or vapor  
23 product manufacturers at least monthly or through the use of a  
24 website maintained by or on behalf of the Oklahoma Tax Commission

1 with updates made as often as practical but no less than every  
2 thirty (30) days.

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

7 SECTION 4. AMENDATORY 68 O.S. 2021, Section 401, is  
8 amended to read as follows:

9 Section 401. A. For the purpose of this article:

10 1. The word "person" shall mean any individual, company,  
11 limited liability company, corporation, partnership, association,  
12 joint adventure, estate, trust or any other group, or combination  
13 acting as a unit, and the plural as well as the singular, unless the  
14 intention to give a more limited meaning is disclosed by the  
15 context;

16 2. The term "Tax Commission" shall mean the Oklahoma Tax  
17 Commission;

18 3. The word "wholesaler" shall include dealers whose principal  
19 business is that of a wholesale dealer, and who is known to the  
20 trade as such, who shall sell any tobacco products or vapor products  
21 to licensed retail dealers only for the purpose of resale;

22 4. The word "retailer" shall include every dealer, other than a  
23 wholesaler as defined above, whose principal business is that of

1 selling merchandise at retail, who shall sell, or offer for sale,  
2 tobacco products or vapor products;

3       5. The word "consumer" shall mean a person who comes into  
4 possession of tobacco products or vapor products for the purpose of  
5 consuming it;

6       6. The words "first sale" shall mean and include the first  
7 sale, or distribution, of tobacco products or vapor products in  
8 intrastate commerce, or the first use or consumption of tobacco  
9 products or vapor products within this state;

10      7. The words "tobacco products" shall mean any cigars, smoking  
11 tobacco and smokeless tobacco;

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

16      9. The term "smokeless tobacco" shall mean all smokeless  
17 tobacco including snuff and chewing tobacco;

18      10. The term "snuff" shall mean any finely cut, ground or  
19 powdered tobacco that is not intended to be smoked;

20      11. The term "chewing tobacco" means any leaf tobacco that is  
21 not intended to be smoked;

22      12. The term "smoking tobacco" shall mean any pipe tobacco or  
23 roll-your-own tobacco;

1       13. The term "pipe tobacco" means any tobacco which, because of  
2 its appearance, type, packaging or labeling, is suitable for use and  
3 likely to be offered to, or purchased by, consumers as tobacco to be  
4 smoked in a pipe;

5       14. The term "roll-your-own tobacco" means any tobacco which,  
6 because of its appearance, type, packaging or labeling, is suitable  
7 for use and likely to be offered to, or purchased by, consumers as  
8 tobacco for making cigarettes or cigars, or for use as wrappers  
9 therof; and

10      15. The term "untaxed" means that the full amount of tax has  
11 not been paid as required by Section 400 et seq. of this title; and

12      16. The term "vapor product" has the same meaning as that term  
13 is defined in Section 1-229.35 of Title 63 of the Oklahoma Statutes.

14      SECTION 5.       AMENDATORY       68 O.S. 2021, Section 414, is  
15 amended to read as follows:

16      Section 414. A. Each truck or vehicle wherefrom tobacco  
17 products or vapor products are sold shall be considered as a place  
18 of business and required to have a wholesale license and a bond of  
19 not less than Five Hundred Dollars (\$500.00).

20      B. Any person operating a truck or vehicle by selling,  
21 exchanging or giving away untaxed ~~merchandise covered by this~~  
22 ~~article~~ tobacco products shall be deemed guilty of violation of same  
23 and shall be penalized as hereinbefore set forth, and untaxed  
24 ~~merchandise~~ tobacco products handled by this person as well as the

1 vehicle used to transport the untaxed tobacco products shall be  
2 subject to confiscation by authorized agents of the Tax Commission  
3 or duly authorized peace officers.

4 C. After seizure or confiscation by such agent or officer, the  
5 merchandise tobacco products and property shall be held until all  
6 taxes, interest and penalties due have been paid. If not paid  
7 within five (5) days after date of seizure, it shall be sold at  
8 public sale by the sheriff of the county where confiscated, after  
9 being advertised by posting of notice of such sale in five public  
10 places in the county where the sale is to occur. The proceeds of  
11 the sale shall be applied to taxes, interest and penalties due and  
12 to the cost of the sale, and the remainder, if any, shall be paid to  
13 the State Treasurer, by the sheriff conducting such sale, to be  
14 deposited to the credit of the General Revenue Fund.

15 SECTION 6. AMENDATORY 68 O.S. 2021, Section 415, as  
16 amended by Section 2, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2024,  
17 Section 415), is amended to read as follows:

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

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

5       1. The applicant's agreement to the jurisdiction of the Tax  
6 Commission and the courts of this state for purposes of enforcement

7 of the provisions of Section 301 et seq. of this title; and

8       2. The applicant's agreement to abide by the provisions of  
9 Section 301 et seq. of this title and the rules promulgated by the

10 Tax Commission with reference thereto. This license, which will be  
11 for the ensuing year, must at all times be displayed in a

12 conspicuous place so that it can be seen. Persons operating more  
13 than one place of business must secure a license for each place of

14 business. "Place of business" shall be construed to include the  
15 place where orders are received, or where tobacco products or vapor

16 products are sold. A "place of business" cannot be a location with

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

19 address. If tobacco products or vapor products are sold on or from  
20 any vehicle, the vehicle shall constitute a place of business, and

21 the license fee of Two Hundred Fifty Dollars (\$250.00) shall be paid  
22 with respect thereto. However, if the vehicle is owned or operated

23 by a place of business for which the regular license fee is paid,

24 the annual fee for the license with respect to such vehicle shall be

1 only Ten Dollars (\$10.00). The expiration for such vehicle license  
2 shall expire on the same date as the current license of the place of  
3 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 or vapor products for resale from a supplier that  
17 does not hold a current wholesaler's license issued pursuant to this  
18 section; and

19          4. The applicant's agreement to sell tobacco products or vapor  
20 products only to consumers.

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

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

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

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

22 2. Wholesale and retail licenses shall be applied for on a form  
23 prescribed by the Tax Commission. Any person operating as a  
24 wholesaler or retailer must at all times have an effective unexpired

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

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

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

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

23  
24

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

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

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

15      SECTION 7.       AMENDATORY       68 O.S. 2021, Section 417, as  
16 amended by Section 5, Chapter 285, O.S.L. 2023 (68 O.S. Supp. 2024,  
17 Section 417), is amended to read as follows:

18      Section 417. A. All tobacco products upon which a tax is  
19 levied by Section 400 et seq. of this title and all tobacco products  
20 sold, offered for sale or imported into this state in violation of  
21 the provisions of Section 403.2 of this title, and all vapor  
22 products sold or offered for sale in violation of Section 1-229.35  
23 of Title 63 of the Oklahoma Statutes, found in the possession,  
24 custody or control of any person for the purpose of being consumed,

1   sold or transported from one place to another in this state, for the  
2   purpose of evading or violating the provisions of Section 400 et  
3   seq. of this title, or with intent to avoid payment of the tax  
4   imposed thereunder, or with intent to avoid complying with the  
5   requirements of Section 1-229.35 of Title 63 of the Oklahoma  
6   Statutes, and any vehicle being used in avoidance of such tax or  
7   such requirements may be seized by any authorized agent of the  
8   Oklahoma Tax Commission or any sheriff, deputy sheriff or police  
9   within the state. Tobacco products or vapor products from the time  
10   of seizure shall be forfeited to the State of Oklahoma and  
11   assessment of penalty as provided thereby and assessment for any  
12   delinquent taxes found to be owing. A proper proceeding shall be  
13   filed to maintain such seizure and prosecute the forfeiture as  
14   herein provided; the provisions of this section shall not apply,  
15   however, where the tax on such tobacco products does not exceed One  
16   Dollar (\$1.00).

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

20           C. The person making such seizure shall immediately make and  
21   file a written report thereof to the Tax Commission, showing the  
22   name of the person making such seizure, the place where seized, the  
23   person from whom seized, the property seized and an inventory and  
24   appraisement thereof, which inventory shall be based on the usual

1 and ordinary retail price or value of the articles seized, and the  
2 Attorney General, in the case of tobacco products sold, offered for  
3 sale or imported into this state in violation of the provisions of  
4 Section 403.2 of this title or in violation of Section 1-229.35 of  
5 Title 63 of the Oklahoma Statutes. Within sixty (60) days of  
6 seizure, the person from whom the property was seized may file a  
7 request for hearing with the Tax Commission or the Attorney General  
8 to show why the seized property should not be forfeited and  
9 destroyed. If a hearing is requested, the owner of the tobacco  
10 products or vapor products shall be given at least ten (10) days'  
11 notice of the hearing. If no request for hearing is filed within  
12 the time provided, the property seized will be forfeited and  
13 destroyed.

14 D. The seizure of such tobacco products or vapor products shall  
15 not relieve the person from whom such tobacco products or vapor  
16 products were seized from prosecution 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 or vapor products with intent to  
20 barter, sell or give away the same.

21 SECTION 8. AMENDATORY 68 O.S. 2021, Section 420.1, is  
22 amended to read as follows:

23 Section 420.1. A. Each wholesaler of tobacco products or vapor  
24 product manufacturer, as defined in Section 400 of this title, shall

1 maintain copies of invoices or equivalent documentation for each of  
2 its facilities for every transaction in which the wholesaler is the  
3 seller, purchaser, consignor, consignee or recipient of tobacco  
4 products or vapor products. The invoices or documentation shall  
5 contain the wholesaler's ~~tobacco~~ license number and the retailer's  
6 ~~tobacco~~ license number if the sale is to a retailer and the quantity  
7 by brand style of the tobacco products or vapor products involved in  
8 the transaction. Each wholesaler shall maintain the documents  
9 required by this subsection for a period of three (3) years.

10       B. Each retailer of tobacco products or vapor products, as  
11 defined in Section 400 of this title, shall maintain copies of  
12 invoices or equivalent documentation for every transaction in which  
13 the retailer receives or purchases tobacco products or vapor  
14 products at each of its facilities. The invoices or documentation  
15 shall show the name, address, and ~~tobacco~~ license number of the  
16 wholesaler from whom, or the address of another facility of the same  
17 retailer from which, the tobacco products or vapor products were  
18 received, the quantity of each brand style received in such  
19 transaction, the date the tobacco products or vapor products were  
20 received and the retail cigarette license number or sales tax  
21 license number. Each retailer shall maintain the documents required  
22 by this subsection for a period of one (1) year.

23                   SECTION 9.       AMENDATORY       68 O.S. 2021, Section 422, is  
24 amended to read as follows:

1       Section 422. All wholesalers or retailers selling or  
2 distributing such tobacco products or vapor products under the  
3 provisions of this act shall comply with the provisions of such  
4 sections, and the rules and regulations of the Oklahoma Tax  
5 Commission as to such sale or distribution, and failure to so comply  
6 shall constitute grounds for revocation of any license issued to the  
7 wholesaler or retailer by the Tax Commission.

8           SECTION 10. It being immediately necessary for the preservation  
9 of the public peace, health or safety, an emergency is hereby  
10 declared to exist, by reason whereof this act shall take effect and  
11 be in full force from and after its passage and approval.

12 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND INSURANCE  
February 27, 2025 - DO PASS