

House Bill 844

By: Representative Crawford of the 91<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to cigar  
2 and cigarette taxes, so as to provide for definitions; to provide for penalties related to  
3 counterfeit cigarettes; to provide for related matters; to provide an effective date; to repeal  
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to cigar and  
8 cigarette taxes, is amended by striking Code Section 48-11-1, relating to definitions, and  
9 inserting in its place a new Code Section 48-11-1 to read as follows:

10 "48-11-1.

11 As used in this chapter, the term:

12 (1) 'Cigar' means any roll for smoking made wholly or in part of tobacco when the cover  
13 of the roll is also tobacco.

14 (2) 'Cigar dealer' means any person other than a distributor who is engaged in this state  
15 in the business of selling cigars directly to the ultimate consumer of the cigars.

16 (3) 'Cigar distributor' means any person who:

17 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly  
18 contact and call on cigar dealers; and

19 (B) Is engaged in the business of:

20 (i) Manufacturing cigars in this state, importing cigars into this state, or purchasing  
21 cigars from other cigar manufacturers or cigar distributors; and

22 (ii) Selling the cigars to cigar dealers in this state for resale but is not in the business  
23 of selling the cigars directly to the ultimate consumer of the cigars.

24 ~~(2)~~(4) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the  
25 cover of the roll is paper or any substance other than tobacco.

1 (5) 'Cigarette dealer' means any person, whether located within or outside the borders of  
 2 this state, who sells or distributes cigarettes to a consumer in this state.

3 (6) 'Cigarette distributor' means any person, whether located within or outside of the  
 4 borders of this state, other than a cigarette dealer, who sells or distributes cigarettes  
 5 within or into the boundaries of this state. Such term shall not include any cigarette  
 6 manufacturer, export warehouse proprietor, or cigarette importer with a valid permit  
 7 under 26 U.S.C. Code Section 5712, if such person sells or distributes cigarettes in this  
 8 state only to cigarette distributors who hold valid and current licenses under Code Section  
 9 48-11-4 or to an export warehouse proprietor or another cigarette manufacturer with a  
 10 valid permit under 26 U.S.C. Code Section 5712.

11 (7) 'Cigarette importer' means any person who imports into the United States, either  
 12 directly or indirectly, a finished cigarette for sale or distribution.

13 (8) 'Cigarette manufacturer' means any person who manufactures, fabricates, assembles,  
 14 processes, or labels a finished cigarette.

15 (9) 'Counterfeit cigarette' means cigarettes that have false manufacturing labels and  
 16 packages of cigarettes bearing counterfeit tax stamps.

17 ~~(10)(3) 'Dealer' means any person other than a distributor who is engaged in this state in~~  
 18 ~~the business of selling cigars or cigarettes directly to the ultimate consumer of the cigars~~  
 19 ~~or cigarettes who is a cigar dealer or a cigarette dealer.~~

20 ~~(11)(4) 'Distributor' means any person who:~~

21 ~~(A) Maintains a warehouse, warehouse personnel, and salesmen who regularly contact~~  
 22 ~~and call on dealers; and~~

23 ~~(B) Is engaged in the business of:~~

24 ~~(i) Manufacturing cigars or cigarettes in this state, importing cigars or cigarettes into~~  
 25 ~~this state, or purchasing cigars or cigarettes from other manufacturers or distributors;~~  
 26 ~~and~~

27 ~~(ii) Selling the cigars or cigarettes to dealers in this state for resale, but is not in the~~  
 28 ~~business of selling the cigars or cigarettes directly to the ultimate consumer of the~~  
 29 ~~cigars or cigarettes is a cigar distributor or a cigarette distributor.~~

30 ~~(12)(5) 'First taxable transaction' means the first sale, receipt, purchase, possession,~~  
 31 ~~consumption, handling, distribution, or use of cigars or cigarettes within this state.~~

32 ~~(13)(6) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and~~  
 33 ~~distribution in any manner or by any means whatever.~~

34 ~~(14)(7) 'Stamp' means any impression, device, stamp, label, or print manufactured,~~  
 35 ~~printed, made, or affixed as prescribed by the commissioner.~~

36 ~~(15)(8) 'Vending machine' means any coin-in-the-slot device used for the automatic~~  
 37 ~~merchandising of cigars or cigarettes."~~

**SECTION 2.**

Said chapter is further amended by adding a new Code section at the end of such chapter to read as follows:

"48-11-30.

(a) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes by a cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette dealer shall result in the seizure of the product and related machinery by the department or any law enforcement agency and shall be punishable as follows:

(1) A first violation with a total quantity of less than two cartons of cigarettes shall be punishable by a fine of \$1,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment;

(2) A subsequent violation with a total quantity of less than two cartons of cigarettes shall be punishable by a fine of \$5,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and the imprisonment, and shall also result in the revocation by the department of the license of the cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette dealer;

(3) A first violation with a total quantity of two cartons of cigarettes or more shall be punishable by a fine of \$2,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and the imprisonment; and

(4) A subsequent violation with a quantity of two cartons of cigarettes or more shall be punishable by a fine of \$50,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment, and shall also result in the revocation by the department of the license of the cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette dealer.

(b) Any counterfeit cigarette seized by the commissioner shall be destroyed by the commissioner or his or her designee."

**SECTION 3.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

**SECTION 4.**

All laws and parts of laws in conflict with this Act are repealed.