

House Bill 379 (FLOOR SUBSTITUTE)

By: Representatives Richardson of the 26th, Skipper of the 116th, Porter of the 119th, Orrock of the 51st, Smyre of the 111th, and others

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 an excise tax with respect to loose or smokeless
3 tobacco; to change the rate of such tax with respect to little cigars, other cigars, and
4 cigarettes; to provide for an additional cigarette excise tax; to change certain definitions; to
5 change certain provisions regarding excise taxes; to change certain provisions regarding
6 collection of such tax by stamps; to change certain provisions regarding licensure,
7 suspension, and revocation; to change certain provisions regarding licensing of nonresident
8 distributors; to change certain provisions regarding sale or possession prohibitions; to change
9 certain provisions regarding seizure of contraband; to change certain provisions regarding
10 monthly reports; to change certain provisions regarding records; to change certain provisions
11 regarding assessment of deficiencies and penalties; to change certain provisions regarding
12 certain use, consumption, or storage taxes; to change certain provisions regarding
13 registration, reports, and tax payments; to change certain provisions regarding claims for
14 refunds; to change certain provisions regarding the status of unpaid tax as a lien; to change
15 certain provisions regarding hearings by the state revenue commissioner; to change certain
16 provisions regarding powers and duties of special agents and enforcement officers; to change
17 certain provisions regarding transportation of certain cigarettes or cigars; to change certain
18 provisions regarding additional requirements and seizure and forfeiture of contraband; to
19 change certain provisions regarding criminal penalties; to provide for powers, duties, and
20 authority of the state revenue commissioner; to amend Article 1 of Chapter 3 of Title 35 of
21 the Official Code of Georgia Annotated, relating to general provisions regarding the Georgia
22 Bureau of Investigation, so as to change certain provisions regarding powers of agents
23 generally; to amend Title 50 of the Official Code of Georgia Annotated, relating to state
24 government, so as to change certain provisions regarding tax stamps; to change certain
25 provisions regarding examinations by the state auditor; to provide for related matters; to
26 provide an effective date; to repeal conflicting laws; and for other purposes.

H. B. 379 (SUB)

1 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

2 SECTION 1.

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

6 "48-11-1.

7 As used in this chapter, the term:

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

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

12 (3) 'Dealer' means any person other than a distributor who is engaged in this state in the
13 business of selling cigars, ~~or~~ cigarettes, or loose or smokeless tobacco directly to the
14 ultimate consumer of the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco.

15 (4) 'Distributor' means any person who:

16 (A) Maintains a warehouse, warehouse personnel, and ~~salesmen~~ salespersons who
17 regularly contact and call on dealers; and

18 (B) Is engaged in the business of:

19 (i) Manufacturing cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in this state;
20 importing cigars, ~~or~~ cigarettes, or loose or smokeless tobacco into this state;
21 purchasing cigars, ~~or~~ cigarettes, or loose or smokeless tobacco from other
22 manufacturers or distributors; and

23 (ii) Selling the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco to dealers in this
24 state for resale, but is not in the business of selling the cigars, ~~or~~ cigarettes, or loose
25 or smokeless tobacco directly to the ultimate consumer of the cigars, ~~or~~ cigarettes, or
26 loose or smokeless tobacco.

27 (5) 'First taxable transaction' means the first sale, receipt, purchase, possession,
28 consumption, handling, distribution, or use of cigars, ~~or~~ cigarettes, or loose or smokeless
29 tobacco within this state.

30 (6) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready rubbed,
31 and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco;
32 fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and
33 sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as
34 to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and
35 smoking but does not include cigarettes or cigars or tobacco purchased for the
36 manufacture of cigarettes by cigarette distributors.

1 ~~(6)~~(7) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
2 distribution in any manner or by any means whatever.

3 ~~(7)~~ (8) 'Stamp' means any impression, device, stamp, label, or print manufactured,
4 printed, made, or affixed as prescribed by the commissioner.

5 ~~(8)~~ (9) 'Vending machine' means any coin-in-the-slot device used for the automatic
6 merchandising of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco."

7 **SECTION 2.**

8 Said chapter is further amended by striking Code Section 48-11-2, relating to excise taxes,
9 and inserting in its place a new Code Section 48-11-2 to read as follows:

10 "48-11-2.

11 (a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed
12 upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of
13 cigars, ~~and~~ cigarettes, and loose or smokeless tobacco in this state at the following rates:

14 (1) Little cigars weighing not more than three pounds per thousand: two and one-half
15 mills each;

16 (2) All other cigars: ~~13~~ 41 percent of the wholesale cost price, exclusive of any trade,
17 cash, or other discounts or any promotion, advertising, display, or similar allowances;

18 (3)(A) Cigarettes: ~~12¢~~ 33¢ per pack of 20 cigarettes and a like rate, pro rata, for other
19 size packages.

20 (B) In addition to the tax specified under subparagraph (A) of this paragraph, any
21 cigarettes sold by a tobacco product manufacturer selling cigarettes to consumers within
22 the state (whether directly or through a distributor, retailer, or similar intermediary or
23 intermediaries), which manufacturer is not a participating manufacturer as that term is
24 defined in Section II (jj) of the Master Settlement Agreement, and which manufacturer
25 makes qualified escrow fund payments pursuant to paragraph (2) of Code Section
26 10-13-3, shall be subject to a further tax of 50¢ per pack of 20 cigarettes and a like rate,
27 pro rata, for other size packages; and

28 (4) Loose or smokeless tobacco: 10 percent of the wholesale cost price, exclusive of any
29 trade, cash, or other discounts or any promotion, advertising, display, or similar
30 allowances.

31 (b) When the retail selling price is referred to in this chapter as the basis for computing the
32 tax, it is intended to mean the ordinary retail selling price of the article to the consumer
33 before adding the amount of the tax.

34 (c) The taxes imposed by this chapter are levied with respect to the purchase or use of
35 cigars, ~~or~~ cigarettes, or loose or smokeless tobacco by the state or any department,
36 institution, or agency of the state and by the political subdivisions of the state and their

1 departments, institutions, and agencies. The taxes imposed by this chapter are not imposed
 2 with respect to cigars, ~~or~~ cigarettes, or loose or smokeless tobacco purchased exclusively
 3 for use by the patients at the Georgia War Veterans Home and the Georgia War Veterans
 4 Nursing Home.

5 (d) The taxes imposed by this chapter are not levied with respect to cigars, ~~or~~ cigarettes,
 6 or loose or smokeless tobacco the purchase or use of which this state is prohibited from
 7 taxing under the Constitution or statutes of the United States.

8 (e) The taxes imposed by this chapter shall be advanced and paid by the distributor to the
 9 commissioner for deposit and distribution as provided in this chapter upon the first taxable
 10 transaction within the state, whether or not the transaction involves the ultimate purchaser
 11 or consumer. The seller or distributor shall collect the tax from the purchaser or consumer
 12 and the purchaser or consumer shall pay the tax to the seller or distributor. The seller or
 13 distributor shall be responsible for the collection of the tax and the payment of the tax to
 14 the commissioner. Whenever cigars, ~~or~~ cigarettes, or loose or smokeless tobacco is ~~are~~
 15 shipped from outside the state to anyone other than a distributor, the person receiving the
 16 cigars, ~~or~~ cigarettes, or loose or smokeless tobacco shall be deemed to be a distributor and
 17 shall be responsible for the tax on the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco
 18 and the payment of the tax to the commissioner.

19 (f) The amount of taxes advanced and paid to the state as provided in this Code section
 20 shall be added to and collected as a part of the sales price of the cigars, ~~or~~ cigarettes, or
 21 loose or smokeless tobacco sold or distributed. The amount of the tax shall be stated
 22 separately from the price of the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco.

23 (g) The cigars, ~~and~~ cigarettes, and loose or smokeless tobacco tax imposed shall be
 24 collected only once upon the same cigarettes, cigars, ~~or~~ little cigars, or loose or smokeless
 25 tobacco."

26

SECTION 3.

27 Said chapter is further amended by striking Code Section 48-11-3, relating to collection of
 28 such tax by stamps, and inserting in its place a new Code Section 48-11-3 to read as follows:
 29 "48-11-3.

30 (a) Except as otherwise provided in this Code section, the taxes imposed by Code Section
 31 48-11-2 shall be collected and paid through the use of stamps. The commissioner shall
 32 secure stamps of such design and materials as ~~he~~ the commissioner deems appropriate to
 33 protect the revenue and shall sell the stamps to licensed distributors at a discount of not less
 34 than 2 percent and not more than 8 percent of the value of the stamps. The exact percentage
 35 of the discount shall be based on brackets according to the volume of cigars, ~~and~~ cigarettes,
 36 and loose or smokeless tobacco handled by the distributor pursuant to regulations

1 promulgated by the commissioner. The commissioner shall prescribe by regulation the
 2 condition, method, and manner in which stamps are to be affixed to containers of cigars,
 3 ~~and cigarettes, and loose or smokeless tobacco.~~

4 (b) The commissioner may prescribe by regulation an alternate method, in lieu of the sale
 5 of stamps, of collecting and paying the tax imposed upon cigars and little cigars. The
 6 commissioner may also prescribe by regulation an alternate method, in lieu of the sale of
 7 stamps, of collecting and paying the tax imposed on loose or smokeless tobacco. Any such
 8 regulations shall be promulgated so that use of the alternate method will result in the same
 9 revenue to the state as the state would realize through the sale of stamps to the distributors.

10 (c) No distributor shall sell or exchange with another distributor any stamps issued
 11 pursuant to this chapter. The commissioner is authorized to redeem at cost price any stamps
 12 presented for redemption by a licensed distributor when the commissioner determines from
 13 physical inspection that no cigars, ~~or cigarettes, or loose or smokeless tobacco has~~ have
 14 been sold by the distributor under pretense of the tax imposed by this chapter having been
 15 paid through use of the stamps."

16 **SECTION 4.**

17 Said chapter is further amended by striking Code Section 48-11-4, relating to licensure and
 18 suspension and revocation, and inserting in its place a new Code Section 48-11-4 to read as
 19 follows:

20 "48-11-4.

21 (a) No person shall engage in or conduct the business of manufacturing, purchasing,
 22 selling, consigning, vending, dealing in, or distributing cigars, ~~or cigarettes, or loose or~~
 23 smokeless tobacco in this state without first obtaining a license from the commissioner.

24 (b) All licenses shall be issued by the commissioner, who shall make rules and regulations
 25 with respect to applications for and issuance of the licenses. The commissioner may refuse
 26 to issue any license under this chapter when ~~he~~ the commissioner has reasonable cause to
 27 believe that the applicant has willfully withheld information requested of ~~him~~ the applicant
 28 or required by the regulations to be provided or reported or when the commissioner has
 29 reasonable cause to believe that the information submitted in any application or report is
 30 false or misleading and is not given in good faith.

31 (c) The fee for a distributor's license shall be \$50.00 annually, except that for a person
 32 commencing business as a distributor for the first time the first year's fee shall be \$250.00.
 33 Each dealer shall have a permanent license issued by the commissioner free of charge.
 34 Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next
 35 succeeding year. The prescribed fee shall accompany every application for a license and
 36 shall apply for any portion of the annual period. Each distributor's or dealer's license shall

1 be subject to suspension or revocation for violation of any of the provisions of this chapter
 2 or of the rules and regulations made pursuant to this chapter. A separate license shall be
 3 required for each place of business. No person shall hold a distributor's license and a
 4 dealer's license at the same time.

5 (d) The commissioner may make rules and regulations governing the sale of cigars, ~~and~~
 6 cigarettes, and loose or smokeless tobacco and other tobacco products in vending
 7 machines. The commissioner shall require annually a special registration of each vending
 8 machine for any operation in this state and charge a license fee for the registration in the
 9 amount of \$1.00 for each machine. The annual registration shall indicate the location of the
 10 vending machine. No vending machine shall be purchased or transported into this state for
 11 use in this state when the vending machine is not so designed as to permit inspection
 12 without opening the machine for the purpose of determining that cigars, ~~and~~ cigarettes, and
 13 loose or smokeless tobacco and other tobacco products contained in the machine bear the
 14 tax stamp required under this chapter.

15 (e) The distributor's or dealer's license shall be exhibited in the place of business for
 16 which it is issued in the manner prescribed by the commissioner. The commissioner shall
 17 require each licensed distributor to file with ~~him~~ the commissioner a bond in an amount of
 18 not less than \$1,000.00 to guarantee the proper performance of the distributor's duties and
 19 the discharge of the distributor's liabilities under this chapter. The bond shall run
 20 concurrently with the distributor's license but shall remain in full force and effect for a
 21 period of one year after the expiration or revocation of the distributor's license unless the
 22 commissioner certifies that all obligations due the state arising under this chapter have been
 23 paid.

24 (f) The jurisdiction of the commissioner in the administration of this chapter shall extend
 25 to every person using or consuming cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in
 26 this state and to every person dealing in cigars, ~~or~~ cigarettes, or loose or smokeless tobacco
 27 in any way for business purposes and maintaining a place of business in this state. For the
 28 purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of
 29 goods, or regular sales or promotional activity, whether carried on automatically or by
 30 ~~salesmen~~ salespersons or other representatives, shall constitute, among other activities, the
 31 maintaining of a place of business.

32 (g) The commissioner may provide for the licensing of promotional activities, not
 33 including the sale of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco, carried on by the
 34 manufacturer. The fee for any such license shall be \$10.00 annually."

1

SECTION 5.

2 Said chapter is further amended by striking Code Section 48-11-5, relating to licensing of
3 nonresident distributors, and inserting in its place a new Code Section 48-11-5 to read as
4 follows:

5 "48-11-5.

6 (a)(1) If the commissioner finds that the collection of the tax imposed by this chapter
7 would be facilitated by such action, ~~he~~ the commissioner may authorize any person
8 residing or located outside this state who is engaged in the business of manufacturing
9 cigars, ~~or~~ cigarettes, or loose or smokeless tobacco or any person residing or located
10 outside this state who ships cigars, ~~or~~ cigarettes, or loose or smokeless tobacco into this
11 state for sale to licensed dealers in this state, to be licensed as a distributor and, after the
12 person complies with the commissioner's requirements, to affix or cause to be affixed the
13 stamps required by this chapter on behalf of the purchasers of the cigars, ~~or~~ cigarettes, or
14 loose or smokeless tobacco who would otherwise be taxable for the cigars, ~~and~~ cigarettes,
15 and loose or smokeless tobacco. The commissioner may sell tax stamps to an authorized
16 person or may authorize the use of a metering machine by the person as provided in Code
17 Section 48-11-3.

18 (2) The commissioner shall require a bond of a nonresident distributor satisfactory to the
19 commissioner and in an amount not to exceed \$10,000.00, conditioned upon the payment
20 of the tax and compliance with any other requirements specified by the commissioner.
21 As a condition of authorization as provided in this Code section, a nonresident distributor
22 shall agree to submit ~~his~~ the distributor's books, accounts, and records for examination
23 by the commissioner or ~~his~~ the commissioner's duly authorized agent during reasonable
24 business hours and shall appoint in writing an agent who resides in this state for the
25 purpose of service. Service upon an agent shall be sufficient service upon the nonresident
26 distributor and may be made by leaving a duly attested copy of the process with the
27 agent. When legal process against any nonresident distributor is served upon the agent,
28 the agent shall notify the nonresident distributor in the manner specified in Code Section
29 40-12-2.

30 (3) Upon the grant of authorization as provided in this subsection and except as may
31 otherwise be determined by the commissioner, a nonresident distributor shall become a
32 licensed distributor within the meaning of this chapter and shall be subject to all
33 provisions of this chapter applicable to licensed distributors.

34 (b) Every nonresident manufacturer and every nonresident distributor of cigars, ~~or~~
35 cigarettes, or loose or smokeless tobacco making shipments of cigars, ~~or~~ cigarettes, or loose
36 or smokeless tobacco by common carrier or otherwise for their own account or for the

1 account of others to distributors or dealers located within this state shall make reports of
2 the shipments when and as required by rules and regulations of the commissioner."

3 **SECTION 6.**

4 Said chapter is further amended by striking Code Section 48-11-8, relating to sale or
5 possession prohibitions and inserting in its place a new Code Section 48-11-8 to read as
6 follows:

7 "48-11-8.

8 (a)(1) No person shall sell, offer for sale, or possess with intent to sell any cigarettes in
9 this state when the cigarette container does not bear the tax stamps required by Code
10 Section 48-11-3.

11 (2) No person shall sell, offer for sale, or possess with intent to sell in this state any
12 cigars or little cigars upon which the tax has not been paid under the alternate method of
13 collecting the taxes provided in Code Section 48-11-3 or which do not bear tax stamps.

14 (3) No person shall sell, offer for sale, or possess with intent to sell any loose or
15 smokeless tobacco in this state when the loose or smokeless tobacco container does not
16 bear the tax stamps required by Code Section 48-11-3 or upon which the tax has not been
17 paid under the alternate method of collecting the tax provided under Code Section
18 48-11-3.

19 (b) Each distributor at the location for which ~~his~~ such distributor's license is issued and in
20 the manner specified by the commissioner shall affix the stamps required by this Code
21 section to each individual package of cigarettes sold or distributed by ~~him~~ such distributor.
22 Each distributor shall comply with the commissioner's regulations for the payment of the
23 tax on cigars or loose or smokeless tobacco as provided in Code Section 48-11-3 or shall
24 affix to each container of cigars or loose or smokeless tobacco sold by ~~him~~ such distributor
25 or from which ~~he~~ such distributor sells cigars or loose or smokeless tobacco the stamps
26 required by this chapter. The stamps may be affixed or the tax under the alternate method
27 may be paid by a distributor at any time before the cigars, ~~or~~ cigarettes, or loose or
28 smokeless tobacco is ~~are~~ transferred out of ~~his~~ such distributor's possession.

29 (c) It is the intent of this chapter that the tax imposed by this chapter be paid only once and
30 that, if the distributor acquires stamped cigarettes, tax-paid cigars, ~~or~~ stamped cigars,
31 stamped loose or smokeless tobacco, or tax-paid loose or smokeless tobacco, such
32 distributor ~~he~~ is not required to affix additional stamps or provide other evidence of
33 payment of the tax.

34 (d) Every dealer who comes into possession of cigars, ~~or~~ cigarettes, or loose or smokeless
35 tobacco not bearing proper tax stamps or other evidence of the tax imposed by this chapter
36 shall report the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco to the commissioner

1 prior to displaying, selling, using, or otherwise disposing of the cigars, ~~and~~ cigarettes, and
 2 loose or smokeless tobacco. After a report, the commissioner shall authorize a licensed
 3 distributor to affix the proper stamps to the cigars, ~~and~~ cigarettes, and loose or smokeless
 4 tobacco or, in the case of cigars or loose or smokeless tobacco, authorize the dealer to remit
 5 the tax by the alternate method promulgated by the commissioner in accordance with Code
 6 Section 48-11-3. A licensed distributor shall affix the stamps or comply with the alternate
 7 regulations when presented a permit for such action issued by the commissioner. A
 8 licensed distributor shall stamp cigarettes or comply with the alternate method provided in
 9 this chapter with respect to cigars or loose or smokeless tobacco, other than ~~his~~ such
 10 distributor's own, only when authorized by the permit issued by the commissioner.

11 (e) No wholesale or retail distributor or wholesale or retail dealer shall accept deliveries
 12 of unstamped cigarettes or loose or smokeless tobacco or nontax-paid cigars or loose or
 13 smokeless tobacco which ~~are~~ is shipped to ~~him~~ such distributor or acquired by ~~him~~ such
 14 distributor at any place within the state except as authorized and provided in this Code
 15 section. All cigars, ~~and~~ cigarettes, and loose or smokeless tobacco shall be examined by the
 16 distributor or dealer on receipt, and the distributor shall immediately report the cigars, ~~or~~
 17 cigarettes, or loose or smokeless tobacco to the commissioner as provided in subsection (d)
 18 of this Code section.

19 (f) The commissioner may prescribe the charges which may be made by a distributor to
 20 any person for the services of the distributor as provided in this chapter in affixing the tax
 21 stamps to each individual package of cigarettes or loose or smokeless tobacco and may
 22 prescribe the charges which may be made by a distributor in complying with the
 23 commissioner's alternate regulations for the collection of the tax on cigars and little cigars
 24 or loose or smokeless tobacco.

25 (g) This Code section shall not apply to unstamped cigars and little cigars or loose or
 26 smokeless tobacco upon which the tax has been paid in accordance with the alternate
 27 regulations promulgated by the commissioner under Code Section 48-11-3."

28 **SECTION 7.**

29 Said chapter is further amended by striking Code Section 48-11-9, relating to seizure of
 30 contraband, and inserting in its place a new Code Section 48-11-9 to read as follows:

31 "48-11-9.

32 (a)(1) Any cigars, ~~or~~ cigarettes, or loose or smokeless tobacco found at any place in this
 33 state without stamps affixed to them as required by this chapter are declared to be
 34 contraband articles and may be seized by the commissioner, ~~his~~ the commissioner's
 35 agents or employees, or any peace officer of this state when directed by the commissioner
 36 to do so.

1 (2) Paragraph (1) of this subsection shall not apply when:

2 (A) The tax has been paid on the unstamped cigars and little cigars or loose or
 3 smokeless tobacco in accordance with the commissioner's regulations promulgated
 4 pursuant to Code Section 48-11-3;

5 (B) The cigars, ~~or~~ cigarettes, or loose or smokeless tobacco is ~~are~~ in the possession of
 6 a licensed distributor;

7 (C) The cigars, ~~or~~ cigarettes, or loose or smokeless tobacco is ~~are~~ in course of transit
 8 from outside the state and ~~are~~ is consigned to a licensed distributor;

9 (D) The cigars, ~~or~~ cigarettes, or loose or smokeless tobacco is ~~are~~ in the possession of
 10 a transporter who is in compliance with Code Section 48-11-22; or

11 (E) The cigars, ~~or~~ cigarettes, or loose or smokeless tobacco is ~~are~~ in the possession of
 12 a registered taxpayer as defined in Code Section 48-11-14 and the time for making the
 13 report required by Code Section 48-11-14 has not expired.

14 (3) This subsection shall not be construed to require the commissioner to confiscate
 15 unstamped or nontax-paid cigars, ~~and~~ cigarettes, and loose or smokeless tobacco or other
 16 property when ~~he~~ the commissioner has reason to believe that the owner of the cigars,
 17 cigarettes, loose or smokeless tobacco, or property is not willfully or intentionally
 18 evading the tax imposed by this chapter.

19 (b) Any cigars, cigarettes, loose or smokeless tobacco, or other property seized pursuant
 20 to this chapter may be offered for sale by the commissioner, at ~~his~~ the commissioner's
 21 discretion, at public auction to the highest bidder after advertisement as provided in this
 22 Code section. The commissioner shall deliver to the Office of Treasury and Fiscal Services
 23 the proceeds of any sale made under this Code section. Before delivering any cigars, ~~or~~
 24 cigarettes, or loose or smokeless tobacco sold to a purchaser at the sale, the commissioner
 25 shall require the purchaser to affix to the packages the amount of stamps required by this
 26 chapter or to comply with the commissioner's alternate method. The seizure and sale of any
 27 cigars, cigarettes, loose or smokeless tobacco, or property pursuant to this chapter shall not
 28 relieve any person from a fine, imprisonment, or other penalty for violation of this chapter.

29 (c) When any cigars, cigarettes, loose or smokeless tobacco, or other property has been
 30 seized pursuant to this chapter, the commissioner, at ~~his~~ the commissioner's discretion,
 31 may advertise ~~them~~ it for sale in a newspaper published or having a circulation in the place
 32 in which the seizure occurred, at least five days before the sale. Any person claiming an
 33 interest in the cigars, cigarettes, loose or smokeless tobacco, or other property may make
 34 written application to the commissioner for a hearing. The application shall state the
 35 person's interest in the cigars, cigarettes, loose or smokeless tobacco, or other property and
 36 ~~his~~ such person's reasons why the cigars, cigarettes, loose or smokeless tobacco, or other
 37 property should not be forfeited. Further proceedings on the application for hearing shall

1 be taken as provided in subsection (a) of Code Section 48-11-18. No sale of any cigars,
 2 cigarettes, loose or smokeless tobacco, or property seized pursuant to this chapter shall be
 3 made while an application for a hearing is pending before the commissioner. The pendency
 4 of an appeal under subsection (b) of Code Section 48-11-18 shall not prevent the sale
 5 unless the appellant posts a satisfactory bond with surety in an amount double the estimated
 6 value of the cigars, cigarettes, loose or smokeless tobacco, or other property and
 7 conditioned upon the successful termination of the appeal.

8 (d) Any vending machine containing or dispensing any cigarettes or loose or smokeless
 9 tobacco which ~~do~~ does not bear the tax stamps required under this chapter or containing
 10 or dispensing any cigars or loose or smokeless tobacco upon which the tax has not been
 11 paid either through the purchase of stamps or the alternate procedure provided by the
 12 commissioner as required under this chapter shall be a contraband article. The
 13 commissioner may seize any such machine and deal with it in the same manner as provided
 14 by law for the seizure and sale of unstamped cigarettes or loose or smokeless tobacco and
 15 nontax-paid cigars or loose or smokeless tobacco."

16

SECTION 8.

17 Said chapter is further amended by striking Code Section 48-11-10, relating to monthly
 18 reports, and inserting in its place a new Code Section 48-11-10 to read as follows:

19 "48-11-10.

20 (a) Every licensed distributor shall file with the commissioner, on or before the tenth day
 21 of each month, a report in the form prescribed by the commissioner and disclosing:

22 (1) The ~~number~~ quantity of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco on hand
 23 on the first and last days of the calendar month immediately preceding the month in
 24 which the report is filed;

25 (2) Information required by the commissioner concerning the amount of stamps
 26 purchased, used, and on hand during the report period; and

27 (3) Information otherwise required by the commissioner for the report period.

28 (b) The commissioner may require other reports as ~~he~~ the commissioner deems necessary
 29 for the proper administration of this chapter including, but not limited to, reports from
 30 common carriers and warehousemen with respect to cigars, ~~and~~ cigarettes, and loose or
 31 smokeless tobacco delivered to or stored at any point in this state.

32 (c) Any person who fails to file any report when due shall forfeit as a penalty for each day
 33 after the due date until the report is filed the sum of \$1.00, to be collected in the manner
 34 provided in subsection (c) of Code Section 48-11-24 for the collection of penalties."

1

SECTION 9.

2 Said chapter is further amended by striking subsection (a) of Code Section 48-11-11, relating
3 to records, and inserting in its place a new subsection (a) to read as follows:

4 "(a) Each distributor and each dealer shall keep complete and accurate records of all cigars,
5 ~~and~~ cigarettes, and loose or smokeless tobacco manufactured, produced, purchased, and
6 sold. The records shall be of the kind and in the form prescribed by the commissioner and
7 shall be safely preserved for three years in an appropriate manner to ensure permanency
8 and accessibility for inspection by the commissioner and ~~his~~ the commissioner's authorized
9 agents. The commissioner and ~~his~~ the commissioner's authorized agents may examine the
10 books, papers, and records of any distributor or dealer in this state for the purpose of
11 determining whether the tax imposed by this chapter has been fully paid and, for the
12 purpose of determining whether the provisions of this chapter are properly observed, may
13 investigate and examine the stock of cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in
14 or upon any premises including, but not limited to, public and private warehouses where
15 the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco ~~is~~ are possessed, stored, or sold."

16

SECTION 10.

17 Said chapter is further amended by striking subsection (a) of Code Section 48-11-12, relating
18 to assessment of deficiencies and penalties, and inserting in its place a new subsection (a) to
19 read as follows:

20 "(a)(1) The commissioner shall assess a deficiency and may assess a penalty of 10
21 percent of the deficiency if, after an examination of the invoices, books, and records of
22 a licensed distributor or dealer or of any other information obtained by the commissioner
23 or ~~his~~ the commissioner's authorized agents, the commissioner determines that:

24 (A) The report of the licensed distributor or licensed dealer is incorrect;
25 (B) The licensed distributor or dealer has not paid the tax in accordance with the
26 alternate regulations promulgated by the commissioner under Code Section 48-11-3;
27 (C) The licensed distributor or dealer has not purchased sufficient stamps to cover ~~his~~
28 such licensed distributor or dealer's receipts for sales or other disposition of unstamped
29 cigarettes or loose or smokeless tobacco and nontax-paid cigars or loose or smokeless
30 tobacco.

31 (2) In any case where a licensed distributor or dealer cannot produce evidence of
32 sufficient stamps purchased or other payment of the tax to cover the receipt of unstamped
33 cigarettes or loose or smokeless tobacco or nontax-paid cigars or loose or smokeless
34 tobacco, it shall be assumed that the cigars, ~~and~~ cigarettes, and loose or smokeless
35 tobacco were sold without having either the proper stamps affixed or the tax paid on
36 unstamped cigars or loose or smokeless tobacco."

1 **SECTION 11.**

2 Said chapter is further amended by striking Code Section 48-11-13, relating to certain use,
3 consumption, or storage taxes, and inserting in its place a new Code Section 48-11-13 to read
4 as follows:

5 "48-11-13.

6 (a) There is imposed a tax on every person for the privilege of using, consuming, or storing
7 cigars, ~~and~~ cigarettes, and loose or smokeless tobacco in this state on which the tax
8 imposed by Code Section 48-11-2 has not been paid. The tax shall be measured by and
9 graduated in accordance with the volume of cigars, ~~and~~ cigarettes, and loose or smokeless
10 tobacco used, consumed, or stored as set forth in Code Section 48-11-2.

11 (b) This Code section shall not apply to:

12 (1) Cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in the hands of a licensed
13 distributor or dealer;

14 (2) Cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in the possession of a carrier
15 complying with Code Section 48-11-22;

16 (3) Cigars, ~~or~~ cigarettes, or loose or smokeless tobacco stored in a public warehouse;

17 (4) Cigarettes in an amount not exceeding 200 cigarettes which have been brought into
18 the state on the person; ~~or~~

19 (5) Cigars in an amount not exceeding 20 cigars which have been brought into the state
20 on the person; ~~or~~

21 (6) Loose or smokeless tobacco in an amount not exceeding six containers which has
22 been brought into the state on the person."

23 **SECTION 12.**

24 Said chapter is further amended by striking subsection (a) of Code Section 48-11-14, relating
25 to registration, reports, and tax payments, and inserting in its place a new subsection (a) to
26 read as follows:

27 "(a) Before any person acquires cigars, ~~or~~ cigarettes, or loose or smokeless tobacco subject
28 to the tax imposed by Code Section 48-11-13, ~~he~~ such person shall register with the
29 commissioner as a responsible taxpayer subject to the obligation of maintaining records
30 and making reports in the form prescribed by the commissioner. The report shall be made
31 on or before the tenth day of the month following the month in which the cigars, ~~or~~
32 cigarettes, or loose or smokeless tobacco was ~~were~~ acquired and shall be accompanied by
33 the amount of tax due."

1 **SECTION 13.**

2 Said chapter is further amended by striking Code Section 48-11-15, relating to claims for
3 refunds, and inserting in its place a new Code Section 48-11-15 to read as follows:

4 "48-11-15.

5 The Office of Treasury and Fiscal Services is authorized to pay, on the order of the
6 commissioner, claims for refunds of cigars, ~~or cigarettes,~~ or loose or smokeless tobacco taxes
7 found by the commissioner or the courts to be due any distributor, dealer, or taxpayer. The
8 commissioner, upon proof satisfactory to ~~him~~ the commissioner and in accordance with
9 regulations promulgated by ~~him~~ the commissioner, shall refund the cost price of stamps
10 affixed to any package of cigars, ~~or cigarettes,~~ or loose or smokeless tobacco or shall
11 refund the tax paid on cigars or loose or smokeless tobacco under the alternate method
12 when the cigars, ~~or cigarettes,~~ or loose or smokeless tobacco ~~has~~ have become unfit for use,
13 consumption, or sale and ~~have~~ has been destroyed or shipped out of the state."

14 **SECTION 14.**

15 Said chapter is further amended by striking Code Section 48-11-17, relating to status of
16 unpaid tax as a lien, and inserting in its place a new Code Section 48-11-17 to read as
17 follows:

18 "48-11-17.

19 The amount of any unpaid tax shall be a lien against the property of any distributor or
20 dealer who sells cigars, ~~or cigarettes,~~ or loose or smokeless tobacco without collecting the
21 tax and against the property of any person using or consuming cigars, ~~or cigarettes,~~ or loose
22 or smokeless tobacco without proper stamps affixed to the cigars, ~~or cigarettes,~~ or loose
23 or smokeless tobacco or without the tax paid on the cigars or loose or smokeless tobacco as
24 otherwise provided in this chapter. The commissioner or ~~his~~ the commissioner's authorized
25 agents are authorized to seize the property of a delinquent distributor, dealer, or taxpayer
26 and sell it as provided by law to satisfy the claim for taxes due under this chapter; or the
27 commissioner may record ~~his~~ the commissioner's lien specifying and describing the
28 property against which the lien is effective, and the lien shall be good as against any other
29 person until the claim for taxes is satisfied."

30 **SECTION 15.**

31 Said chapter is further amended by striking subsection (a) of Code Section 48-11-18, relating
32 to hearings by the commissioner, and inserting in its place a new subsection (a) to read as
33 follows:

34 "(a) Any person aggrieved by any action of the commissioner or ~~his~~ the commissioner's
35 authorized agent may apply to the commissioner, in writing within ten days after the notice

1 of the action is delivered or mailed to ~~him~~ the commissioner, for a hearing. The application
 2 shall set forth the reasons why the hearing should be granted and the manner of relief
 3 sought. The commissioner shall notify the applicant of the time and place fixed for the
 4 hearing. After the hearing, the commissioner may make an order as may appear to ~~him~~ the
 5 commissioner to be just and lawful and shall furnish a copy of the order to the applicant.
 6 The commissioner at any time by notice in writing may order a hearing on ~~his~~ the
 7 commissioner's own initiative and require the taxpayer or any other person whom ~~he~~ the
 8 commissioner believes to be in possession of information concerning any manufacture,
 9 importation, use, consumption, storage, or sale of cigars, ~~or~~ cigarettes, or loose or
 10 smokeless tobacco which ~~have~~ has escaped taxation to appear before ~~him~~ the commissioner
 11 or ~~his~~ the commissioner's duly authorized agent with any specific books of account, papers,
 12 or other documents for examination under oath relative to the information."

13

SECTION 16.

14 Said chapter is further amended by striking subsection (a) of Code Section 48-11-19, relating
 15 to powers and duties of special agents and enforcement officers, and inserting in its place a
 16 new subsection (a) to read as follows:

17 "(a) Each person appointed by the commissioner as a special agent or enforcement officer
 18 of the department for the enforcement of the laws of this state with respect to the
 19 manufacture, transportation, distribution, sale, possession, and taxation of cigars, cigarettes,
 20 ~~and~~ little cigars, and loose or smokeless tobacco shall have the authority throughout the
 21 state to:

- 22 (1) Obtain and execute warrants for arrest of persons charged with violations of such
 23 laws;
- 24 (2) Obtain and execute search warrants in the enforcement of such laws;
- 25 (3) Arrest without warrant any person violating such laws in the officer's presence or
 26 within ~~his~~ such officer's immediate knowledge when there is likely to be a failure of
 27 enforcement of such laws for want of a judicial officer to issue a warrant;
- 28 (4) Make investigations in the enforcement of such laws and, in connection with such
 29 investigations, to go upon any property outside buildings, whether posted or otherwise,
 30 in the performance of ~~his~~ such officer's duties;
- 31 (5) Seize and take possession of all property which is declared contraband under such
 32 laws; and
- 33 (6) Carry firearms while performing ~~his~~ such officer's duties."

1 **SECTION 17.**

2 Said chapter is further amended by striking Code Section 48-11-22, relating to transportation
3 of certain cigarettes and cigars, and inserting in its place a new Code Section 48-11-22 to
4 read as follows:

5 "48-11-22.

6 (a) Every person who transports upon the public highways, roads, and streets of this state
7 cigars, ~~or~~ cigarettes, or loose or smokeless tobacco not stamped or on which tax has not
8 been paid in accordance with the alternate regulations provided by the commissioner under
9 Code Section 48-11-3 shall have in ~~his~~ such person's actual possession invoices or delivery
10 tickets for the cigars, ~~and~~ cigarettes, and loose or smokeless tobacco which show the true
11 name and address of the consignor or seller, the true name of the consignee or purchaser,
12 the quantity and brands of the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco
13 transported, and the name and address of the person who has assumed or shall assume the
14 payment of the tax at the point of ultimate destination. In the absence of the invoices or
15 delivery tickets, the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco being transported
16 and the vehicles in which the cigars, ~~or~~ cigarettes, or loose or smokeless tobacco is ~~are~~
17 being transported shall be confiscated and disposed of as provided in Code Section
18 48-11-9; and the transporter may be liable for a penalty of not more than \$25.00 for each
19 individual carton of cigarettes, ~~and~~ \$50.00 for each individual box of cigars, and \$25.00 for
20 each individual container of loose or smokeless tobacco being transported by ~~him~~ such
21 person. The penalty shall be recovered as provided in subsection (c) of Code Section
22 48-11-24.

23 (b) This Code section shall apply only with respect to the transportation of more than 200
24 cigarettes, ~~or~~ more than 20 cigars, or more than six containers of loose or smokeless
25 tobacco."

26 **SECTION 18.**

27 Said chapter is further amended by striking subsection (a) of Code Section 48-11-23, relating
28 to additional sale requirements, and inserting in its place a new subsection (a) to read as
29 follows:

30 "(a) It shall be unlawful for any person, with intent to evade the tax imposed by this
31 chapter, to transport cigars, ~~or~~ cigarettes, or loose or smokeless tobacco in violation of
32 Code Section 48-11-22."

SECTION 19.

1
2 Said chapter is further amended by striking Code Section 48-11-23.1, relating to additional
3 requirements and seizure and forfeiture of contraband, and inserting in its place a new Code
4 Section 48-11-23.1 to read as follows:

5 "48-11-23.1.

6 (a) As used in this Code section, the term 'package' means a pack, carton, or container of
7 any kind in which cigarettes or loose or smokeless tobacco is ~~are~~ offered for sale, sold, or
8 otherwise distributed, or intended for distribution, to consumers.

9 (b) No tax stamp may be affixed to, or made upon, any package of cigarettes or loose or
10 smokeless tobacco if:

11 (1) The package differs in any respect with the requirements of the Federal Cigarette
12 Labeling and Advertising Act, 15 U.S.C. Sec. 1331, et seq., for the placement of labels,
13 warnings, or any other information upon a package of cigarettes or loose or smokeless
14 tobacco that is to be sold within the United States;

15 (2) The package is labeled 'For Export Only,' 'U.S. Tax Exempt,' 'For Use Outside U.S.,'
16 or similar wording indicating that the manufacturer did not intend that the product be sold
17 in the United States;

18 (3) The package, or a package containing individually stamped packages, has been
19 altered by adding or deleting the wording, labels, or warnings described in paragraph (1)
20 or (2) of this subsection;

21 (4) The package has been imported into the United States after January 1, 2000, in
22 violation of 26 U.S.C. Sec. 5754; or

23 (5) The package in any way violates federal trademark or copyright laws.

24 (c) Any person who sells or holds for sale a cigarette packages or loose or smokeless
25 tobacco package to which is affixed a tax stamp in violation of subsection (b) of this Code
26 section shall be guilty of a misdemeanor.

27 (d) Notwithstanding any other provision of law, the commissioner may revoke any license
28 issued under this chapter to any person who sells or holds for sale a cigarette or loose or
29 smokeless tobacco package to which is affixed a tax stamp in violation of subsection (b)
30 of this Code section.

31 (e) Notwithstanding any other provision of law, the commissioner may seize and destroy
32 or sell to the manufacturer, only for export, packages that do not comply with subsection
33 (b) of this Code section.

34 (f) A violation of subsection (b) of this Code section shall constitute an unfair and
35 deceptive act or practice under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair
36 Business Practices Act of 1975.'

1 **SECTION 20.**

2 Said chapter is further amended by striking subsection (a) of Code Section 48-11-24, relating
3 to criminal penalties, and inserting in its place a new subsection (a) to read as follows:

4 "(a) Any person who possesses unstamped cigarettes or loose or smokeless tobacco or
5 nontax-paid cigars or loose or smokeless tobacco in violation of this chapter shall be liable
6 for a penalty of not more than \$25.00 for each individual carton of unstamped cigarettes
7 or loose or smokeless tobacco and \$50.00 for each individual box of nontax-paid cigars or
8 loose or smokeless tobacco in his or her possession."

9 **SECTION 21.**

10 Said chapter is further amended by striking Code Section 48-11-25, relating to criminal
11 penalties, and inserting in its place a new Code Section 48-11-25 to read as follows:

12 "48-11-25.

13 (a)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this
14 chapter, to possess unstamped cigarettes or loose or smokeless tobacco or nontax-paid
15 cigars or loose or smokeless tobacco.

16 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a
17 misdemeanor.

18 (b)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this
19 chapter, to:

20 (A) Sell cigarettes or loose or smokeless tobacco without the stamps required by this
21 chapter being affixed to the cigarettes or loose or smokeless tobacco; or

22 (B) Sell cigars or loose or smokeless tobacco without the stamp or stamps required by
23 this chapter or without the tax being paid on the cigars or loose or smokeless tobacco
24 in accordance with the alternate method.

25 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
26 and, upon conviction thereof, shall be imprisoned for not less than one year nor more than
27 ten years."

28 **SECTION 22.**

29 Said chapter is further amended by striking subsection (a) of Code Section 48-11-27, relating
30 to criminal penalties, and inserting in its place a new subsection (a) to read as follows:

31 "(a) It shall be unlawful for any person to:

32 (1) Make a false entry upon any invoices or any record relating to the purchase,
33 possession, or sale of cigarettes or loose or smokeless tobacco; or

1 (2) With intent to evade any tax imposed by this chapter, present any false entry upon
 2 any such invoice or record for the inspection of the commissioner or ~~his~~ the
 3 commissioner's authorized agents."

4 **SECTION 23.**

5 Article 1 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
 6 general provisions regarding the Georgia Bureau of Investigation, is amended by striking
 7 Code Section 35-3-8, relating to powers of agents generally, and inserting in its place a new
 8 Code Section 35-3-8 to read as follows:

9 "35-3-8.

10 (a) All properly appointed agents of the bureau shall have the powers, including the power
 11 of making arrests and appearing in court, for the enforcement of all criminal statutes
 12 pertaining to the manufacture, transportation, distribution, sale, or possession of liquor,
 13 wine, beer, alcoholic beverages, cigars, cigarettes, little cigars, cheroots, ~~and~~ stogies, and
 14 loose or smokeless tobacco and shall concurrently with agents and enforcement officers
 15 appointed by the state revenue commissioner have the authority throughout the state to:

16 (1) Obtain and execute warrants for the arrest of persons charged with violations of such
 17 laws;

18 (2) Obtain and execute search warrants in the enforcement of such laws;

19 (3) Arrest without warrant any person found in violation of such laws, or endeavoring
 20 to escape, or if for other cause there is likely to be a failure of enforcement of such laws
 21 for want of an officer to issue a warrant;

22 (4) Make investigations in the enforcement of such laws and in connection therewith to
 23 go upon any property outside of buildings, posted or otherwise, in the performance of
 24 such duties;

25 (5) Seize and take possession of all property which is declared contraband under such
 26 laws; and

27 (6) Carry firearms while performing their duties.

28 (b) The enforcement powers conferred in this Code section upon agents of the bureau shall
 29 relate only to the enforcement of the criminal provisions relating to the manufacture,
 30 transportation, distribution, sale, or possession of liquor, wine, beer, alcoholic beverages,
 31 cigars, cigarettes, little cigars, cheroots, ~~and~~ stogies, and loose or smokeless tobacco and
 32 shall not extend to regulatory matters with respect to such products under the jurisdiction
 33 of the state revenue commissioner."

