

House Bill 1282

By: Representatives Epps of the 90th and Crawford of the 91st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes
2 on tobacco products, so as to provide for definitions; to change provisions relating to
3 licensure of manufacturers, importers, and distributors; to provide for penalties related to
4 counterfeit cigarettes; to provide for related matters; to provide an effective date; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

11 "48-11-1.

12 As used in this chapter, the term:

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

15 (2) 'Cigar dealer' means any person located within the borders of this state who sells or
16 distributes cigars to a consumer in this state.

17 (3) 'Cigar distributor' means any person, whether located within or outside the borders
18 of this state, other than a cigar dealer, who sells or distributes cigars within or into the
19 boundaries of this state; and who:

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

22 (B) Is engaged in the business of:

23 (i) Importing cigars into this state or purchasing cigars from other cigar
24 manufacturers or cigar distributors; and

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

1 (4) 'Cigar importer' means any person who imports into or who brokers within the United
 2 States, either directly or indirectly, a finished cigar for sale or distribution.

3 (5) 'Cigar manufacturer' means any person who manufactures, fabricates, assembles,
 4 processes, or labels a finished cigar.

5 ~~(2)~~(6) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the
 6 cover of the roll is paper or any substance other than tobacco.

7 (7) 'Cigarette dealer' means any person located within the borders of this state who sells
 8 or distributes cigarettes to a consumer in this state.

9 (8) 'Cigarette distributor' means any person, whether located within or outside the
 10 borders of this state, other than a cigarette dealer, who sells or distributes cigarettes
 11 within or into the boundaries of this state; and who:

12 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 13 contact and call on cigarette dealers; and

14 (B) Is engaged in the business of:

15 (i) Importing cigarettes into this state or purchasing cigarettes from other cigarette
 16 manufacturers or cigarette distributors; and

17 (ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the
 18 business of selling the cigarettes directly to the ultimate consumer of the cigarettes.

19 Such term shall not include any cigarette manufacturer, export warehouse proprietor, or
 20 cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells
 21 or distributes cigarettes in this state only to cigarette distributors who hold valid and
 22 current licenses under Code Section 48-11-4 or to an export warehouse proprietor or
 23 another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.

24 (9) 'Cigarette importer' means any person who imports into or who brokers within the
 25 United States, either directly or indirectly, a finished cigarette for sale or distribution.

26 (10) 'Cigarette manufacturer' means any person who manufactures, fabricates, assembles,
 27 processes, or labels a finished cigarette.

28 (11) 'Counterfeit cigarette' means cigarettes that are manufactured, fabricated, assembled,
 29 processed, packaged, or labeled by any person other than the trademark owner of a
 30 cigarette brand or the owner's designated agent.

31 ~~(3)~~(12) 'Dealer' means any person other than a distributor who is engaged in this state in
 32 the business of selling cigars or cigarettes directly to the ultimate consumer of the cigars
 33 or cigarettes who is a cigar dealer, a cigarette dealer, or a loose or smokeless tobacco
 34 dealer.

35 ~~(4)~~(13) 'Distributor' means any person who:

36 ~~(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly~~
 37 ~~contact and call on dealers; and~~

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

2 ~~(i) Manufacturing cigars, cigarettes, or loose or smokeless tobacco in this state;~~
 3 ~~importing cigars, cigarettes, or loose or smokeless tobacco into this state, or~~
 4 ~~purchasing cigars, cigarettes, or loose or smokeless tobacco from other manufacturers~~
 5 ~~or distributors; and~~

6 ~~(ii) Selling the cigars, cigarettes, or loose or smokeless tobacco to dealers in this state~~
 7 ~~for resale, but is not in the business of selling the cigars, cigarettes, or loose or~~
 8 ~~smokeless tobacco directly to the ultimate consumer of the cigars, cigarettes, or loose~~
 9 ~~or smokeless tobacco is a cigar distributor, a cigarette distributor, or a loose or~~
 10 ~~smokeless tobacco distributor.~~

11 ~~(5)~~(14) 'First taxable transaction' means the first sale, receipt, purchase, possession,
 12 consumption, handling, distribution, or use of cigars, cigarettes, or loose or smokeless
 13 tobacco within this state.

14 ~~(6)~~(15) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready
 15 rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist
 16 tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
 17 and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such
 18 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for
 19 chewing and smoking but does not include cigarettes or cigars or tobacco purchased for
 20 the manufacture of cigarettes or cigars by cigarette ~~distributors~~ manufacturers or cigar
 21 manufacturers.

22 (16) 'Loose or smokeless tobacco dealer' means any person located within the borders
 23 of this state who sells or distributes loose or smokeless tobacco to a consumer in this
 24 state.

25 (17) 'Loose or smokeless tobacco distributor' means any person who:

26 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 27 contact and call on loose or smokeless tobacco dealers; and

28 (B) Is engaged in the business of:

29 (i) Importing loose or smokeless tobacco into this state or purchasing loose or
 30 smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or
 31 smokeless tobacco distributors; and

32 (ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in
 33 this state for resale but is not in the business of selling the loose or smokeless tobacco
 34 directly to the ultimate consumer of the loose or smokeless tobacco.

35 (18) 'Loose or smokeless tobacco importer' means any person who imports into or who
 36 brokers within the United States, either directly or indirectly, finished loose or smokeless
 37 tobacco for sale or distribution.

1 (19) 'Loose or smokeless tobacco manufacturer' means any person who manufactures,
 2 fabricates, assembles, processes, or labels finished loose or smokeless tobacco.

3 (20) 'Related machinery' means any item, device, conveyance, or vessel of any kind or
 4 character used in manufacturing, packaging, labeling, stamping, transporting, distributing,
 5 selling, or possessing counterfeit cigarettes.

6 ~~(7)~~(21) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
 7 distribution in any manner or by any means whatever.

8 ~~(8)~~(22) 'Stamp' means any impression, device, stamp, label, or print manufactured,
 9 printed, made, or affixed as prescribed by the commissioner.

10 ~~(9)~~(23) 'Vending machine' means any coin-in-the-slot device used for the automatic
 11 merchandising of cigars, cigarettes, or loose or smokeless tobacco."

12 SECTION 2.

13 Said chapter is further amended by striking Code Section 48-11-4, relating to licensing of
 14 persons engaged in the tobacco business, and inserting in its place a new Code Section
 15 48-11-4 to read as follows:

16 "48-11-4.

17 (a) No person shall engage in or conduct the business of manufacturing, importing,
 18 brokering, purchasing, selling, consigning, vending, dealing in, or distributing cigars,
 19 cigarettes, or loose or smokeless tobacco in this state without first obtaining a license from
 20 the commissioner.

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

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

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

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

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

25 (f) The jurisdiction of the commissioner in the administration of this chapter shall extend
26 to every person using or consuming cigars, cigarettes, or loose or smokeless tobacco in this
27 state and to every person dealing in cigars, cigarettes, or loose or smokeless tobacco in any
28 way for business purposes and maintaining a place of business in this state. For the purpose
29 of this chapter, the maintaining of an office, store, plant, warehouse, stock of goods, or
30 regular sales or promotional activity, whether carried on automatically or by salespersons
31 or other representatives, shall constitute, among other activities, the maintaining of a place
32 of business. For the purpose of enforcement of this chapter and the rules and regulations
33 promulgated hereunder, notwithstanding any other provision of law, the commissioner or
34 his or her duly appointed hearing officer is granted authority to conduct hearings which
35 shall at all times be exercised in conformity with Chapter 13 of Title 50, the 'Georgia
36 Administrative Procedures Act.'

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

4 SECTION 3.

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

8 "48-11-5.

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

20 (2) The commissioner shall require a bond of a nonresident distributor satisfactory to the
21 commissioner and in an amount ~~not to exceed \$10,000.00~~ of not less than \$1,000.00,
22 conditioned upon the payment of the tax and compliance with any other requirements
23 specified by the commissioner. As a condition of authorization as provided in this Code
24 section, a nonresident distributor shall agree to submit the distributor's books, accounts,
25 and records for examination by the commissioner or the commissioner's duly authorized
26 agent during reasonable business hours and shall appoint in writing an agent who resides
27 in this state for the purpose of service. Service upon an agent shall be sufficient service
28 upon the nonresident distributor and made by leaving a duly attested copy of the process
29 with the agent. When legal process against any nonresident distributor is served upon the
30 agent, the agent shall notify the nonresident distributor in the manner specified in Code
31 Section 40-12-2.

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

1 (b) Every nonresident manufacturer ~~and every nonresident, importer, or~~ distributor of
 2 cigars, cigarettes, or loose or smokeless tobacco making shipments of cigars, cigarettes, or
 3 loose or smokeless tobacco by common carrier or otherwise for their own account or for
 4 the account of others to distributors or dealers of cigars, cigarettes, or loose or smokeless
 5 tobacco located within this state shall make reports of the shipments when and as required
 6 by rules and regulations of the commissioner."

7 SECTION 4.

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

10 "48-11-30.

11 (a) Notwithstanding any other provision of law, the sale or possession for sale of
 12 counterfeit cigarettes by any person shall result in the seizure of the product and related
 13 machinery by the commissioner or his or her authorized agents and any law enforcement
 14 agency at the direction of the commissioner and shall be punishable as follows:

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

19 (2) A subsequent violation with a total quantity of less than two cartons of cigarettes
 20 shall be punishable by a fine of \$5,000.00 or five times the retail value of the cigarettes
 21 involved, whichever is greater, or imprisonment not to exceed five years, or both the fine
 22 and imprisonment;

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

27 (4) A subsequent violation with a quantity of two cartons of cigarettes or more shall be
 28 punishable by a fine of \$50,000.00 or five times the retail value of the cigarettes involved,
 29 whichever is greater, or imprisonment not to exceed five years, or both the fine and
 30 imprisonment.

31 (b) An act committed by or on behalf of a licensed cigarette manufacturer, cigarette
 32 importer, cigarette distributor, or cigarette dealer in violation of paragraphs (2) or (4) of
 33 subsection (a) of this Code section shall also result in the revocation of the license by the
 34 department pursuant to Code Section 48-11-6.

35 (c) Any counterfeit cigarette seized by or at the direction of the commissioner shall be
 36 destroyed by the commissioner or his or her designee. Any related machinery seized by or

1 at the direction of the commissioner may be sold by the commissioner at public auction in
2 accordance with the requirements of Code Section 48-11-9."

3 **SECTION 5.**

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

6 **SECTION 6.**

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