

Senate Bill 281

By: Senators Ligon, Jr. of the 3rd, Shafer of the 48th, Carter of the 1st and Albers of the 56th

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 that any taxes imposed on cigars on or after January
3 1, 2012, shall be collected and paid through the use of stamps; to provide that the
4 commissioner of revenue shall provide by regulation for stamps to be affixed to cigars prior
5 to April 10, 2012, for which taxes are collected and paid prior to January 1, 2012; to provide
6 for changes throughout the chapter to certain provisions in order to remove references to the
7 collection and payment of taxes on cigars using an alternate method; to provide for related
8 matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 PART I

11 SECTION 1-1.

12 Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on
13 tobacco products, is amended by revising Code Section 48-11-3, relating to collection of tax
14 by stamps, sale at discount to distributors, basis of discount percentage, alternate method of
15 collection of tax on cigars, prohibition of sale or exchange of stamps with another distributor,
16 and redemption, as follows:

17 "48-11-3.

18 (a) Except as otherwise provided in this Code section, the taxes imposed by Code Section
19 48-11-2 shall be collected and paid through the use of stamps. The commissioner shall
20 secure stamps of such design and materials as the commissioner deems appropriate to
21 protect the revenue and shall sell the stamps to licensed distributors at a discount of not less
22 than 2 percent and not more than 8 percent of the value of the stamps. The exact percentage
23 of the discount shall be based on brackets according to the volume of cigars, cigarettes, and
24 loose or smokeless tobacco handled by the distributor pursuant to regulations promulgated
25 by the commissioner. The commissioner shall prescribe by regulation the condition,
26 method, and manner in which stamps are to be affixed to containers of cigars, cigarettes,
27 and loose or smokeless tobacco.

28 (b)(1)(A) ~~The~~ Prior to January 1, 2012, the commissioner may prescribe by regulation
 29 an alternate method, in lieu of the sale of stamps, of collecting and paying the tax
 30 imposed upon cigars and little cigars. Any such regulations shall be promulgated so
 31 that use of the alternate method will result in the same revenue to the state as the state
 32 would realize through the sale of stamps to the distributors.

33 (B) Beginning on January 1, 2012, the taxes imposed upon cigars shall be collected and
 34 paid through the use of stamps as provided in subsection (a) of this Code Section. The
 35 commissioner shall prescribe by regulation the condition, method, and manner in which
 36 stamps are to be affixed to containers of cigars for which taxes imposed upon cigars
 37 were collected and paid by an alternate method prior to January 1, 2012, such that all
 38 such containers of cigars for which taxes have been collected and paid imposed by
 39 Code Section 48-11-2 shall be required to have an affixed stamp as of April 10, 2012.

40 (2) The commissioner may also prescribe by regulation an alternate method, in lieu of
 41 the sale of stamps, of collecting and paying the tax imposed on loose or smokeless
 42 tobacco. Any such regulations shall be promulgated so that use of the alternate method
 43 will result in the same revenue to the state as the state would realize through the sale of
 44 stamps to the distributors.

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

51 PART II

52 SECTION 2-1.

53 Said chapter is further amended by revising Code Section 48-11-3, relating to collection of
 54 tax by stamps, sale at discount to distributors, basis of discount percentage, alternate method
 55 of collection of tax on cigars, prohibition of sale or exchange of stamps with another
 56 distributor, and redemption, as follows:

57 "48-11-3.

58 (a) Except as otherwise provided in this Code section, the taxes imposed by Code Section
 59 48-11-2 shall be collected and paid through the use of stamps. The commissioner shall
 60 secure stamps of such design and materials as the commissioner deems appropriate to
 61 protect the revenue and shall sell the stamps to licensed distributors at a discount of not less
 62 than 2 percent and not more than 8 percent of the value of the stamps. The exact percentage
 63 of the discount shall be based on brackets according to the volume of cigars, cigarettes, and

64 loose or smokeless tobacco handled by the distributor pursuant to regulations promulgated
 65 by the commissioner. The commissioner shall prescribe by regulation the condition,
 66 method, and manner in which stamps are to be affixed to containers of cigars, cigarettes,
 67 and loose or smokeless tobacco.

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

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

80

SECTION 2-2.

81 Said chapter is further amended by revising Code Section 48-11-8, relating to prohibition of
 82 sale or possession of unstamped tobacco products, distributors to affix stamps or otherwise
 83 pay tax, payment of tax only once, and reports, as follows:

84 "48-11-8.

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

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

92 (3) No person shall sell, offer for sale, or possess with intent to sell any loose or
 93 smokeless tobacco in this state when the loose or smokeless tobacco container does not
 94 bear the tax stamps required by Code Section 48-11-3 or upon which the tax has not been
 95 paid under the alternate method of collecting the tax provided under Code Section
 96 48-11-3.

97 (4) No person shall sell, offer for sale, or possess with intent to sell cigarettes as
 98 prohibited by Code Section 10-13A-5.

99 (b) Each distributor at the location for which such distributor's license is issued and in the
100 manner specified by the commissioner shall affix the stamps required by this Code section
101 to each individual package or container of cigarettes or cigars sold or distributed by such
102 distributor, except as prohibited by Code Section 10-13A-5. Each distributor shall comply
103 with the commissioner's regulations for the payment of the tax on ~~cigars~~ or loose or
104 smokeless tobacco as provided in Code Section 48-11-3 or shall affix to each container of
105 ~~cigars~~ or loose or smokeless tobacco sold by such distributor or from which such
106 distributor sells ~~cigars~~ or loose or smokeless tobacco the stamps required by this chapter.
107 The stamps may be affixed or the tax under the alternate method may be paid by a
108 distributor at any time before the cigars, cigarettes, or loose or smokeless tobacco is
109 transferred out of such distributor's possession.

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

114 (d) Every dealer who comes into possession of cigars, cigarettes, or loose or smokeless
115 tobacco not bearing proper tax stamps or other evidence of the tax imposed by this chapter
116 shall report the cigars, cigarettes, or loose or smokeless tobacco to the commissioner prior
117 to displaying, selling, using, or otherwise disposing of the cigars, cigarettes, and loose or
118 smokeless tobacco. After a report, the commissioner shall authorize a licensed distributor
119 to affix the proper stamps to the cigars, cigarettes, and loose or smokeless tobacco or, in
120 the case of ~~cigars~~ or loose or smokeless tobacco, authorize the dealer to remit the tax by the
121 alternate method promulgated by the commissioner in accordance with Code Section
122 48-11-3. A licensed distributor shall affix the stamps or comply with the alternate
123 regulations when presented a permit for such action issued by the commissioner. A
124 licensed distributor shall stamp cigarettes or cigars or comply with the alternate method
125 provided in this chapter with respect to ~~cigars~~ or loose or smokeless tobacco, other than
126 such distributor's own, only when authorized by the permit issued by the commissioner.

127 (e) No wholesale or retail distributor or wholesale or retail dealer shall accept deliveries
128 of unstamped cigars, cigarettes, or loose or smokeless tobacco or nontax-paid ~~cigars~~ or
129 loose or smokeless tobacco which is shipped to such distributor or acquired by such
130 distributor at any place within the state except as authorized and provided in this Code
131 section. All cigars, cigarettes, and loose or smokeless tobacco shall be examined by the
132 distributor or dealer on receipt, and the distributor shall immediately report the cigars,
133 cigarettes, or loose or smokeless tobacco to the commissioner as provided in subsection (d)
134 of this Code section.

- 135 (f) The commissioner may prescribe the charges which may be made by a distributor to
 136 any person for the services of the distributor as provided in this chapter in affixing the tax
 137 stamps to each individual package or container of cigars, cigarettes, or loose or smokeless
 138 tobacco and may prescribe the charges which may be made by a distributor in complying
 139 with the commissioner's alternate regulations for the collection of the tax on ~~cigars and~~
 140 ~~little cigars~~ or loose or smokeless tobacco.
- 141 (g) This Code section shall not apply to unstamped ~~cigars and little cigars~~ or loose or
 142 smokeless tobacco upon which the tax has been paid in accordance with the alternate
 143 regulations promulgated by the commissioner under Code Section 48-11-3."

144 SECTION 2-3.

145 Said chapter is further amended by revising Code Section 48-11-9, relating to seizure as
 146 contraband of unstamped tobacco products, exceptions, sale at public auction, procedure,
 147 disposition of proceeds, hearing, bond, and contraband vending machines, as follows:

148 "48-11-9.

149 (a)(1) Any cigars, cigarettes, or loose or smokeless tobacco found at any place in this
 150 state without stamps affixed to them as required by this chapter and any cigarettes seized
 151 pursuant to subsection (b) of Code Section 10-13A-8 are declared to be contraband
 152 articles and may be seized by the commissioner, the commissioner's agents or employees,
 153 or any peace officer of this state when directed by the commissioner to do so.

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

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

158 (B) The cigars, cigarettes, or loose or smokeless tobacco is in the possession of a
 159 licensed distributor;

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

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

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

167 (3) This subsection shall not be construed to require the commissioner to confiscate
 168 unstamped or nontax-paid cigars, cigarettes, and loose or smokeless tobacco or other
 169 property when the commissioner has reason to believe that the owner of the cigars,

170 cigarettes, loose or smokeless tobacco, or property is not willfully or intentionally
171 evading the tax imposed by this chapter.

172 (b) Any cigars, cigarettes, loose or smokeless tobacco, or other property seized pursuant
173 to this chapter may be offered for sale by the commissioner, at the commissioner's
174 discretion, at public auction to the highest bidder after advertisement as provided in this
175 Code section. The commissioner shall deliver to the Office of the State Treasurer the
176 proceeds of any sale made under this Code section. Before delivering any cigars,
177 cigarettes, or loose or smokeless tobacco sold to a purchaser at the sale, the commissioner
178 shall require the purchaser to affix to the packages the amount of stamps required by this
179 chapter or to comply with the commissioner's alternate method. The seizure and sale of
180 any cigars, cigarettes, loose or smokeless tobacco, or property pursuant to this chapter shall
181 not relieve any person from a fine, imprisonment, or other penalty for violation of this
182 chapter.

183 (c) When any cigars, cigarettes, loose or smokeless tobacco, or other property has been
184 seized pursuant to this chapter, the commissioner, at the commissioner's discretion, may
185 advertise it for sale in a newspaper published or having a circulation in the place in which
186 the seizure occurred, at least five days before the sale. Any person claiming an interest in
187 the cigars, cigarettes, loose or smokeless tobacco, or other property may make written
188 application to the commissioner for a hearing. The application shall state the person's
189 interest in the cigars, cigarettes, loose or smokeless tobacco, or other property and such
190 person's reasons why the cigars, cigarettes, loose or smokeless tobacco, or other property
191 should not be forfeited. Further proceedings on the application for hearing shall be taken
192 as provided in subsection (a) of Code Section 48-11-18. No sale of any cigars, cigarettes,
193 loose or smokeless tobacco, or property seized pursuant to this chapter shall be made while
194 an application for a hearing is pending before the commissioner. The pendency of an
195 appeal under subsection (b) of Code Section 48-11-18 shall not prevent the sale unless the
196 appellant posts a satisfactory bond with surety in an amount double the estimated value of
197 the cigars, cigarettes, loose or smokeless tobacco, or other property and conditioned upon
198 the successful termination of the appeal.

199 (d) Any vending machine containing or dispensing any cigars, cigarettes, or loose or
200 smokeless tobacco which does not bear the tax stamps required under this chapter or
201 containing or dispensing any ~~cigars~~ or loose or smokeless tobacco upon which the tax has
202 not been paid either through the purchase of stamps or the alternate procedure provided by
203 the commissioner as required under this chapter shall be a contraband article. The
204 commissioner may seize any such machine and deal with it in the same manner as provided
205 by law for the seizure and sale of unstamped cigarettes, cigars, or loose or smokeless
206 tobacco and nontax-paid ~~cigars~~ or loose or smokeless tobacco.

207 **SECTION 2-4.**

208 Said chapter is further amended by revising subsection (a) of Code Section 48-11-12, relating
 209 to assessment of deficiencies and penalties for incorrect reports, nonpayment of tax, or
 210 purchase of insufficient stamps, assumption of illegal sale absent evidence to contrary, and
 211 penalty for deficiency due to fraud, as follows:

212 "48-11-12.

213 (a)(1) The commissioner shall assess a deficiency and may assess a penalty of 10 percent
 214 of the deficiency if, after an examination of the invoices, books, and records of a licensed
 215 distributor or dealer or of any other information obtained by the commissioner or the
 216 commissioner's authorized agents, the commissioner determines that:

217 (A) The report of the licensed distributor or licensed dealer is incorrect;

218 (B) The licensed distributor or dealer has not paid the tax in accordance with the
 219 alternate regulations promulgated by the commissioner under Code Section 48-11-3;
 220 or

221 (C) The licensed distributor or dealer has not purchased sufficient stamps to cover such
 222 licensed distributor or dealer's receipts for sales or other disposition of unstamped
 223 cigars, cigarettes, or loose or smokeless tobacco and nontax-paid ~~cigars~~ or loose or
 224 smokeless tobacco.

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

231 **SECTION 2-5.**

232 Said chapter is further amended by revising Code Section 48-11-15, relating to procedure for
 233 refund of taxes, cost price of affixed stamps, and tax on tobacco products unfit for sale, use,
 234 or consumption and destroyed or exported, as follows:

235 "48-11-15.

236 The Office of the State Treasurer is authorized to pay, on the order of the commissioner,
 237 claims for refunds of cigar, cigarette, or loose or smokeless tobacco taxes found by the
 238 commissioner or the courts to be due any distributor, dealer, or taxpayer. The
 239 commissioner, upon proof satisfactory to the commissioner and in accordance with
 240 regulations promulgated by the commissioner, shall refund the cost price of stamps affixed
 241 to any package or container of cigars, cigarettes, or loose or smokeless tobacco or shall
 242 refund the tax paid on ~~cigars~~ or loose or smokeless tobacco under the alternate method

243 when the cigars, cigarettes, or loose or smokeless tobacco has become unfit for use,
244 consumption, or sale and has been destroyed or shipped out of the state."

245 **SECTION 2-6.**

246 Said chapter is further amended by revising Code Section 48-11-23.1, relating to additional
247 requirements on the sale of tobacco products, seizure and forfeiture of contraband, and
248 revocation of licenses, as follows:

249 "48-11-23.1.

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

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

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

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

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

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

267 (5) The package in any way violates federal trademark or copyright laws; or

268 (6) The package in any way violates Code Section 10-13A-5.

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

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

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

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

282 **SECTION 2-7.**

283 Said chapter is further amended by revising subsection (a) of Code Section 48-11-24, relating
 284 to penalties for possession of unstamped tobacco products, penalty for operation of
 285 unlicensed business or activity, procedure for enforcement and collection of penalties, and
 286 costs and expenses, as follows:

287 "(a) Any person who possesses unstamped cigars, cigarettes, or loose or smokeless tobacco
 288 or nontax-paid ~~cigars~~ or loose or smokeless tobacco in violation of this chapter shall be
 289 liable for a penalty of not more than \$25.00 for each individual carton or container of
 290 unstamped cigars, cigarettes, or loose or smokeless tobacco and \$50.00 for each individual
 291 ~~box~~ container of nontax-paid ~~cigars~~ or loose or smokeless tobacco in his or her possession."

292 **SECTION 2-8.**

293 Said chapter is further amended by revising Code Section 48-11-25, relating to violations of
 294 chapter and penalties, as follows:

295 "48-11-25.

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

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

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

303 (A) Sell cigars, cigarettes, or loose or smokeless tobacco without the stamps required
 304 by this chapter being affixed to the cigars, cigarettes, or loose or smokeless tobacco; or

305 (B) Sell ~~cigars~~ or loose or smokeless tobacco without the stamp or stamps required by
 306 this chapter or without the tax being paid on the ~~cigars~~ or loose or smokeless tobacco
 307 in accordance with the alternate method.

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

311 **SECTION 2-9.**

312 Said chapter is further amended by revising subsection (a) of Code Section 48-11-27, relating
313 to false entries on invoices or records pursuant to chapter and penalty, as follows:

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

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

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

320

321 **PART III**

322 **SECTION 3-1.**

323 (a) Part 1 of this Act and this part shall become effective on July 1, 2011.

324 (b) Part 2 of this Act shall become effective on April 10, 2012, on which date the
325 amendments made to Code Section 48-11-3 by Part I of this Act shall stand repealed.

326

327 **SECTION 3-2.**

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