

House Bill 1071 (COMMITTEE SUBSTITUTE)

By: Representative Houston of the 170th

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 change certain provisions relating to the excise tax on certain
3 tobacco products; to provide for a definition; to establish the rate of tax on certain tobacco
4 products; to establish the retail selling price before the addition of certain taxes; to provide
5 for annual renewal of tobacco dealer license; to provide for exemptions from certain taxes;
6 to authorize the collection and payment on the first taxable transaction; to change certain
7 provisions regarding civil and criminal penalties; to amend Code Section 50-13-2 of the
8 Official Code of Georgia Annotated, relating to definitions relative to administrative
9 procedure, so as to revise a definition to include hearings related to tobacco within its
10 meaning; to provide for related matters; to provide for an effective date; to repeal conflicting
11 laws; and for other purposes.

SECTION 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 48-11-1, relating to definitions
14 relative to taxes on tobacco products, as follows:

15 "48-11-1.

16 As used in this chapter, the term:

17 (1) 'Cigar' means any roll for smoking made wholly or in part of tobacco when the cover
18 of the roll is also tobacco. Such term shall include a little cigar.

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

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

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

26 (B) Is engaged in the business of:

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- 28 (i) Importing cigars into this state or purchasing cigars from other cigar
 29 manufacturers or cigar distributors; and
- 30 (ii) Selling the cigars to cigar dealers in this state for resale but is not in the business
 31 of selling the cigars directly to the ultimate consumer of the cigars.
- 32 (4) 'Cigar importer' means any person who imports into or who brokers within the United
 33 States, either directly or indirectly, a finished cigar for sale or distribution.
- 34 (5) 'Cigar manufacturer' means any person who manufactures, fabricates, assembles,
 35 processes, or labels a finished cigar.
- 36 (6) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the
 37 cover of the roll is paper or any substance other than tobacco.
- 38 (7) 'Cigarette dealer' means any person located within the borders of this state who sells
 39 or distributes cigarettes to a consumer in this state.
- 40 (8) 'Cigarette distributor' means any person, whether located within or outside the
 41 borders of this state, other than a cigarette dealer, who sells or distributes cigarettes
 42 within or into the boundaries of this state and who:
- 43 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 44 contact and call on cigarette dealers; and
- 45 (B) Is engaged in the business of:
- 46 (i) Importing cigarettes into this state or purchasing cigarettes from other cigarette
 47 manufacturers or cigarette distributors; and
- 48 (ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the
 49 business of selling the cigarettes directly to the ultimate consumer of the cigarettes.
- 50 Such term shall not include any cigarette manufacturer, export warehouse proprietor, or
 51 cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells
 52 or distributes cigarettes in this state only to cigarette distributors who hold valid and
 53 current licenses under Code Section 48-11-4 or to an export warehouse proprietor or
 54 another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.
- 55 (9) 'Cigarette importer' means any person who imports into or who brokers within the
 56 United States, either directly or indirectly, a finished cigarette for sale or distribution.
- 57 (10) 'Cigarette manufacturer' means any person who manufactures, fabricates, assembles,
 58 processes, or labels a finished cigarette.
- 59 (11) 'Counterfeit cigarette' means cigarettes that are manufactured, fabricated, assembled,
 60 processed, packaged, or labeled by any person other than the trademark owner of a
 61 cigarette brand or the owner's designated agent.
- 62 (12) 'Dealer' means any person who is a cigar dealer, a cigarette dealer, or a loose or
 63 smokeless tobacco dealer.

- 64 (13) 'Distributor' means any person who is a cigar distributor, a cigarette distributor, or
 65 a loose or smokeless tobacco distributor.
- 66 (14) 'First ~~taxable~~ transaction' means the first sale, receipt, purchase, possession,
 67 consumption, handling, distribution, or use of cigars, cigarettes, or loose or smokeless
 68 tobacco within this state.
- 69 ~~(15)~~ (16) 'Little cigar' means any cigar weighing not more than three pounds per thousand.
- 70 ~~(15)~~(16) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready
 71 rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist
 72 tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
 73 and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such
 74 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for
 75 chewing and smoking, but does not include cigarettes or cigars or tobacco purchased for
 76 the manufacture of cigarettes or cigars by cigarette manufacturers or cigar manufacturers.
- 77 ~~(16)~~(17) 'Loose or smokeless tobacco dealer' means any person located within the
 78 borders of this state who sells or distributes loose or smokeless tobacco to a consumer in
 79 this state.
- 80 ~~(17)~~(18) 'Loose or smokeless tobacco distributor' means any person who:
- 81 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 82 contact and call on loose or smokeless tobacco dealers; and
- 83 (B) Is engaged in the business of:
- 84 (i) Importing loose or smokeless tobacco into this state or purchasing loose or
 85 smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or
 86 smokeless tobacco distributors; and
- 87 (ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in
 88 this state for resale but is not in the business of selling the loose or smokeless tobacco
 89 directly to the ultimate consumer of the loose or smokeless tobacco.
- 90 ~~(18)~~(19) 'Loose or smokeless tobacco importer' means any person who imports into or
 91 who brokers within the United States, either directly or indirectly, finished loose or
 92 smokeless tobacco for sale or distribution.
- 93 ~~(19)~~(20) 'Loose or smokeless tobacco manufacturer' means any person who
 94 manufactures, fabricates, assembles, processes, or labels finished loose or smokeless
 95 tobacco.
- 96 ~~(20)~~(21) 'Related machinery' means any item, device, conveyance, or vessel of any kind
 97 or character used in manufacturing, packaging, labeling, stamping, transporting,
 98 distributing, selling, or possessing counterfeit cigarettes.
- 99 ~~(21)~~(22) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
 100 distribution in any manner or by any means whatever.

101 ~~(22)~~(23) 'Stamp' means any impression, device, stamp, label, or print manufactured,
102 printed, made, or affixed as prescribed by the commissioner.

103 ~~(23)~~(24) 'Vending machine' means any coin-in-the-slot device used for the automatic
104 merchandising of cigars, cigarettes, or loose or smokeless tobacco."

105 **SECTION 2.**

106 Said chapter is further amended by revising Code Section 48-11-2, relating to excise taxes,
107 rate on tobacco products, the retail selling price before the addition of tax, exemptions,
108 collection and payment on the first taxable transaction, distributors, taxes separately
109 identified, and collection, as follows:

110 "48-11-2.

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

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

116 (2) All ~~other~~ cigars other than little cigars: 23 percent of the wholesale cost price,
117 exclusive of any trade, cash, or other discounts or any promotion, advertising, display,
118 or similar allowances;

119 (3) Cigarettes: 37¢ per pack of 20 cigarettes and a like rate, pro rata, for other size
120 packages; and

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

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

127 (c) The taxes imposed by this chapter are levied ~~with respect to~~ on the purchase or use of
128 cigars, cigarettes, or loose or smokeless tobacco by the state or any department, institution,
129 or agency of the state and by the political subdivisions of the state and their departments,
130 institutions, and agencies. The taxes imposed by this chapter are not imposed ~~with respect~~
131 ~~to~~ on cigars, cigarettes, or loose or smokeless tobacco purchased exclusively for use by the
132 patients at the Georgia War Veterans Home and the Georgia War Veterans Nursing Home.

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

- 136 (e) The taxes imposed by this chapter shall be advanced and paid by the ~~distributor~~ dealer
 137 or distributor licensed pursuant to this chapter to the commissioner for deposit and
 138 distribution as provided in this chapter upon the first ~~taxable~~ transaction within ~~the~~ this
 139 state, whether or not the transaction involves the ultimate purchaser or consumer. The
 140 ~~seller~~ licensed dealer or distributor shall collect the tax on the first transaction within this
 141 state from the purchaser or consumer, and the purchaser or consumer shall pay the tax to
 142 the ~~seller~~ dealer or distributor. The ~~seller~~ dealer or distributor shall be responsible for the
 143 collection of the tax and the payment of the tax to the commissioner. Whenever cigars,
 144 cigarettes, or loose or smokeless tobacco is shipped from outside ~~the~~ this state to anyone
 145 other than a distributor, the person receiving the cigars, cigarettes, or loose or smokeless
 146 tobacco shall be deemed to be a distributor and shall be responsible for the tax on the
 147 cigars, cigarettes, or loose or smokeless tobacco and the payment of the tax to the
 148 commissioner. No tobacco products shall be received in, sold in, or shipped into this state
 149 unless lawfully obtained from a person licensed pursuant to this chapter or from an
 150 importer with a valid permit issued pursuant to 26 U.S.C. Section 5712.
- 151 (f) The amount of taxes advanced and paid to the state as provided in this Code section
 152 shall be added to and collected as a part of the sales price of the cigars, cigarettes, or loose
 153 or smokeless tobacco sold or distributed. The amount of the tax shall be stated separately
 154 from the price of the cigars, cigarettes, or loose or smokeless tobacco.
- 155 (g) The cigars, cigarettes, and loose or smokeless tobacco tax imposed shall be collected
 156 only once upon the same ~~cigarettes, cigars, little cigars, cigarettes,~~ or loose or smokeless
 157 tobacco."

158 SECTION 3.

159 Said chapter is further amended by revising Code Section 48-11-4, relating to the licensing
 160 of persons engaged in tobacco business, initial and annual fees, suspension and revocation
 161 of licenses, the registration and inspection of vending machines, bond, jurisdiction, and
 162 licensing of promotional activities, as follows:

163 "48-11-4.

164 (a) No person shall engage in or conduct the business of manufacturing, importing,
 165 brokering, purchasing, selling, consigning, vending, dealing in, shipping, receiving, or
 166 distributing cigars, cigarettes, or loose or smokeless tobacco in this state without first
 167 obtaining a license from the commissioner.

168 (b) All licenses shall be issued by the commissioner, who shall make rules and regulations
 169 with respect to applications for and issuance of the licenses and for other purposes of
 170 enforcing this chapter. The commissioner may refuse to issue any license under this
 171 chapter when the commissioner has reasonable cause to believe that the applicant has

172 willfully withheld information requested of the applicant or required by the regulations to
 173 be provided or reported or when the commissioner has reasonable cause to believe that the
 174 information submitted in any application or report is false or misleading and is not given
 175 in good faith.

176 (c) The annual renewal fee for a manufacturer's, importer's, or distributor's or dealer's
 177 license shall be ~~\$50.00~~ \$10.00, ~~annually, except that~~ There shall also be a first year
 178 registration fee of \$250.00 for a person commencing business as a manufacturer, importer,
 179 or distributor ~~for the first time the first year's fee shall be \$250.00.~~ All renewal applications
 180 shall be filed at least 30 days in advance of the expiration date shown on the license. ~~Each~~
 181 ~~dealer shall have a permanent license issued by the commissioner free of charge.~~

182 (1) Each license, except a dealer's license, shall begin on July 1 and end on June 30 of
 183 the next succeeding year. The prescribed fee shall accompany every application for a
 184 license and shall apply for any portion of the annual period.

185 (2) Each dealer's license shall be valid for 12 months beginning on the date of issue for
 186 the initial license, and the first day of the month of issue for subsequent licenses, and
 187 shall expire on the last day of the month preceding the month in which the initial license
 188 was issued. Any dealer licensed under the provisions of this Code section who is also
 189 licensed under Chapter 2 of Title 3 to sell alcoholic beverages may, upon written request
 190 to the commissioner, arrange to have both licenses renewed on the same date each year.
 191 Any dealer that follows the proper procedure for a renewal of his or her license, including
 192 filing the application for renewal at least 30 days in advance of the expiration date of his
 193 or her existing license, shall be allowed to continue operating as a dealer under the
 194 existing license until the commissioner has issued the new license or denied the
 195 application for renewal.

196 (3) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to
 197 suspension or revocation for violation of any of the provisions of this chapter or of the
 198 rules and regulations made pursuant to this chapter. A separate license shall be required
 199 for each place of business. No person shall hold a distributor's license and a dealer's
 200 license at the same time.

201 (d) The commissioner may make rules and regulations governing the sale of cigars,
 202 cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines.
 203 The commissioner shall require annually a special registration of each vending machine for
 204 any operation in this state and charge a license fee for the registration in the amount of
 205 ~~\$1.00~~ \$10.00 for each machine. The annual registration shall indicate the location of the
 206 vending machine. No vending machine shall be purchased or transported into this state for
 207 use in this state when the vending machine is not so designed as to permit inspection
 208 without opening the machine for the purpose of determining that all cigars, cigarettes, loose

209 or smokeless tobacco, and other tobacco products contained in the machine bear the tax
210 stamp required under this chapter.

211 (e) The manufacturer's, importer's, distributor's, or dealer's license shall be exhibited in the
212 place of business for which it is issued in the manner prescribed by the commissioner. The
213 commissioner shall require each licensed manufacturer, importer, or distributor to file with
214 the commissioner a bond in an amount of not less than \$1,000.00 to guarantee the proper
215 performance of the manufacturer's, importer's, or distributor's duties and the discharge of
216 the manufacturer's, importer's, or distributor's liabilities under this chapter. The bond shall
217 run concurrently with the manufacturer's, importer's, or distributor's license but shall
218 remain in full force and effect for a period of one year after the expiration or revocation of
219 the manufacturer's, importer's, or distributor's license unless the commissioner certifies that
220 all obligations due the state arising under this chapter have been paid.

221 (f) The jurisdiction of the commissioner in the administration of this chapter shall extend
222 to every person using or consuming cigars, cigarettes, or loose or smokeless tobacco in this
223 state and to every person dealing in cigars, cigarettes, or loose or smokeless tobacco in any
224 way for business purposes and maintaining a place of business in this state. For the
225 purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of
226 goods, or regular sales or promotional activity, whether carried on automatically or by
227 salespersons or other representatives, shall constitute, among other activities, the
228 maintaining of a place of business. For the purpose of enforcement of this chapter and the
229 rules and regulations promulgated ~~hereunder~~ under this chapter, notwithstanding any other
230 provision of law, the commissioner or his or her duly appointed hearing officer is granted
231 authority to conduct hearings which shall at all times be exercised in conformity with rules
232 and regulations promulgated by the commissioner and consistent with Chapter 13 of Title
233 50, the 'Georgia Administrative Procedure Act.'

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

237 **SECTION 4.**

238 Said chapter is further amended by revising Code Section 48-11-10, relating to monthly
239 reports of licensed distributors, contents, and authority to require reports from common
240 carriers, warehousemen, and others, as follows:

241 "48-11-10.

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

- 244 (1) The quantity of cigars, cigarettes, or loose or smokeless tobacco on hand on the first
 245 and last days of the calendar month immediately preceding the month in which the report
 246 is filed;
- 247 (2) Information required by the commissioner concerning the amount of stamps
 248 purchased, used, and on hand during the report period; and
- 249 (3) Information otherwise required by the commissioner for the report period.
- 250 (b) The commissioner may require other reports as the commissioner deems necessary for
 251 the proper administration of this chapter, including, but not limited to, reports from
 252 common carriers and warehousemen with respect to cigars, cigarettes, and loose or
 253 smokeless tobacco delivered to or stored at any point in this state.
- 254 (c) Any person who fails to file any report when due shall forfeit as a penalty for each day
 255 after the due date until the report is filed the sum of ~~\$1.00~~ \$25.00, to be collected in the
 256 manner provided in subsection (c) of Code Section 48-11-24 for the collection of
 257 penalties."

258 **SECTION 5.**

259 Said chapter is further amended by revising Code Section 48-11-11, relating to
 260 record-keeping requirements for tobacco products, as follows:

261 "48-11-11.

- 262 (a) Each distributor and each dealer shall keep complete and accurate records of all cigars,
 263 cigarettes, and loose or smokeless tobacco manufactured, produced, purchased, and sold.
 264 The original records or a complete and legible photocopy or electronic image shall be of
 265 the kind and in the form prescribed by the commissioner and shall be safely preserved for
 266 three years in an appropriate manner to ensure permanency and accessibility for inspection
 267 by the commissioner and the commissioner's authorized agents. The commissioner and the
 268 commissioner's authorized agents may examine the books, papers, and records of any
 269 distributor or dealer in this state for the purpose of determining whether the tax imposed
 270 by this chapter has been fully paid and, for the purpose of determining whether the
 271 provisions of this chapter are properly observed, may investigate and examine the stock of
 272 cigars, cigarettes, or loose or smokeless tobacco in or upon any premises, including, but not
 273 limited to, public and private warehouses where the cigars, cigarettes, or loose or
 274 smokeless tobacco is possessed, stored, or sold. Invoices sufficient to cover current
 275 inventory at a licensed location shall be maintained at that licensed location and made
 276 available for immediate inspection. All other records may be kept at a locality other than
 277 the licensed location and shall be provided for inspection within two business days after
 278 receipt of notification from the commissioner or an authorized agent of the commissioner
 279 to make such records available.

280 (b) The commissioner and his or her authorized agents may examine the books, papers,
281 and records of any transportation company, any common, contract, or private carrier, and
282 any public or private warehouse for the purpose of determining whether the provisions of
283 this chapter are properly observed."

284 **SECTION 6.**

285 Said chapter is further amended by revising paragraph (4) of subsection (b) of Code Section
286 48-11-13, relating to a tax on persons having tobacco products on which certain taxes have
287 not been paid, as follows:

288 "(4) Cigarettes or little cigars in an amount not exceeding 200 cigarettes or little cigars
289 which have been brought into the state on the person;"

290 **SECTION 7.**

291 Said chapter is further amended by revising Code Section 48-11-18, relating to the procedure
292 for hearing by persons aggrieved by actions of commissioner, initiation of hearings by the
293 commissioner, production of evidence, appeals, bond, and grounds for not sustaining the
294 commissioner's action, as follows:

295 "48-11-18.

296 (a) Any person aggrieved by any action of the commissioner or the commissioner's
297 authorized agent may apply to the commissioner, in writing within ten days after the notice
298 of the action is delivered or mailed to the commissioner, for a hearing. The application
299 shall set forth the reasons why the hearing should be granted and the manner of relief
300 sought. The commissioner shall notify the applicant of the time and place fixed for the
301 hearing. After the hearing, the commissioner may make an order as may appear to the
302 commissioner to be just and lawful and shall furnish a copy of the order to the applicant.
303 The commissioner at any time by notice in writing may order a hearing on the
304 commissioner's own initiative and require the taxpayer or any other person whom the
305 commissioner believes to be in possession of information concerning any manufacture,
306 importation, use, consumption, storage, or sale of cigars, cigarettes, or loose or smokeless
307 tobacco which has escaped taxation to appear before the commissioner or the
308 commissioner's duly authorized agent with any specific books of account, papers, or other
309 documents for examination under oath relative to the information.

310 (b) Any person aggrieved because of any final action or decision of the commissioner,
311 after hearing, may appeal from the decision to the superior court of the county in which the
312 appellant resides. The appeal shall be returnable at the same time and shall be served and
313 returned in the same manner as required in the case of a summons in a civil action. The
314 authority issuing the citation shall take from the appellant a bond of recognizance to the

315 state, with surety, conditioned to prosecute the appeal and to effect and comply with the
 316 orders and decrees of the court. The action of the commissioner shall be sustained unless
 317 the court finds that ~~he~~ the commissioner misinterpreted this chapter or that there is no
 318 evidence to support ~~his~~ the commissioner's action. If the commissioner's action is not
 319 sustained, the court may grant equitable relief to the appellant. Upon all appeals which are
 320 denied, costs may be taxed against the appellant at the discretion of the court. No costs of
 321 any appeal shall be taxed against the state."

322 **SECTION 8.**

323 Said chapter is further amended by revising Code Section 48-11-22, relating to the
 324 transportation of unstamped tobacco products, the requirement of invoices or delivery tickets,
 325 contents, confiscation and disposition absent invoice or ticket, and penalties, as follows:

326 "48-11-22.

327 (a) Every person who transports upon the public highways, roads, and streets of this state
 328 cigars, cigarettes, or loose or smokeless tobacco not stamped or on which tax has not been
 329 paid in accordance with the alternate regulations provided by the commissioner under Code
 330 Section 48-11-3 shall have in such person's actual possession invoices or delivery tickets
 331 for the cigars, cigarettes, and loose or smokeless tobacco which show the true name and
 332 address of the consignor or seller, the true name of the consignee or purchaser, the quantity
 333 and brands of the cigars, cigarettes, or loose or smokeless tobacco transported, and the
 334 name and address of the person who has assumed or shall assume the payment of the tax
 335 at the point of ultimate destination. In the absence of the invoices or delivery tickets, the
 336 cigars, cigarettes, or loose or smokeless tobacco being transported and the vehicles in
 337 which the cigars, cigarettes, or loose or smokeless tobacco is being transported shall be
 338 confiscated and disposed of as provided in Code Section 48-11-9; and the transporter may
 339 be liable for a penalty of not more than ~~\$25.00~~ \$50.00 for each individual carton of little
 340 cigars or cigarettes, \$50.00 for each individual box of cigars, and ~~\$25.00~~ \$50.00 for each
 341 individual container of loose or smokeless tobacco being transported by such person. The
 342 penalty shall be recovered as provided in subsection (c) of Code Section 48-11-24.

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

346 **SECTION 9.**

347 Said chapter is further amended by revising Code Section 48-11-23, relating to penalties for
 348 transporting unstamped tobacco products, as follows:

349 "48-11-23.

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

353 (b) Any person who violates Code Section 48-11-22, with the intent to evade the tax
354 imposed by this chapter, shall, upon conviction, be guilty of a misdemeanor; subject to the
355 following punishments:

356 (1) If such person is transporting more than 20 but fewer than 60 cigars, more than 200
357 but fewer than 600 cigarettes or little cigars, or more than six but fewer than 18
358 containers of loose or smokeless tobacco, such person shall be guilty of a misdemeanor;

359 (2) If such person is transporting 60 or more but fewer than 200 cigars, 600 or more but
360 fewer than 2,000 cigarettes or little cigars, or 18 or more but fewer than 60 containers of
361 loose or smokeless tobacco, such person shall be guilty of a misdemeanor of a high and
362 aggravated nature; or

363 (3) If such person is transporting 200 or more cigars, 2,000 or more cigarettes or little
364 cigars, or 60 or more containers of loose or smokeless tobacco, such person shall be
365 guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than three
366 years nor more than ten years."

367 **SECTION 10.**

368 Said chapter is further amended by revising Code Section 48-11-24, relating to penalties for
369 possession of unstamped tobacco products, penalties for operation of an unlicensed business
370 or activity, procedure for enforcement and collection of penalties, and costs and expenses,
371 as follows:

372 "48-11-24.

373 (a) Any person who possesses unstamped cigarettes ~~or loose or smokeless tobacco~~ or
374 nontax-paid cigars, or little cigars, or loose or smokeless tobacco in violation of this
375 chapter shall be liable for a penalty of not more than ~~\$25.00~~ \$50.00 for each individual
376 carton of unstamped cigarettes ~~or loose or smokeless tobacco~~ and \$50.00 for each
377 individual nontax-paid carton of little cigars, box of ~~nontax-paid~~ cigars or container of
378 loose or smokeless tobacco in his or her possession.

379 (b) Any person who engages in any business or activity for which a license is required by
380 this chapter without first having obtained a license to do so or any person who continues
381 to engage in or conduct the business after ~~his~~ the person's license has been revoked or
382 during a suspension of the license shall be ~~liable for a penalty of not more than \$250.00~~
383 guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof,
384 shall be subject to imprisonment for up to 12 months, a fine of not more than \$5,000.00,

385 or both. Each day that the business is engaged in or conducted shall be deemed a separate
386 offense.

387 (c) Proceedings to enforce and collect the penalties provided by this chapter shall be
388 brought by and in the name of the commissioner. With respect to offenses committed
389 within the territorial jurisdiction of the court, each superior court shall have jurisdiction to
390 enforce and collect the penalty. The costs recoverable in any such proceeding shall be
391 recovered by the commissioner in the event of judgment in ~~his~~ the commissioner's favor.
392 If the judgment is for the defendant, it shall be without costs against the commissioner. All
393 expenses incident to the recovery of any penalty pursuant to this Code section shall be paid
394 in the same manner as any other expense incident to the administration of this chapter."

395 **SECTION 11.**

396 Said chapter is further amended by revising Code Section 48-11-26, relating to failure to file
397 a report or a filing false report, as follows:

398 "48-11-26.

399 (a) With respect to this chapter, it shall be unlawful for any person, with the intent to
400 defraud the state or evade the payment of any tax, penalty, or interest or any part of a
401 payment when due, to:

402 (1) Willfully fail or refuse to file any report or statement required to be filed pursuant to
403 this chapter or by the commissioner's rules and regulations; or

404 ~~(2) File or cause to be filed with the commissioner any false or fraudulent report or~~
405 ~~statement; or~~

406 ~~(3)~~(2) Aid or abet another in the filing with the commissioner of any false or fraudulent
407 report or statement.

408 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
409 misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be subject
410 to a fine of not more than \$1,000.00 for each separate offense."

411 **SECTION 12.**

412 Said chapter is further amended by revising Code Section 48-11-28, relating to cigars and
413 cigarettes and offenses relating to counterfeit stamps or tampering with metering machines,
414 as follows:

415 "48-11-28.

416 (a) With respect to this chapter, it shall be unlawful for any person to:

417 (1) Fraudulently make, utter, forge, or counterfeit any stamp prescribed by the
418 commissioner;

419 (2) Cause or procure a violation of paragraph (1) of this subsection to be done;

- 420 (3) Willfully utter, publish, pass, or render as true any false, altered, forged, or
 421 counterfeited stamp;
- 422 (4) Knowingly possess any false, altered, forged, or counterfeited stamp;
- 423 (5) For the purpose of evading the tax imposed, use more than once any stamp required
 424 by this chapter; or
- 425 (6) Tamper with or cause to be tampered with any metering machine authorized to be
 426 used.
- 427 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
 428 and, upon conviction thereof, shall be imprisoned for not less than ~~one year~~ three years nor
 429 more than ten years."

430 SECTION 13.

431 Said chapter is further amended by revising Code Section 48-11-29, relating to cigars and
 432 cigarettes and false swearing or giving false testimony, as follows:

433 "48-11-29.

434 ~~(a) It shall be unlawful for any person to:~~

435 ~~(1) Knowingly swear to or affirm any false or fraudulent statement with intent to evade~~
 436 ~~the payment of any tax imposed by this chapter; or~~

437 ~~(2) Under oath, testify falsely at any hearing held pursuant to this chapter.~~

438 ~~(b) Any person who violates subsection (a) of this Code section shall be guilty of a~~
 439 ~~misdemeanor Reserved.~~"

440 SECTION 14.

441 Code Section 50-13-2 of the Official Code of Georgia Annotated, relating to definitions
 442 relative to administrative procedure, is amended by revising paragraph (1) as follows:

443 "(1) 'Agency' means each state board, bureau, commission, department, activity, or
 444 officer authorized by law expressly to make rules and regulations or to determine
 445 contested cases, except the General Assembly; the judiciary; the Governor; the State
 446 Board of Pardons and Paroles; the State Financing and Investment Commission; the State
 447 Properties Commission; the Board of Bar Examiners; the Board of Corrections and its
 448 penal institutions; the State Board of Workers' Compensation; all public authorities
 449 except as otherwise expressly provided by law; the State Personnel Board (Merit
 450 System); the Department of Administrative Services or commissioner of administrative
 451 services; the Technical College System of Georgia; the Department of Revenue when
 452 conducting hearings relating to alcoholic beverages, tobacco, or ~~relating to~~ bona fide coin
 453 operated amusement machines or any violations relating thereto; the Georgia Tobacco
 454 Community Development Board; the Georgia Higher Education Savings Plan; any

455 school, college, hospital, or other such educational, eleemosynary, or charitable
456 institution; or any agency when its action is concerned with the military or naval affairs
457 of this state. The term 'agency' shall include the State Board of Education and
458 Department of Education, subject to the following qualifications:

459 (A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid
460 rules adopted by the State Board of Education and Department of Education prior to
461 January 1, 1990, are ratified and validated and shall be effective until January 1, 1991,
462 whether or not such rules were adopted in compliance with the requirements of this
463 chapter; and

464 (B) Effective January 1, 1991, any rule of the State Board of Education or Department
465 of Education which has not been proposed, submitted, and adopted in accordance with
466 the requirements of this chapter shall be void and of no effect."

467 **SECTION 15.**

468 This Act shall become effective January 1, 2013.

469 **SECTION 16.**

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