

The Senate Finance Committee offered the following substitute to HB 1071:

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.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

13 Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on
14 tobacco products, is amended by revising Code Section 48-11-1, relating to definitions
15 relative to taxes on tobacco products, as follows:
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17 "48-11-1.

18 As used in this chapter, the term:

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

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

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

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

63 (12) 'Dealer' means any person who is a cigar dealer, a cigarette dealer, or a loose or
64 smokeless tobacco dealer.

65 (13) 'Distributor' means any person who is a cigar distributor, a cigarette distributor, or
66 a loose or smokeless tobacco distributor.

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

70 (15) 'Little cigar' means any cigar weighing not more than three pounds per thousand.

71 ~~(15)~~(16) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready
72 rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist
73 tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
74 and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such
75 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for
76 chewing and smoking, but does not include cigarettes or cigars or tobacco purchased for
77 the manufacture of cigarettes or cigars by cigarette manufacturers or cigar manufacturers.

78 ~~(16)~~(17) 'Loose or smokeless tobacco dealer' means any person located within the
79 borders of this state who sells or distributes loose or smokeless tobacco to a consumer in
80 this state.

81 ~~(17)~~(18) 'Loose or smokeless tobacco distributor' means any person who:

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

84 (B) Is engaged in the business of:

85 (i) Importing loose or smokeless tobacco into this state or purchasing loose or
86 smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or
87 smokeless tobacco distributors; and

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

91 ~~(18)~~(19) 'Loose or smokeless tobacco importer' means any person who imports into or
92 who brokers within the United States, either directly or indirectly, finished loose or
93 smokeless tobacco for sale or distribution.

94 ~~(19)~~(20) 'Loose or smokeless tobacco manufacturer' means any person who
95 manufactures, fabricates, assembles, processes, or labels finished loose or smokeless
96 tobacco.

97 ~~(20)~~(21) 'Related machinery' means any item, device, conveyance, or vessel of any kind
98 or character used in manufacturing, packaging, labeling, stamping, transporting,
99 distributing, selling, or possessing counterfeit cigarettes.

100 ~~(21)~~(22) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
 101 distribution in any manner or by any means whatever.

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

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

106 **SECTION 2.**

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

111 "48-11-2.

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

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

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

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

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

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

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

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

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

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

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

159 SECTION 3.

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

164 "48-11-4.

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

169 (b) All licenses shall be issued by the commissioner, who shall make rules and regulations
 170 with respect to applications for and issuance of the licenses and for other purposes of
 171 enforcing this chapter. The commissioner may refuse to issue any license under this
 172 chapter when the commissioner has reasonable cause to believe that the applicant has
 173 willfully withheld information requested of the applicant or required by the regulations to
 174 be provided or reported or when the commissioner has reasonable cause to believe that the
 175 information submitted in any application or report is false or misleading and is not given
 176 in good faith.

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

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

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

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

202 (d) The commissioner may make rules and regulations governing the sale of cigars,
 203 cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines.
 204 The commissioner shall require annually a special registration of each vending machine for
 205 any operation in this state and charge a license fee for the registration in the amount of

206 ~~\$1.00~~ \$10.00 for each machine. The annual registration shall indicate the location of the
 207 vending machine. No vending machine shall be purchased or transported into this state for
 208 use in this state when the vending machine is not so designed as to permit inspection
 209 without opening the machine for the purpose of determining that all cigars, cigarettes, loose
 210 or smokeless tobacco, and other tobacco products contained in the machine bear the tax
 211 stamp required under this chapter.

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

222 (f) The jurisdiction of the commissioner in the administration of this chapter shall extend
 223 to every person using or consuming cigars, cigarettes, or loose or smokeless tobacco in this
 224 state and to every person dealing in cigars, cigarettes, or loose or smokeless tobacco in any
 225 way for business purposes and maintaining a place of business in this state. For the
 226 purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of
 227 goods, or regular sales or promotional activity, whether carried on automatically or by
 228 salespersons or other representatives, shall constitute, among other activities, the
 229 maintaining of a place of business. For the purpose of enforcement of this chapter and the
 230 rules and regulations promulgated ~~hereunder~~ under this chapter, notwithstanding any other
 231 provision of law, the commissioner or his or her duly appointed hearing officer is granted
 232 authority to conduct hearings which shall at all times be exercised in conformity with rules
 233 and regulations promulgated by the commissioner and consistent with Chapter 13 of Title
 234 50, the 'Georgia Administrative Procedure Act.'

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

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SECTION 4.

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

242 "48-11-10.

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

245 (1) The quantity of cigars, cigarettes, or loose or smokeless tobacco on hand on the first
246 and last days of the calendar month immediately preceding the month in which the report
247 is filed;

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

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

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

255 (c) Any person who fails to file any report when due shall forfeit as a penalty for each day
256 after the due date until the report is filed the sum of ~~\$1.00~~ \$25.00, to be collected in the
257 manner provided in subsection (c) of Code Section 48-11-24 for the collection of
258 penalties."

259 **SECTION 5.**

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

262 "48-11-11.

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

278 the licensed location and shall be provided for inspection within two business days after
 279 receipt of notification from the commissioner or an authorized agent of the commissioner
 280 to make such records available.

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

285 **SECTION 6.**

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

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

291 **SECTION 7.**

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

296 "48-11-18.

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

311 (b) Any person aggrieved because of any final action or decision of the commissioner,
 312 after hearing, may appeal from the decision to the superior court of the county in which the

313 appellant resides. The appeal shall be returnable at the same time and shall be served and
 314 returned in the same manner as required in the case of a summons in a civil action. The
 315 authority issuing the citation shall take from the appellant a bond of recognizance to the
 316 state, with surety, conditioned to prosecute the appeal and to effect and comply with the
 317 orders and decrees of the court. The action of the commissioner shall be sustained unless
 318 the court finds that ~~he~~ the commissioner misinterpreted this chapter or that there is no
 319 evidence to support ~~his~~ the commissioner's action. If the commissioner's action is not
 320 sustained, the court may grant equitable relief to the appellant. Upon all appeals which are
 321 denied, costs may be taxed against the appellant at the discretion of the court. No costs of
 322 any appeal shall be taxed against the state."

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SECTION 8.

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

327 "48-11-22.

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

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

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SECTION 9.

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

"48-11-23.

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

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

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

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

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

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SECTION 10.

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

"48-11-24.

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

(b) Any person who engages in any business or activity for which a license is required by this chapter without first having obtained a license to do so or any person who continues to engage in or conduct the business after ~~his~~ the person's license has been revoked or

383 during a suspension of the license shall be ~~liable for a penalty of not more than \$250.00~~
 384 guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof,
 385 shall be subject to imprisonment for up to 12 months, a fine of not more than \$5,000.00,
 386 or both. Each day that the business is engaged in or conducted shall be deemed a separate
 387 offense.

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

396 **SECTION 11.**

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

399 "48-11-26.

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

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

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

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

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

412 **SECTION 12.**

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

416 "48-11-28.

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

- 418 (1) Fraudulently make, utter, forge, or counterfeit any stamp prescribed by the
 419 commissioner;
- 420 (2) Cause or procure a violation of paragraph (1) of this subsection to be done;
- 421 (3) Willfully utter, publish, pass, or render as true any false, altered, forged, or
 422 counterfeited stamp;
- 423 (4) Knowingly possess any false, altered, forged, or counterfeited stamp;
- 424 (5) For the purpose of evading the tax imposed, use more than once any stamp required
 425 by this chapter; or
- 426 (6) Tamper with or cause to be tampered with any metering machine authorized to be
 427 used.
- 428 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
 429 and, upon conviction thereof, shall be imprisoned for not less than ~~one year~~ three years nor
 430 more than ten years."

431 **SECTION 13.**

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

434 "48-11-29.

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

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

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

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

441 **SECTION 14.**

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

444 "(1) 'Agency' means each state board, bureau, commission, department, activity, or
 445 officer authorized by law expressly to make rules and regulations or to determine
 446 contested cases, except the General Assembly; the judiciary; the Governor; the State
 447 Board of Pardons and Paroles; the State Financing and Investment Commission; the State
 448 Properties Commission; the Board of Bar Examiners; the Board of Corrections and its
 449 penal institutions; the State Board of Workers' Compensation; all public authorities
 450 except as otherwise expressly provided by law; the State Personnel Board (Merit
 451 System); the Department of Administrative Services or commissioner of administrative
 452 services; the Technical College System of Georgia; the Department of Revenue when

453 conducting hearings relating to alcoholic beverages, tobacco, or ~~relating to~~ bona fide coin
454 operated amusement machines or any violations relating thereto; the Georgia Tobacco
455 Community Development Board; the Georgia Higher Education Savings Plan; any
456 school, college, hospital, or other such educational, eleemosynary, or charitable
457 institution; or any agency when its action is concerned with the military or naval affairs
458 of this state. The term 'agency' shall include the State Board of Education and
459 Department of Education, subject to the following qualifications:

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

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

468 **SECTION 15.**

469 This Act shall become effective January 1, 2013.

470 **SECTION 16.**

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