

House Bill 1229

By: Representatives Buckner of the 137th, Stephens of the 164th, Trammell of the 132nd, Kausche of the 50th, and Anulewicz of the 42nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to increase or revise the rate of the tax on tobacco products; to provide for
3 excise taxes to be levied on certain alternative nicotine products and vapor products; to
4 require licensure of importers, manufacturers, distributors, and dealers of alternative nicotine
5 products or vapor products; to provide for license fees, suspensions, revocations, and
6 renewals; to provide for procedures for hearings and appeals; to provide for bonds; to provide
7 for seizure of certain products; to require certain reports and provide for inspections of
8 certain records; to prohibit certain conduct relating to the sale and transportation of
9 alternative nicotine products and vapor products; to provide for assessments and penalties;
10 to provide for powers and duties of special agents and enforcement officers; to provide for
11 warrantless searches and seizures by certain agents and officers of the Department of
12 Revenue; to provide for appeals of certain decisions made by the state revenue
13 commissioner; to provide for civil and criminal penalties; to provide for rules and
14 regulations; to revise and provide for definitions; to provide for related matters; to provide
15 for an effective date; to repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
19 amended by revising Chapter 11, relating to taxes on tobacco products, as follows:

20 "CHAPTER 11

21 48-11-1.

22 As used in this chapter, the term:

23 (1) 'Alternative nicotine product' means any material that contains nicotine, but does not
24 contain tobacco leaf, and is intended for human consumption, whether such material is

25 chewed, absorbed, dissolved, or ingested by any other means. Such term shall include,
 26 but shall not be limited to, nicotine gel, pouches, or gum or dissolvable nicotine strips,
 27 sticks, lozenges, or pellets. Such term shall not include little cigars, cigars, cigarettes,
 28 loose or smokeless tobacco, consumable vapor products, or any product regulated as a
 29 drug or therapeutic device by the United States Food and Drug Administration under
 30 Chapter V of the Federal Food, Drug, and Cosmetic Act.

31 (2) 'Alternative nicotine product dealer' means any person located within the borders of
 32 this state who sells or distributes alternative nicotine products to a consumer in this state.

33 (3) 'Alternative nicotine product distributor' means any person who:

34 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 35 contact and call on alternative nicotine product dealers; and

36 (B) Is engaged in the business of:

37 (i) Importing alternative nicotine products into this state or purchasing alternative
 38 nicotine products from other alternative nicotine product manufacturers or alternative
 39 nicotine product distributors; and

40 (ii) Selling the alternative nicotine products to alternative nicotine product dealers in
 41 this state for resale but is not in the business of selling the alternative nicotine
 42 products directly to the ultimate consumers of the alternative nicotine products.

43 (4) 'Alternative nicotine product importer' means any person who imports into or who
 44 brokers within the United States, either directly or indirectly, finished alternative nicotine
 45 products for sale or distribution.

46 (5) 'Alternative nicotine product manufacturer' means any person who manufactures,
 47 fabricates, assembles, processes, or labels finished alternative nicotine products.

48 ~~(1)~~(6) 'Cigar' means any roll for smoking made wholly or in part of tobacco when the
 49 cover of the roll is also tobacco. Such term shall include a little cigar.

50 ~~(2)~~(7) 'Cigar dealer' means any person located within the borders of this state who sells
 51 or distributes cigars to a consumer in this state.

52 ~~(3)~~(8) 'Cigar distributor' means any person, whether located within or outside the borders
 53 of this state, other than a cigar dealer, who sells or distributes cigars within or into the
 54 boundaries of this state and who:

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

57 (B) Is engaged in the business of:

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

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

62 ~~(4)~~(9) 'Cigar importer' means any person who imports into or who brokers within the
63 United States, either directly or indirectly, a finished cigar for sale or distribution.

64 ~~(5)~~(10) 'Cigar manufacturer' means any person who manufactures, fabricates, assembles,
65 processes, or labels a finished cigar.

66 ~~(6)~~(11) 'Cigarette' means any roll or stick for smoking made wholly or in part of tobacco
67 when the cover of the roll is paper or any substance other than tobacco or when the stick
68 is heated in a device without combustion.

69 ~~(7)~~(12) 'Cigarette dealer' means any person located within the borders of this state who
70 sells or distributes cigarettes to a consumer in this state.

71 ~~(8)~~(13) 'Cigarette distributor' means any person, whether located within or outside the
72 borders of this state, other than a cigarette dealer, who sells or distributes cigarettes
73 within or into the boundaries of this state and who:

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

76 (B) Is engaged in the business of:

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

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

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

86 ~~(9)~~(14) 'Cigarette importer' means any person who imports into or who brokers within
87 the United States, either directly or indirectly, a finished cigarette for sale or distribution.

88 ~~(10)~~(15) 'Cigarette manufacturer' means any person who manufactures, fabricates,
89 assembles, processes, or labels a finished cigarette.

90 (16) 'Consumable vapor product' means any liquid or solid solution, whether it contains
91 nicotine or not, that is intended to be heated into an aerosol state and inhaled by an
92 individual using a vapor device. Such term shall include, but shall not be limited to,
93 e-liquid, e-juice, vape juice, and cartridges that are prefilled with such a solution. Such
94 term shall not include any alternative nicotine product, cigar, cigarette, loose or
95 smokeless tobacco, perfume, potpourri, essential oil, or product regulated as a drug or
96 therapeutic device by the United States Food and Drug Administration under Chapter V
97 of the Federal Food, Drug, and Cosmetic Act.

98 ~~(11)~~(17) 'Counterfeit cigarette' means cigarettes that are manufactured, fabricated,
 99 assembled, processed, packaged, or labeled by any person other than the trademark owner
 100 of a cigarette brand or the owner's designated agent.

101 ~~(12)~~(18) 'Dealer' means any person who is a cigar dealer, a cigarette dealer, ~~or~~ a loose
 102 or smokeless tobacco dealer, an alternative nicotine product dealer, or a vapor product
 103 dealer.

104 ~~(13)~~(19) 'Distributor' means any person who is a cigar distributor, a cigarette distributor,
 105 ~~or~~ a loose or smokeless tobacco distributor, an alternative nicotine product distributor, or
 106 a vapor product distributor.

107 ~~(14)~~(20) 'First transaction' means the first sale, receipt, purchase, possession,
 108 consumption, handling, distribution, or use of cigars, cigarettes, ~~or~~ loose or smokeless
 109 tobacco, alternative nicotine products, or vapor products within this state.

110 (21) 'Licensed dealer' means a dealer that maintains a valid license issued pursuant to this
 111 chapter with respect to tobacco products, alternative nicotine products, vapor products,
 112 or a combination thereof.

113 ~~(15)~~(22) 'Little cigar' means any cigar weighing not more than three pounds per
 114 thousand.

115 ~~(16)~~(23) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready
 116 rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist
 117 tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
 118 and sweepings of tobacco; ~~and~~ other kinds and forms of tobacco, prepared in such
 119 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for
 120 chewing and smoking; and any tobacco product intended for human consumption that is
 121 not otherwise defined by this chapter. Such term shall but does not include alternative
 122 nicotine products, consumable vapor products, cigarettes, or cigars, or tobacco purchased
 123 for the manufacture of cigarettes or cigars by cigarette manufacturers or cigar
 124 manufacturers.

125 ~~(17)~~(24) 'Loose or smokeless tobacco dealer' means any person located within the
 126 borders of this state who sells or distributes loose or smokeless tobacco to a consumer in
 127 this state.

128 ~~(18)~~(25) 'Loose or smokeless tobacco distributor' means any person who:

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

131 (B) Is engaged in the business of:

132 (i) Importing loose or smokeless tobacco into this state or purchasing loose or
 133 smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or
 134 smokeless tobacco distributors; and

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

138 ~~(19)~~(26) 'Loose or smokeless tobacco importer' means any person who imports into or
 139 who brokers within the United States, either directly or indirectly, finished loose or
 140 smokeless tobacco for sale or distribution.

141 ~~(20)~~(27) 'Loose or smokeless tobacco manufacturer' means any person who
 142 manufactures, fabricates, assembles, processes, or labels finished loose or smokeless
 143 tobacco.

144 ~~(21)~~(28) 'Related machinery' means any item, device, conveyance, or vessel of any kind
 145 or character used in manufacturing, packaging, labeling, stamping, transporting,
 146 distributing, selling, or possessing counterfeit cigarettes.

147 ~~(22)~~(29) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
 148 distribution in any manner or by any means whatever.

149 ~~(23)~~(30) 'Stamp' means any impression, device, stamp, label, or print manufactured,
 150 printed, made, or affixed as prescribed by the commissioner.

151 (31) 'Tobacco product' means any cigar, cigarette, or loose or smokeless tobacco.

152 ~~(24)~~(32) 'Vapor device' means any system or device developed or intended to deliver a
 153 consumable vapor product to an individual who inhales from the device. Such term shall
 154 include, but not be limited to, an electronic nicotine delivery system, an electronic
 155 cigarette, electronic cigar, electronic pipe, vape pen, vape tool, or electronic hookah.
 156 Such term shall not include a fragrance or essential oil diffuser, an air freshener, or any
 157 product regulated as a drug or device by the United States Food and Drug Administration
 158 under Chapter V of the Federal Food, Drug, and Cosmetic Act.

159 (33) 'Vapor product' means any consumable vapor product or vapor device.

160 (34) 'Vapor product dealer' means any person located within the borders of this state who
 161 sells or distributes vapor products to a consumer in this state.

162 (35) 'Vapor product distributor' means any person who:

163 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 164 contact and call on vapor product dealers; and

165 (B) Is engaged in the business of:

166 (i) Importing vapor products into this state or purchasing vapor products from other
 167 vapor product manufacturers or vapor product distributors; and

168 (ii) Selling the vapor products to vapor product dealers in this state for resale but is
 169 not in the business of selling the vapor products directly to the ultimate consumers of
 170 the vapor products.

171 (36) 'Vapor product importer' means any person who imports into or who brokers within
 172 the United States, either directly or indirectly, finished vapor products for sale or
 173 distribution.

174 (37) 'Vapor product manufacturer' means any person who manufactures, fabricates,
 175 assembles, processes, or labels finished vapor products.

176 (38) 'Vending machine' means any coin-in-the-slot device used for the automatic
 177 merchandising of cigars, cigarettes, or loose or smokeless tobacco.

178 48-11-2.

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

183 ~~(1) Little cigars: two and one-half mills each;~~

184 ~~(2) All cigars other than little cigars: 23 39 percent of the wholesale cost price, exclusive~~
 185 ~~of any trade, cash, or other discounts or any promotion, advertising, display, or similar~~
 186 ~~allowances; provided, however, that the rate shall be \$1.87~~

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

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

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

195 (c) The taxes imposed by this chapter are levied on the purchase or use of cigars,
 196 cigarettes, or loose or smokeless tobacco by the state or any department, institution, or
 197 agency of the state and by the political subdivisions of the state and their departments,
 198 institutions, and agencies. The taxes imposed by this chapter are not imposed on cigars,
 199 cigarettes, or loose or smokeless tobacco purchased exclusively for use by the patients at
 200 the Georgia War Veterans Home and the Georgia War Veterans Nursing Home.

201 (d) The taxes imposed by this chapter are not levied on cigars, cigarettes, ~~or~~ loose or
 202 smokeless tobacco, alternative nicotine products, or vapor products, the purchase or use of
 203 which this state is prohibited from taxing under the Constitution or statutes of the United
 204 States.

205 (e) The taxes imposed by this chapter shall be advanced and paid by the dealer or
 206 distributor licensed pursuant to this chapter to the commissioner for deposit and

207 distribution as provided in this chapter upon the first transaction within this state, whether
 208 or not the transaction involves the ultimate purchaser or consumer. The licensed dealer or
 209 distributor shall collect the tax on the first transaction within this state from the purchaser
 210 or consumer, and the purchaser or consumer shall pay the tax to the dealer or distributor.
 211 The dealer or distributor shall be responsible for the collection of the tax and the payment
 212 of the tax to the commissioner. Whenever cigars, cigarettes, ~~or~~ loose or smokeless tobacco
 213 is, alternative nicotine products, or vapor products are shipped from outside this state to
 214 anyone other than a distributor, the person receiving the cigars, cigarettes, ~~or~~ loose or
 215 smokeless tobacco, alternative nicotine products, or vapor products shall be deemed to be
 216 a distributor and shall be responsible for the tax on the cigars, cigarettes, ~~or~~ loose or
 217 smokeless tobacco, alternative nicotine products, or vapor products and the payment of the
 218 tax to the commissioner. No tobacco products, alternative nicotine products, or vapor
 219 products shall be received in, sold in, or shipped into this state unless lawfully obtained
 220 from a person licensed pursuant to this chapter or from an importer with a valid permit
 221 issued pursuant to 26 U.S.C. Section 5712.

222 (f) The amount of taxes advanced and paid to the state as provided in this Code section
 223 shall be added to and collected as a part of the sales price of the cigars, cigarettes, ~~or~~ loose
 224 or smokeless tobacco, alternative nicotine products, or vapor products sold or distributed.
 225 The amount of the tax shall be stated separately from the price of the cigars, cigarettes, ~~or~~
 226 loose or smokeless tobacco, alternative nicotine products, or vapor products.

227 (g) The cigars, cigarettes, ~~and~~ loose or smokeless tobacco, alternative nicotine products,
 228 and vapor products tax imposed shall be collected only once upon the same cigars,
 229 cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor products.

230 48-11-3.

231 (a) Except as otherwise provided in this Code section, the taxes imposed by Code Section
 232 48-11-2 shall be collected and paid through the use of stamps. The commissioner shall
 233 secure stamps of such design and materials as the commissioner deems appropriate to
 234 protect the revenue and shall sell the stamps to licensed distributors at a discount of not less
 235 than 2 percent and not more than 8 percent of the value of the stamps. The exact
 236 percentage of the discount shall be based on brackets according to the volume of cigars,
 237 cigarettes, ~~and~~ loose or smokeless tobacco, alternative nicotine products, and vapor
 238 products handled by the distributor pursuant to regulations promulgated by the
 239 commissioner. The commissioner shall prescribe by regulation the condition, method, and
 240 manner in which stamps are to be affixed to containers of cigars, cigarettes, ~~and~~ loose or
 241 smokeless tobacco, alternative nicotine products, and vapor products.

242 (b) The commissioner may prescribe by regulation an alternate method, in lieu of the sale
 243 of stamps, of collecting and paying the tax imposed upon cigars and little cigars. The
 244 commissioner may also prescribe by regulation an alternate method, in lieu of the sale of
 245 stamps, of collecting and paying the tax imposed on loose or smokeless tobacco, alternative
 246 nicotine products, or vapor products. Any such regulations shall be promulgated so that
 247 use of the alternate method will result in the same revenue to the state as the state would
 248 realize through the sale of stamps to the distributors.

249 (c) No distributor shall sell or exchange with another distributor any stamps issued
 250 pursuant to this chapter. The commissioner is authorized to redeem at cost price any
 251 stamps presented for redemption by a licensed distributor when the commissioner
 252 determines from physical inspection that no cigars, cigarettes, ~~or~~ loose or smokeless
 253 tobacco, alternative nicotine products, or vapor products ~~have~~ ~~has~~ been sold by the
 254 distributor under pretense of the tax imposed by this chapter having been paid through use
 255 of the stamps.

256 48-11-4.

257 (a) No person shall engage in or conduct the business of manufacturing, importing,
 258 brokering, purchasing, selling, consigning, vending, dealing in, shipping, receiving, or
 259 distributing cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products,
 260 or vapor products in this state without first obtaining a license from the commissioner.

261 (a.1) The commissioner may require a separate license for each business activity and
 262 product for which a license is required under this chapter. Alternatively, the commissioner
 263 may issue a single license allowing the license holder to act as dealer, distributor, importer,
 264 or manufacturer, or a combination thereof as to cigars, cigarettes, loose or smokeless
 265 tobacco, alternative nicotine products, or vapor products, or any combination thereof, at a
 266 location; provided, however, that the commissioner may permit or limit the business or
 267 activities of a license holder as to any product or products for which a license is required
 268 under this chapter without issuing a new license or requiring a new application.

269 (a.2) The commissioner shall maintain at all times information for each location for which
 270 any license has been issued under this chapter whether the license holder is authorized to
 271 engage in business as a dealer, distributor, importer, or manufacturer, or a combination
 272 thereof, and whether cigars, cigarettes, loose or smokeless tobacco, alternative nicotine
 273 products, or vapor products, or any combination thereof, have been authorized at such
 274 location.

275 (b) All licenses shall be issued by the commissioner, who shall make rules and regulations
 276 with respect to applications for and issuance of the licenses and for other purposes of
 277 enforcing this chapter. The commissioner may refuse to issue any license under this

278 chapter when the commissioner has reasonable cause to believe that the applicant has
 279 willfully withheld information requested of the applicant or required by the regulations to
 280 be provided or reported or when the commissioner has reasonable cause to believe that the
 281 information submitted in any application or report is false or misleading and is not given
 282 in good faith.

283 (c)(1) The annual renewal fee for a each manufacturer's, importer's, distributor's, or
 284 dealer's license for vapor products shall be \$100.00 and for tobacco products which shall
 285 automatically include alternative nicotine products, such annual renewal fee shall be
 286 \$10.00 \$100.00 combined. There shall also be a first-year first-year registration fee of
 287 \$250.00 for a person commencing business as a manufacturer, importer, or distributor
 288 upon first issuance of each manufacturer's, importer's, distributor's, or dealer's license for
 289 vapor products and \$250.00 for tobacco products, provided that alternative nicotine
 290 products shall be automatically included with the tobacco products registration and
 291 first-year registration fee. All renewal applications shall be filed at least 30 days in
 292 advance of the expiration date shown on the license.

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

296 (3) Each dealer's license shall be valid for 12 months beginning on the date of issue for
 297 the initial license, and the first day of the month of issue for subsequent licenses, and
 298 shall expire on the last day of the month preceding the month in which the initial license
 299 was issued. Any dealer licensed under the provisions of this Code section who is also
 300 licensed under Chapter 2 of Title 3 to sell alcoholic beverages may, upon written request
 301 to the commissioner, arrange to have both licenses renewed on the same date each year.
 302 Any dealer who follows the proper procedure for a renewal of his or her license,
 303 including filing the application for renewal at least 30 days in advance of the expiration
 304 date of his or her existing license, shall be allowed to continue operating as a dealer under
 305 the existing license until the commissioner has issued the new license or denied the
 306 application for renewal.

307 (4) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to
 308 suspension or revocation for violation of any of the provisions of this chapter or of the
 309 rules and regulations made pursuant to this chapter or Chapters 13 and 13A of Title 10
 310 or of the rules and regulations made pursuant to those chapters. A separate license shall
 311 be required for each place of business. No person shall hold a distributor's license and
 312 a dealer's license at the same time.

313 (d) The commissioner may make rules and regulations governing the sale of cigars,
 314 cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines.

315 The commissioner shall require annually a special registration of each vending machine for
316 any operation in this state and charge a license fee for the registration in the amount of
317 \$10.00 for each machine. The annual registration shall indicate the location of the vending
318 machine. No vending machine shall be purchased or transported into this state for use in
319 this state when the vending machine is not so designed as to permit inspection without
320 opening the machine for the purpose of determining that all cigars, cigarettes, loose or
321 smokeless tobacco, and other tobacco products contained in the machine bear the tax stamp
322 required under this chapter.

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

332 (f) The jurisdiction of the commissioner in the administration of this chapter shall extend
333 to every person using or consuming cigars, cigarettes, ~~or~~ loose or smokeless tobacco,
334 alternative nicotine products, or vapor products in this state and to every person dealing in
335 cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor
336 products in any way for business purposes and maintaining a place of business in this state.
337 For the purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock
338 of goods, or regular sales or promotional activity, whether carried on automatically or by
339 salespersons or other representatives, shall constitute, among other activities, the
340 maintaining of a place of business. For the purpose of enforcement of this chapter and the
341 rules and regulations promulgated under this chapter, notwithstanding any other provision
342 of law, the commissioner or his or her duly appointed hearing officer is granted authority
343 to conduct hearings which shall at all times be exercised in conformity with rules and
344 regulations promulgated by the commissioner and consistent with Chapter 13 of Title 50,
345 the 'Georgia Administrative Procedure Act.'

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

349 48-11-4.1.

350 (a) It shall be unlawful to sell vapor products to any person who is not a licensed
 351 manufacturer, importer, distributor, or dealer of vapor products pursuant to Code Section
 352 48-11-4 by any means other than an in-person, face-to-face sale.

353 (b) A seller of a vapor product shall request proper identification from each person
 354 attempting to purchase a vapor product which shows that such person is at least 21 years
 355 of age. Each person attempting to purchase a vapor product shall provide proper
 356 identification to the seller at the time of such purchase.

357 (c) A violation of any provision of this Code section shall be punished as for a
 358 misdemeanor as provided in Code Section 16-1-10 and shall result in the probation,
 359 suspension, or revocation by the commissioner of all licenses issued to the seller pursuant
 360 to Code Section 48-11-4.

361 48-11-5.

362 (a)(1) If the commissioner finds that the collection of the tax imposed by this chapter
 363 would be facilitated by such action, the commissioner may authorize any person residing
 364 or located outside this state who is engaged in the business of manufacturing cigars,
 365 cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor products
 366 or any person residing or located outside this state who ships cigars, cigarettes, ~~or~~ loose
 367 or smokeless tobacco, alternative nicotine products, or vapor products into this state for
 368 sale to licensed dealers in this state to be licensed as a distributor and, after the person
 369 complies with the commissioner's requirements, to affix or cause to be affixed the stamps
 370 required by this chapter on behalf of the purchasers of the cigars, cigarettes, ~~or~~ loose or
 371 smokeless tobacco, alternative nicotine products, or vapor products who would otherwise
 372 be taxable for the cigars, cigarettes, ~~and~~ loose or smokeless tobacco, alternative nicotine
 373 products, and vapor products. The commissioner may sell tax stamps to an authorized
 374 person or may authorize the use of a metering machine by the person as provided in Code
 375 Section 48-11-3.

376 (2) The commissioner shall require a bond of a nonresident distributor satisfactory to the
 377 commissioner and in an amount of not less than \$1,000.00, conditioned upon the payment
 378 of the tax and compliance with any other requirements specified by the commissioner.
 379 As a condition of authorization as provided in this Code section, a nonresident distributor
 380 shall agree to submit the distributor's books, accounts, and records for examination by the
 381 commissioner or the commissioner's duly authorized agent during reasonable business
 382 hours and shall appoint in writing an agent who resides in this state for the purpose of
 383 service. Service upon an agent shall be sufficient service upon the nonresident distributor
 384 and made by leaving a duly attested copy of the process with the agent. When legal

385 process against any nonresident distributor is served upon the agent, the agent shall notify
386 the nonresident distributor in the manner specified in Code Section 40-12-2.

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

391 (b) Every nonresident manufacturer, importer, or distributor of cigars, cigarettes, ~~or~~ loose
392 or smokeless tobacco, alternative nicotine products, or vapor products making shipments
393 of cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor
394 products by common carrier or otherwise for their own account or for the account of others
395 to distributors or dealers of cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative
396 nicotine products, or vapor products located within this state shall make reports of the
397 shipments when and as required by rules and regulations of the commissioner.

398 48-11-6.

399 The commissioner may suspend or refuse to renew a license issued to any person under this
400 chapter for violation of any provision of this chapter or Chapters 13 and 13A of Title 10
401 or of the rules and regulations made pursuant to those chapters. After notice and
402 opportunity for hearing, the commissioner may revoke a license issued to any person under
403 this chapter for violation of any provision of this chapter or of any rule or regulation of the
404 commissioner made pursuant to this chapter or Chapters 13 and 13A of Title 10 or of the
405 rules and regulations made pursuant to those chapters. Any person aggrieved by the
406 suspension of or refusal to renew his or her license may apply to the commissioner for a
407 hearing as provided in subsection (a) of Code Section 48-11-18; and any person aggrieved
408 by the action of the commissioner in revoking or refusing to renew his or her license after
409 hearing may further appeal to the courts as provided in subsection (b) of Code Section
410 48-11-18. No legal proceedings or other action by the commissioner shall be barred or
411 abated by the suspension, revocation, or expiration of any license issued under this chapter.

412 48-11-7.

413 Each bond required to be filed pursuant to this chapter shall be executed by the distributor
414 as principal and, as surety, by a corporation authorized to engage in business as a surety
415 company in this state.

416 48-11-8.

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

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

424 (3) No person shall sell, offer for sale, or possess with intent to sell any loose or
425 smokeless tobacco in this state when the loose or smokeless tobacco container does not
426 bear the tax stamps required by Code Section 48-11-3 or upon which the tax has not been
427 paid under the alternate method of collecting the tax provided under Code Section
428 48-11-3.

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

431 (b) Each distributor at the location for which such distributor's license is issued and in the
432 manner specified by the commissioner shall affix the stamps required by this Code section
433 to each individual package of cigarettes sold or distributed by such distributor, except as
434 prohibited by Code Section 10-13A-5. Each distributor shall comply with the
435 commissioner's regulations for the payment of the tax on cigars, ~~or~~ loose or smokeless
436 tobacco, alternative nicotine products, or vapor products as provided in Code Section
437 48-11-3 or shall affix to each container of cigars or loose or smokeless tobacco sold by
438 such distributor or from which such distributor sells cigars or loose or smokeless tobacco
439 the stamps required by this chapter. The stamps may be affixed or the tax under the
440 alternate method may be paid by a distributor at any time before the cigars, cigarettes, ~~or~~
441 loose or smokeless tobacco, alternative nicotine products, or vapor products ~~is~~ are
442 transferred out of such distributor's possession.

443 (c) It is the intent of this chapter that the tax imposed by this chapter be paid only once and
444 that, if the distributor acquires stamped cigarettes, tax-paid cigars, stamped cigars, stamped
445 loose or smokeless tobacco, ~~or~~ tax-paid loose or smokeless tobacco, tax-paid alternative
446 nicotine products, or tax-paid vapor products, such distributor is not required to affix
447 additional stamps or provide other evidence of payment of the tax.

448 (d) Every dealer who comes into possession of cigars, cigarettes, or loose or smokeless
449 tobacco not bearing proper tax stamps or other evidence of the tax imposed by this chapter
450 shall report the cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine
451 products, or vapor products to the commissioner prior to displaying, selling, using, or
452 otherwise disposing of the cigars, cigarettes, ~~and~~ loose or smokeless tobacco, alternative

453 nicotine products, and vapor products. After a report, the commissioner shall authorize a
 454 licensed distributor to affix the proper stamps to the cigars, cigarettes, ~~and~~ loose or
 455 smokeless tobacco, alternative nicotine products, or vapor products or, in the case of cigars,
 456 ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor products, authorize
 457 the dealer to remit the tax by the alternate method promulgated by the commissioner in
 458 accordance with Code Section 48-11-3. A licensed distributor shall affix the stamps or
 459 comply with the alternate regulations when presented a permit for such action issued by the
 460 commissioner. A licensed distributor shall stamp cigarettes or comply with the alternate
 461 method provided in this chapter with respect to cigars, ~~or~~ loose or smokeless tobacco,
 462 alternative nicotine products, or vapor products, other than such distributor's own, only
 463 when authorized by the permit issued by the commissioner.

464 (e) No wholesale or retail distributor or wholesale or retail dealer shall accept deliveries
 465 of unstamped cigarettes; or loose or smokeless tobacco or nontax-paid cigars, ~~or~~
 466 nontax-paid loose or smokeless tobacco, nontax-paid alternative nicotine products, or
 467 nontax-paid vapor products which ~~is~~ are shipped to such distributor or acquired by such
 468 distributor at any place within this state except as authorized and provided in this Code
 469 section. All cigars, cigarettes, ~~and~~ loose or smokeless tobacco, alternative nicotine
 470 products, and vapor products shall be examined by the distributor or dealer on receipt, and
 471 the distributor shall immediately report the cigars, cigarettes, ~~or~~ loose or smokeless
 472 tobacco, alternative nicotine products, or vapor products to the commissioner as provided
 473 in subsection (d) of this Code section.

474 (f) The commissioner may prescribe the charges which may be made by a distributor to
 475 any person for the services of the distributor as provided in this chapter in affixing the tax
 476 stamps to each individual package of cigarettes, ~~or~~ loose or smokeless tobacco, alternative
 477 nicotine products, or vapor products and may prescribe the charges which may be made by
 478 a distributor in complying with the commissioner's alternate regulations for the collection
 479 of the tax on cigars and little cigars or loose or smokeless tobacco.

480 (g) This Code section shall not apply to unstamped cigars, ~~and~~ little cigars, ~~or~~ loose or
 481 smokeless tobacco, alternative nicotine products, or vapor products upon which the tax has
 482 been paid in accordance with the alternate regulations promulgated by the commissioner
 483 under Code Section 48-11-3.

484 48-11-9.

485 (a)(1) Any cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine
 486 products, or vapor products found at any place in this state without stamps affixed to
 487 them as required by this chapter and any cigarettes in violation of subsection (c) of Code
 488 Section 10-13A-9 are declared to be contraband articles and may be seized by the

489 commissioner, the commissioner's agents or employees, or any peace officer of this state
490 when directed by the commissioner to do so.

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

492 (A) The tax has been paid on the unstamped cigars and little cigars, ~~or~~ loose or
493 smokeless tobacco, alternative nicotine products, or vapor products in accordance with
494 the commissioner's regulations promulgated pursuant to Code Section 48-11-3;

495 (B) The cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products,
496 or vapor products ~~are~~ is in the possession of a licensed distributor;

497 (C) The cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products,
498 or vapor products ~~are~~ is in course of transit from outside this state and ~~is~~ are consigned
499 to a licensed distributor;

500 (D) The cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products,
501 or vapor products ~~are~~ is in the possession of a transporter who is in compliance with
502 Code Section 48-11-22; or

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

507 (3) This subsection shall not be construed to require the commissioner to confiscate
508 unstamped or nontax-paid cigars, cigarettes, ~~and~~ loose or smokeless tobacco, alternative
509 nicotine products, and vapor products or other property when the commissioner has
510 reason to believe that the owner of the cigars, cigarettes, loose or smokeless tobacco,
511 alternative nicotine products, vapor products, or other property is not willfully or
512 intentionally evading the tax imposed by this chapter.

513 (b) Any cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor
514 products, or other property seized pursuant to this chapter may be offered for sale by the
515 commissioner, at the commissioner's discretion, at public auction to the highest bidder after
516 advertisement as provided in this Code section. The commissioner shall deliver to the
517 Office of the State Treasurer the proceeds of any sale made under this Code section.
518 Before delivering any cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine
519 products, or vapor products sold to a purchaser at the sale, the commissioner shall require
520 the purchaser to affix to the packages the amount of stamps required by this chapter or to
521 comply with the commissioner's alternate method. The seizure and sale of any cigars,
522 cigarettes, loose or smokeless tobacco, or other property pursuant to this chapter shall not
523 relieve any person from a fine, imprisonment, or other penalty for violation of this chapter.

524 (c) When any cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products,
525 vapor products, or other property has been seized pursuant to this chapter, the

526 commissioner, at the commissioner's discretion, may advertise it for sale in a newspaper
527 published or having a circulation in the place in which the seizure occurred, at least five
528 days before the sale. Any person claiming an interest in the cigars, cigarettes, loose or
529 smokeless tobacco, alternative nicotine products, vapor products, or other property may
530 make written application to the commissioner for a hearing. The application shall state the
531 person's interest in the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine
532 products, vapor products, or other property and such person's reasons why the cigars,
533 cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or
534 other property should not be forfeited. Further proceedings on the application for hearing
535 shall be taken as provided in subsection (a) of Code Section 48-11-18. No sale of any
536 cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products,
537 or other property seized pursuant to this chapter shall be made while an application for a
538 hearing is pending before the commissioner. The pendency of an appeal under subsection
539 (b) of Code Section 48-11-18 shall not prevent the sale unless the appellant posts a
540 satisfactory bond with surety in an amount double the estimated value of the cigars,
541 cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or
542 other property and conditioned upon the successful termination of the appeal.

543 (d) Any vending machine containing or dispensing any cigarettes or loose or smokeless
544 tobacco which does not bear the tax stamps required under this chapter or containing or
545 dispensing any cigars or loose or smokeless tobacco upon which the tax has not been paid
546 either through the purchase of stamps or the alternate procedure provided by the
547 commissioner as required under this chapter shall be a contraband article. The
548 commissioner may seize any such machine and deal with it in the same manner as provided
549 by law for the seizure and sale of unstamped cigarettes or loose or smokeless tobacco and
550 nontax-paid cigars or loose or smokeless tobacco.

551 48-11-10.

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

554 (1) The quantity of cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine
555 products, or vapor products on hand on the first and last days of the calendar month
556 immediately preceding the month in which the report is filed;

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

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

560 (b) The commissioner may require other reports as the commissioner deems necessary for
561 the proper administration of this chapter, including, but not limited to, reports from

562 common carriers and warehousemen with respect to cigars, cigarettes, ~~and~~ loose or
 563 smokeless tobacco, alternative nicotine products, and vapor products delivered to or stored
 564 at any point in this state.

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

568 48-11-11.

569 (a) Each distributor and each dealer shall keep complete and accurate records of all cigars,
 570 cigarettes, ~~and~~ loose or smokeless tobacco, alternative nicotine products, and vapor
 571 products manufactured, produced, purchased, and sold. The original records or a complete
 572 and legible photocopy or electronic image shall be safely preserved for three years in an
 573 appropriate manner to ensure permanency and accessibility for inspection by the
 574 commissioner and the commissioner's authorized agents. The commissioner and the
 575 commissioner's authorized agents may examine the books, papers, and records of any
 576 distributor or dealer in this state for the purpose of determining whether the tax imposed
 577 by this chapter has been fully paid and, for the purpose of determining whether the
 578 provisions of this chapter are properly observed, may investigate and examine the stock of
 579 cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor
 580 products in or upon any premises, including, but not limited to, public and private
 581 warehouses where the cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine
 582 products, or vapor products ~~is~~ are possessed, stored, or sold. Invoices sufficient to cover
 583 current inventory at a licensed location shall be maintained at such licensed location and
 584 made available for immediate inspection. All other records may be kept at a locality other
 585 than the licensed location and shall be provided for inspection within two business days
 586 after receipt of notification from the commissioner or an authorized agent of the
 587 commissioner to make such records available.

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

592 48-11-12.

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

- 597 (A) The report of the licensed distributor or dealer is incorrect;
- 598 (B) The licensed distributor or dealer has not paid the tax in accordance with the
599 alternate regulations promulgated by the commissioner under Code Section 48-11-3;
600 or
- 601 (C) The licensed distributor or dealer has not purchased sufficient stamps to cover such
602 licensed distributor's or dealer's receipts for sales or other disposition of unstamped
603 cigarettes or loose or smokeless tobacco and nontax-paid cigars, ~~or nontax-paid~~ loose
604 or smokeless tobacco, nontax-paid alternative nicotine products, or nontax-paid vapor
605 products.
- 606 (2) In any case where a licensed distributor or dealer cannot produce evidence of
607 sufficient stamps purchased or other payment of the tax to cover the receipt of unstamped
608 cigarettes or loose or smokeless tobacco or nontax-paid cigars, ~~or nontax-paid~~ loose or
609 smokeless tobacco, nontax-paid alternative nicotine products, or nontax-paid vapor
610 products, it shall be assumed that the cigars, cigarettes, and loose or smokeless tobacco
611 were sold without having either the proper stamps affixed or the tax paid on unstamped
612 cigars or loose or smokeless tobacco.
- 613 (b) If the commissioner determines that the deficiency or any part of the deficiency is due
614 to a fraudulent intent to evade the tax, a penalty of 50 percent of the deficiency shall be
615 added to the amount due.

616 48-11-13.

- 617 (a) There is imposed a tax on every person for the privilege of using, consuming, or storing
618 cigars, cigarettes, ~~and~~ loose or smokeless tobacco, alternative nicotine products, and vapor
619 products in this state on which the tax imposed by Code Section 48-11-2 has not been paid.
620 The tax shall be measured by and graduated in accordance with the volume of cigars,
621 cigarettes, ~~and~~ loose or smokeless tobacco, alternative nicotine products, and vapor
622 products used, consumed, or stored as set forth in Code Section 48-11-2.
- 623 (b) This Code section shall not apply to:
- 624 (1) Cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or
625 vapor products in the hands of a licensed distributor or dealer;
- 626 (2) Cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or
627 vapor products in the possession of a common carrier complying with Code Section
628 48-11-22;
- 629 (3) Cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or
630 vapor products stored in a public warehouse;
- 631 (4) Cigarettes or little cigars in an amount not exceeding 200 cigarettes or little cigars
632 which have been brought into this state on the person;

- 633 (5) Cigars in an amount not exceeding 20 cigars which have been brought into this state
 634 on the person; ~~or~~
- 635 (6) Loose or smokeless tobacco in an amount not exceeding six containers which has
 636 been brought into this state on the person;
- 637 (7) Alternative nicotine products in an amount not exceeding six containers which have
 638 been brought into this state on the person;
- 639 (8) Consumable vapor products in an amount not exceeding 50 milliliters which have
 640 been brought into this state on the person; or
- 641 (9) Up to five vapor devices which have been brought into this state on the person.

642 48-11-14.

643 (a) Before any person acquires cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative
 644 nicotine products, or vapor products subject to the tax imposed by Code Section 48-11-13,
 645 such person shall register with the commissioner as a responsible taxpayer subject to the
 646 obligation of maintaining records and making reports in the form prescribed by the
 647 commissioner. The report shall be made on or before the tenth day of the month following
 648 the month in which the cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative
 649 nicotine products, or vapor products were ~~was~~ acquired and shall be accompanied by the
 650 amount of tax due.

651 (b) If any person subject to the tax imposed by Code Section 48-11-13 fails to make the
 652 required report or makes an incorrect report, the commissioner shall assess the correct
 653 amount of tax due from that person from the best information available to him or her. A
 654 copy of the assessment shall be furnished the person by registered or certified mail or
 655 statutory overnight delivery, return receipt requested, or by personal service. Any person
 656 aggrieved by any assessment pursuant to this Code section may request a hearing in the
 657 manner provided in subsection (a) of Code Section 48-11-18.

658 (c) Every person subject to the tax imposed by Code Section 48-11-13 who fails to register
 659 with the commissioner as a responsible taxpayer, who fails to make a report within the time
 660 specified, or who fails to remit the tax within the time specified may be required to pay a
 661 penalty of not less than \$25.00 nor more than \$250.00 in addition to the tax and any other
 662 penalties imposed by law and found due by the commissioner. The commissioner may
 663 proceed to collect the tax and penalty in the manner provided in subsection (c) of Code
 664 Section 48-11-24.

665 (d) Except as otherwise provided in this Code section, the sanctions and penalties set forth
 666 in Code Sections 48-11-15, 48-11-17, 48-11-18, and 48-11-20 through 48-11-24 and in
 667 Code Sections 48-7-2 and 48-13-38 shall be imposed where applicable for any violations
 668 of this chapter by consumers.

669 48-11-15.

670 The Office of the State Treasurer is authorized to pay, on the order of the commissioner,
 671 claims for refunds of cigar, cigarette, ~~or~~ loose or smokeless tobacco, alternative nicotine
 672 product, or vapor product taxes found by the commissioner or the courts to be due any
 673 distributor, dealer, or taxpayer. The commissioner, upon proof satisfactory to the
 674 commissioner and in accordance with regulations promulgated by the commissioner, shall
 675 refund the cost price of stamps affixed to any package of cigars, cigarettes, or loose or
 676 smokeless tobacco or shall refund the tax paid on cigars, ~~or~~ loose or smokeless tobacco,
 677 alternative nicotine products, or vapor products under the alternate method when the cigars,
 678 cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor products
 679 have ~~has~~ become unfit for use, consumption, or sale and ~~has~~ have been destroyed or
 680 shipped out of this state.

681 48-11-16.

682 (a) The commissioner may permit licensed distributors to purchase tax stamps from the
 683 department on account. Permits may be granted only to licensed distributors who post
 684 bonds with the commissioner in amounts sufficient in the opinion of the commissioner to
 685 secure payment for stamps delivered on account. Tax stamps purchased by licensed
 686 distributors shall be paid for in full on or before the twentieth day of the month next
 687 succeeding the purchase. The bond provided in this Code section shall be secured by cash
 688 which shall bear no interest, by negotiable securities approved by the Office of the State
 689 Treasurer, or by a surety bond executed by a surety company licensed to do business in this
 690 state and approved by the commissioner.

691 (b) The commissioner may cancel without notice any permit issued under this Code
 692 section if the licensed distributor fails or refuses to comply with the requirements of this
 693 Code section or with the rules and regulations adopted under authority of this Code section.

694 (c) On or before June 30 of each fiscal year, the licensed distributor shall pay in its entirety
 695 any liability for the purchase of tax stamps due at that time.

696 48-11-17.

697 The amount of any unpaid tax shall be a lien against the property of any distributor or
 698 dealer who sells cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine
 699 products, or vapor products without collecting the tax and against the property of any
 700 person using or consuming cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative
 701 nicotine products, or vapor products without proper stamps affixed to the cigars, cigarettes,
 702 ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor products or without
 703 the tax paid on the cigars, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or

704 vapor products as otherwise provided in this chapter. The commissioner or the
705 commissioner's authorized agents are authorized to seize the property of a delinquent
706 distributor, dealer, or taxpayer and sell it as provided by law to satisfy the claim for taxes
707 due under this chapter; or the commissioner may record the commissioner's lien specifying
708 and describing the property against which the lien is effective, and the lien shall be good
709 as against any other person until the claim for taxes is satisfied.

710 48-11-18.

711 (a) Any person aggrieved by any action of the commissioner or the commissioner's
712 authorized agent may apply to the commissioner, in writing within ten days after the notice
713 of the action is delivered or mailed to the commissioner, for a hearing. The application
714 shall set forth the reasons why the hearing should be granted and the manner of relief
715 sought. The commissioner shall notify the applicant of the time and place fixed for the
716 hearing. After the hearing, the commissioner may make an order as may appear to the
717 commissioner to be just and lawful and shall furnish a copy of the order to the applicant.
718 The commissioner at any time by notice in writing may order a hearing on the
719 commissioner's own initiative and require the taxpayer or any other person whom the
720 commissioner believes to be in possession of information concerning any manufacture,
721 importation, use, consumption, storage, or sale of cigars, cigarettes, ~~or~~ loose or smokeless
722 tobacco, alternative nicotine products, or vapor products which ~~has~~ have escaped taxation
723 to appear before the commissioner or the commissioner's duly authorized agent with any
724 specific books of account, papers, or other documents for examination under oath relative
725 to the information.

726 (b) Any person aggrieved because of any final action or decision of the commissioner,
727 after hearing, may appeal from the decision to the superior court of the county in which the
728 appellant resides. The appeal shall be returnable at the same time and shall be served and
729 returned in the same manner as required in the case of a summons in a civil action. The
730 authority issuing the citation shall take from the appellant a bond of recognizance to the
731 state, with surety, conditioned to prosecute the appeal and to effect and comply with the
732 orders and decrees of the court. The action of the commissioner shall be sustained unless
733 the court finds that the commissioner misinterpreted this chapter or that there is no
734 evidence to support the commissioner's action. If the commissioner's action is not
735 sustained, the court may grant equitable relief to the appellant. Upon all appeals which are
736 denied, costs may be taxed against the appellant at the discretion of the court. No costs of
737 any appeal shall be taxed against the state.

738 48-11-19.

739 (a) Each person appointed by the commissioner as a special agent or enforcement officer
740 of the department for the enforcement of the laws of this state with respect to the
741 manufacture, transportation, distribution, sale, possession, and taxation of cigars, cigarettes,
742 little cigars, ~~and~~ loose or smokeless tobacco, alternative nicotine products, and vapor
743 products shall have the authority throughout this state to:

744 (1) Obtain and execute warrants for arrest of persons charged with violations of such
745 laws;

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

747 (3) Arrest without warrant any person violating such laws in the officer's presence or
748 within such officer's immediate knowledge when there is likely to be a failure of
749 enforcement of such laws for want of a judicial officer to issue a warrant;

750 (4) Make investigations in the enforcement of such laws and, in connection with such
751 investigations, to go upon any property outside buildings, whether posted or otherwise,
752 in the performance of such officer's duties;

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

755 (6) Carry firearms while performing such officer's duties.

756 (b) Each special agent or enforcement officer shall file with the commissioner a public
757 official's bond in the amount of \$1,000.00, the cost of the bond to be borne by the
758 department. Nothing in this chapter shall be construed to relieve agents and officers, after
759 making an arrest, from the duties imposed generally to obtain a warrant promptly and to
760 return arrested persons without undue delay before a person authorized to examine,
761 commit, or receive bail as required by general law.

762 (c) After a special agent or enforcement officer has accumulated 25 years of service with
763 the department, upon leaving the department under honorable conditions, such special
764 agent or enforcement officer shall be entitled as part of such officer's compensation to
765 retain his or her weapon and badge pursuant to regulations promulgated by the
766 commissioner.

767 (d) As used in this subsection, the term 'disability' means a disability that prevents an
768 individual from working as a law enforcement officer. When a special agent or
769 enforcement officer leaves the department as a result of a disability arising in the line of
770 duty, such special agent or enforcement officer shall be entitled as part of such officer's
771 compensation to retain his or her weapon and badge in accordance with regulations
772 promulgated by the commissioner.

773 48-11-20.

774 The failure to do any act required by this chapter shall be deemed an act committed in part
775 at the office of the commissioner in Atlanta. The certificate of the commissioner to the
776 effect that any act required by this chapter has not been done shall be prima-facie evidence
777 that the act has not been done.

778 48-11-21.

779 The superior courts of this state shall have jurisdiction of offenses against this chapter
780 which are punishable by fine or imprisonment, or both.

781 48-11-22.

782 (a) Every person who transports upon the public highways, roads, and streets of this state
783 cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor
784 products not stamped or on which tax has not been paid in accordance with the alternate
785 regulations provided by the commissioner under Code Section 48-11-3 shall have in such
786 person's actual possession invoices or delivery tickets for the cigars, cigarettes, ~~and~~ loose
787 or smokeless tobacco, alternative nicotine products, and vapor products which show the
788 true name and address of the consignor or seller, the true name of the consignee or
789 purchaser, the quantity and brands of the cigars, cigarettes, ~~or~~ loose or smokeless tobacco,
790 alternative nicotine products, or vapor products transported, and the name and address of
791 the person who has assumed or shall assume the payment of the tax at the point of ultimate
792 destination. In the absence of the invoices or delivery tickets, the cigars, cigarettes, ~~or~~
793 loose or smokeless tobacco, alternative nicotine products, or vapor products being
794 transported and the vehicles in which the cigars, cigarettes, ~~or~~ loose or smokeless tobacco,
795 alternative nicotine products, or vapor products are ~~is~~ being transported shall be confiscated
796 and disposed of as provided in Code Section 48-11-9; and the transporter may be liable for
797 a penalty of not more than \$50.00 for each individual carton of little cigars or cigarettes,
798 \$50.00 for each individual box of cigars, ~~and~~ \$50.00 for each individual container of loose
799 or smokeless tobacco being transported by such person, and \$50.00 for each individual
800 container of alternative nicotine products, each vapor device, or each 5 milliliters of
801 consumable vapor products. The penalty shall be recovered as provided in subsection (c)
802 of Code Section 48-11-24.

803 (b) This Code section shall apply only to the transportation of more than 200 cigarettes,
804 more than 200 little cigars, more than 20 cigars, ~~or~~ more than six containers of loose or
805 smokeless tobacco, more than six containers of alternative nicotine products, more than
806 five vapor devices, or more than 50 milliliters of consumable vapor products.

807 48-11-23.

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

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

813 (1) If such person is transporting more than 20 but fewer than 60 cigars, more than 200
814 but fewer than 600 cigarettes or little cigars, ~~or~~ more than six but fewer than 18
815 containers of loose or smokeless tobacco, more than six but fewer than 18 containers of
816 alternative nicotine products, more than five vapor devices but fewer than 20 vapor
817 devices, or more than 50 milliliters but fewer than 200 milliliters of consumable vapor
818 products, such person shall be guilty of a misdemeanor;

819 (2) If such person is transporting 60 or more but fewer than 200 cigars, 600 or more but
820 fewer than 2,000 cigarettes or little cigars, ~~or~~ 18 or more but fewer than 60 containers of
821 loose or smokeless tobacco, 18 or more but fewer than 60 containers of alternative
822 nicotine products, 20 or more but fewer than 60 vapor devices, or 200 milliliters or more
823 but fewer than 600 milliliters of consumable vapor products, such person shall be guilty
824 of a misdemeanor of a high and aggravated nature; or

825 (3) If such person is transporting 200 or more cigars, 2,000 or more cigarettes or little
826 cigars, ~~or~~ 60 or more containers of loose or smokeless tobacco, 60 or more containers of
827 alternative nicotine products, 60 or more vapor devices, or 600 milliliters or more of
828 consumable vapor products, such person shall be guilty of a felony and, upon conviction
829 thereof, shall be imprisoned for not less than three years nor more than ten years.

830 48-11-23.1.

831 (a) As used in this Code section, the term 'package' means a pack, carton, or container of
832 any kind in which cigarettes, ~~or~~ loose or smokeless tobacco, alternative nicotine products,
833 or vapor products ~~are~~ is offered for sale, sold, or otherwise distributed, or intended for
834 distribution, to consumers.

835 (b) No tax stamp may be affixed to, or made upon, any package of cigarettes, ~~or~~ loose or
836 smokeless tobacco, alternative nicotine products, or vapor products if:

837 (1) The package differs in any respect with the requirements of the federal Cigarette
838 Labeling and Advertising Act, 15 U.S.C. Section 1331, et seq., or those requirements
839 established by the United States Food and Drug Administration, for the placement of
840 labels, warnings, or any other information upon a package of cigarettes, ~~or~~ loose or
841 smokeless tobacco, alternative nicotine products, or vapor products that ~~is~~ are to be sold
842 within the United States;

- 843 (2) The package is labeled 'For Export Only,' 'U.S. Tax Exempt,' 'For Use Outside U.S.,'
 844 or similar wording indicating that the manufacturer did not intend that the product be sold
 845 in the United States;
- 846 (3) The package, or a package containing individually stamped packages, has been
 847 altered by adding or deleting the wording, labels, or warnings described in paragraph (1)
 848 or (2) of this subsection;
- 849 (4) The package has been imported into the United States after January 1, 2000, in
 850 violation of 26 U.S.C. Section 5754;
- 851 (5) The package in any way violates federal trademark or copyright laws; or
- 852 (6) The package in any way violates Code Section 10-13A-5.
- 853 (c) Any person who sells or holds for sale a cigarette, ~~or~~ loose or smokeless tobacco,
 854 alternative nicotine product, or vapor product package to which is affixed a tax stamp in
 855 violation of subsection (b) of this Code section shall be guilty of a misdemeanor.
- 856 (d) Notwithstanding any other provision of law, the commissioner may revoke any license
 857 issued under this chapter to any person who sells or holds for sale a cigarette, ~~or~~ loose or
 858 smokeless tobacco, alternative nicotine product, or vapor product package to which is
 859 affixed a tax stamp in violation of subsection (b) of this Code section.
- 860 (e) Notwithstanding any other provision of law, the commissioner may seize and destroy
 861 or sell to the manufacturer, only for export, packages that do not comply with subsection
 862 (b) of this Code section.
- 863 (f) A violation of subsection (b) of this Code section shall constitute an unfair and
 864 deceptive act or practice under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair
 865 Business Practices Act of 1975.'

866 48-11-24.

- 867 (a) Any person who possesses unstamped cigarettes or nontax-paid cigars, ~~or~~ little cigars,
 868 ~~or~~ loose or smokeless tobacco, alternative nicotine products, or vapor products in violation
 869 of this chapter shall be liable for a penalty of not more than \$50.00 for each individual
 870 carton of unstamped cigarettes and \$50.00 for each individual nontax-paid carton of little
 871 cigars, box of cigars, or container of loose or smokeless tobacco, alternative nicotine
 872 products, or vapor products in his or her possession.
- 873 (b) Any person who engages in any business or activity for which a license is required by
 874 this chapter without first having obtained a license to do so or any person who continues
 875 to engage in or conduct the business after the person's license has been revoked or during
 876 a suspension of the license shall be guilty of a misdemeanor of a high and aggravated
 877 nature and, upon conviction thereof, shall be subject to imprisonment for up to 12 months,

878 a fine of not more than \$5,000.00, or both. Each day that the business is engaged in or
879 conducted shall be deemed a separate offense.

880 (c) Proceedings to enforce and collect the penalties provided by this chapter shall be
881 brought by and in the name of the commissioner. With respect to offenses committed
882 within the territorial jurisdiction of the court, each superior court shall have jurisdiction to
883 enforce and collect the penalty. The costs recoverable in any such proceeding shall be
884 recovered by the commissioner in the event of judgment in the commissioner's favor. If
885 the judgment is for the defendant, it shall be without costs against the commissioner. All
886 expenses incident to the recovery of any penalty pursuant to this Code section shall be paid
887 in the same manner as any other expense incident to the administration of this chapter.

888 48-11-25.

889 (a)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this
890 chapter, to possess unstamped cigarettes or loose or smokeless tobacco or nontax-paid
891 cigars, ~~or loose or smokeless tobacco,~~ alternative nicotine products, or vapor products.

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

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

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

898 (B) Sell cigars, ~~or loose or smokeless tobacco,~~ alternative nicotine products, or vapor
899 products without the stamp or stamps required by this chapter or without the tax being
900 paid on the cigars, ~~or loose or smokeless tobacco,~~ alternative nicotine products, or
901 vapor products in accordance with the alternate method.

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

905 48-11-26.

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

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

911 (2) Aid or abet another in the filing with the commissioner of any false or fraudulent
912 report or statement.

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

916 48-11-27.

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

918 (1) Make a false entry upon any invoices or any record relating to the purchase,
919 possession, or sale of cigars, cigarettes, ~~or~~ loose or smokeless tobacco, alternative
920 nicotine products, or vapor products; or

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

924 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
925 misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than
926 \$250.00 for each separate offense.

927 48-11-28.

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

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

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

932 (3) Willfully utter, publish, pass, or render as true any false, altered, forged, or
933 counterfeited stamp;

934 (4) Knowingly possess any false, altered, forged, or counterfeited stamp;

935 (5) For the purpose of evading the tax imposed, use more than once any stamp required
936 by this chapter; or

937 (6) Tamper with or cause to be tampered with any metering machine authorized to be
938 used.

939 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
940 and, upon conviction thereof, shall be imprisoned for not less than three years nor more
941 than ten years.

942 48-11-29.

943 Reserved.

944 48-11-30.

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

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

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

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

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

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

969 (c) Any counterfeit cigarette seized by or at the direction of the commissioner shall be
970 destroyed by the commissioner or his or her designee. Any related machinery seized by
971 or at the direction of the commissioner may be sold by the commissioner at public auction
972 in accordance with the requirements of Code Section 48-11-9."

973 **SECTION 2.**

974 This Act shall become effective on October 1, 2020.

975 **SECTION 3.**

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