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Title: A LEGISLATIVE ACT AMENDING TITLE 68 CHAPTER 4 OF THE CHEROKEE NATION CODE ANNOTATED - TOBACCO TAX; ADDING DEFINITIONS, AND ALLOWING FOR THE REPEAL OF SECTIONS OF THE TOBACCO TAX COMPACT ACT
Sponsors: Meredith Frailey
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A LEGISLATIVE ACT AMENDING TITLE 68 CHAPTER 4 OF THE CHEROKEE NATION CODE ANNOTATED - TOBACCO TAX; ADDING DEFINITIONS, AND ALLOWING FOR THE REPEAL OF SECTIONS OF THE TOBACCO TAX COMPACT ACT
BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the "Tobacco Wholesaler Act of 2007" and codified as (Title) (Section) of the Cherokee Nation Code Annotated (CNCA).

Section 2. Purpose

This Act is to establish qualifications for the Cherokee Nation or Cherokee Nation wholly-owned tribally entities to become a wholesaler through the Cherokee Nation Tax Commission. This enactment will increase the ability of the Cherokee Nation to control the sale, distribution and possession of cigarettes and tobacco in Indian Country. This Act also allows for the repeal of sections of Title 68, Chapter 5, and Legislative Act 7-04 "Cherokee Nation/State Tobacco Tax Compact Act of 2003," which contains language from the Cherokee Nation-State of Oklahoma Tobacco Tax Compact which is currently being renegotiated. The repealing of these sections would be necessary in order to avoid conflicts with the language in a renegotiated compact.

Section 3. Substantive provisions

1. The following sections of CNCA Title 68 shall be amended as follows:

§ 41. Definitions

B. "Wholesaler" means any jobber or person who is organized and existing or doing business primarily to sell cigarettes or tobacco products to and render services to retailers and who makes such sales or renders such services to retailers located in Cherokee country, or who is located on Cherokee country regardless of the location of the retailers to whom said wholesaler sells product; provided, that at least 75% of the entire amount of gross sales occurring in Cherokee country are made at wholesale. Irrespective of the foregoing requirements, any jobber or person who is recognized and licensed as a wholesaler in the jurisdiction wherein said jobber or person resides, is incorporated, or has its principal place of business shall be a wholesaler as defined by this Chapter, and any operator of four (4) or more cigarette vending machines shall be a wholesaler as defined by this Chapter. The Cherokee Nation or

Cherokee Nation wholly-owned tribally entities shall be the exclusive wholesaler for tribally-licensed tobacco retailers.

§ 55. Wholesaler Licensing

A. Every wholesaler of cigarettes or tobacco products must apply and receive from the Commission a “Tobacco Wholesaler License” prior to establishing any place of business, warehouse, or wholesale outlet for the sale of cigarettes or tobacco products in Cherokee country. Forms for such application and license shall be provided by the Commission. Wholesalers of cigarettes or tobacco products operating in Cherokee country as of the effective date as defined in Section 5 of this title shall apply for a tobacco Wholesaler License within one (1) month of such effective date.

B. The Cherokee Nation or Cherokee Nation wholly-owned tribally chartered corporations may become a tribally licensed wholesaler without a wholesale license with the State of Oklahoma.

C. The Tax Commission is hereby authorized to develop rules and regulations, reports or other documentation required of licensees.

§ 59. Other Unlawful Acts

It shall be unlawful for any retailer to sell cigarettes and tobacco products in Cherokee country without first applying for and receiving a tobacco retailer license at any location constituting Cherokee country. It shall further be unlawful for any retailer to sell cigarettes and tobacco products within the fourteen (14) county area of the Cherokee Nation at any location which does not constitute “Indian country” as defined by federal law, without first affixing tax stamps or paying tax as required by ~~the State of Oklahoma~~ the Cherokee Nation Tax Commission and/or without first applying for and receiving a tobacco retailer license from the ~~State of Oklahoma~~ Cherokee Nation Tax Commission. Failure to conspicuously post a valid Cherokee Nation Tax Commission, ~~or state~~ tobacco retailer license at the location establishes a presumption of violation of this section. The Tax Commission is hereby authorized to develop rules and regulations, reports or other documentation required of licensees in order to implement and enforce this title.

2. Title 68 of the Cherokee Nation Code Annotated, Sections 73, 74, and all sections of Legislative Act 7-04 enacting the “Cherokee Nation/State Tobacco Tax Compact Act of 2003,” shall be repealed in their entirety upon termination of the currently existing Tobacco Compact with the State of Oklahoma as executed on February 9, 2004.

Section 6. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 7. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 8. Effective Date

The provisions of this Act shall become effective as determined by the Principal Chief of the Cherokee Nation. This authority may be exercised upon the failure to compact with the state of Oklahoma, after an adverse ruling by a tribunal, or other circumstances in which it becomes necessary for the Cherokee Nation to supply tribally-licensed tobacco retailers with product in order for said retailers to remain in business.

Section 9. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.