

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Representative Flanagin, McGee, Roberts, Smith, Sheid, and Bennett**

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For An Act To Be Entitled

8 "AN ACT TO CREATE A CHILDREN FIRST TRUST FUND; TO LEVY A
9 FIVE PERCENT (5%) TAX ON WHOLESALERS_ GROSS RECEIPTS
10 DERIVED FROM THE SALE OF CIGARETTES AND TO LEVY A SIX
11 PERCENT (6%) TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES
12 TO FUND THE TRUST FUND; TO DETERMINE THE DISTRIBUTION OF
13 THE PROCEEDS IN THE TRUST FUND; AND FOR OTHER PURPOSES."

14

15

Subtitle

16 "AN ACT TO CREATE A CHILDREN FIRST TRUST FUND."

17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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20 SECTION 1. DEFINITIONS. For purposes of this Act, the following words
21 and terms shall have the following meaning:

22 (a) "Cigarettes" means all rolled tobacco, or substitutes therefor, for
23 smoking which is wrapped in paper or any substitute other than natural leaf
24 tobacco in its natural state;

25 (b) "Director" means the Director of the Department of Finance and
26 Administration or his authorized agents.

27 (c) "Gross receipts" means the amount received by a wholesaler for
28 sales of tobacco products without any deductions for the cost of goods, labor,
29 interest or other expenses. Gross receipts includes all federal and state
30 taxes which are required to be collected or paid by the wholesaler,
31 specifically including taxes levied by Arkansas Code Annotated 26-57-201 et.
32 seq. and those levied by Act 2 of the Second Extraordinary Session of the 78th
33 General Assembly.

34 (d) "Other tobacco products" means all products other than cigarettes
35 containing tobacco for consumption and includes, but is not limited to cigars,

1 little cigars, cigarillos, chewing tobacco, smokeless tobacco, pipe tobacco,
2 smoking tobacco, smoking tobacco substitutes and snuff.

3 (e) "Wholesaler" means any individual, person, business, corporation or
4 other entity who does business within this state, who purchases unstamped or
5 untaxed cigarettes or other tobacco products directly from manufacturers and
6 who sells cigarettes or other tobacco products to properly licensed vendors or
7 retailers.

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9 SECTION 2. IMPOSITION OF TAX. There is levied a tax of *five percent*
10 (5%) on the total gross receipts derived from the sale of cigarettes by
11 wholesalers to any person or entity. The total gross receipts shall include
12 the total amount received by the wholesaler for the sale of cigarettes without
13 any deductions for the cost of goods, labor, interest or other expenses.
14 Gross receipts includes all federal and state taxes which are required to be
15 collected or paid by the wholesaler on cigarettes, including those taxes
16 levied by Arkansas Code Annotated §§26-57-208 and 26-57-802 and those levied
17 by Act 2 of the Second Extraordinary Session of the 78th General Assembly.

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19 SECTION 3. IMPOSITION OF TAX. In addition to the tax imposed by
20 Arkansas Code Annotated Section 26-57-208(2) and by Act 2 of the Second
21 Extraordinary Session of the 78th General Assembly, there is hereby an
22 additional excise or privilege tax on other tobacco products (other than
23 cigarettes), on the first sale to wholesalers or retailers within the state of
24 *six percent (6%)* of the manufacturer_s selling price. The tax shall be
25 computed on the actual manufacturer_s invoice price before discounts and deals
26 and shall be paid by the wholesaler, or by the retailer if he purchases
27 directly from the manufacturer.

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29 SECTION 4. REPORTING REQUIREMENTS. (a) Every wholesaler selling
30 tobacco products in the state of Arkansas shall pay the tax levied by this
31 Act.

32 (b) (1) On or before the fifteenth day of each month, every wholesaler
33 shall file with the Director a report reflecting the previous month_s gross
34 receipts and such other information prescribed by the Director.

35 (2) The tax levied by this Act shall be paid when the report is

1 filed. No discount shall be allowed for timely payment.

2 (3) The assessment and collection of the tax levied by this Act
3 shall be governed by the Arkansas Tax Procedure Act (Arkansas Code Annotated
4 Section 26-18-101 et. seq.).

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6 SECTION 5. CHILDREN FIRST TRUST FUND. (a) There is hereby created on
7 the books of the State Treasurer, State Auditor, and Chief Fiscal Officer of
8 the State a fund to be known as the "Children First Trust Fund" which shall
9 consist of those monies collected under this Act.

10 (b) From the monies accruing to the Children First Trust Fund, the
11 State Treasurer on the last day of the month shall transfer to the various
12 funds and fund accounts listed below monthly allocations in accordance with
13 each fund or fund account_s proportionate part of the total monies collected
14 under this Act:

| 15 Fund or fund Account | Proportionate amount |
|---|----------------------|
| 16 <i>Children's Education & Health Services Fund Account</i> | 85% |
| 17 <i>Disease Surveillance & Screening Fund Account</i> | 10% |
| 18 <i>Media Fund Account</i> | 5% |

19 (c) No monies collected under this Act shall be distributed for any
20 purpose other than those set forth herein without the prior approval of the
21 Arkansas General Assembly.

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23 SECTION 6. (a) The Director of the Department of Health shall be the
24 disbursing officer of the Children_s Education & Health Services Fund Account.

25 (b) Monies in the Children_s Education & Health Services Fund Account
26 shall only be expended by the Department of Health for local grants or
27 contracts to public school districts, *educational cooperatives, county*
28 *extension services* or parent/teacher associations of public schools to be used
29 for any or all of the following:

30 (1) Instructional materials and training for comprehensive health
31 education programs for kindergarten through twelfth grade;

32 (2) For early childhood education programs for children ages zero
33 (0) through four (4);

34 (3) For establishment or continuation of student service centers;

35 (4) *For health screens for children entering kindergarten;*

1 (5) For health access programs for children under age eighteen
2 (18) through Arkansas project ACCESS.

3 (c) Subject to the rules and regulations as may be implemented by the
4 Chief Fiscal Officer of the state, the disbursing officer for the department
5 is authorized to transfer all unexpended funds received in the Children_s
6 Education & Health Services Fund Account, as certified by the Chief Fiscal
7 Officer of the state, and such funds shall be carried forward and made
8 available for expenditures for the same purpose for any following fiscal year.

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10 SECTION 7. (a) The Director of the Department of Health shall be the
11 disbursing officer of the Disease Surveillance and Screening Fund Account.
12 The monies in the account shall only be expended to fund the Cancer Registry
13 of Arkansas as specified in Arkansas Code 20-15-201 et. seq., for cancer
14 screening programs by the Department of Health, and for surveys of behaviors,
15 such as tobacco use, which affect risk of cancer.

16 (b) Subject to the rules and regulations as may be implemented by the
17 Chief Fiscal Officer of the state, the disbursing officer for the department
18 is authorized to transfer all unexpended funds received in the Disease
19 Surveillance and Screening Fund Account, as certified by the Chief Fiscal
20 Officer of the state, and such funds shall be carried forward and made
21 available for expenditures for the same purpose for any following fiscal year.

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23 SECTION 8. (a) The Director of the Department of Health shall be the
24 disbursing officer of the Media Fund Account. The monies in the account shall
25 only be expended for statewide media campaigns on the prevention and reduction
26 of tobacco use, alcohol and other substance abuse or for local grants or
27 contracts to community organizations for community media campaigns on the
28 prevention and reduction of tobacco use, alcohol and other substance abuse.

29 (b) Subject to the rules and regulations as may be implemented by the
30 Chief Fiscal Officer of the state, the disbursing officer for the department
31 is authorized to transfer all unexpended funds received in the Media Fund
32 Account, as certified by the Chief Fiscal Officer of the state, and such funds
33 shall be carried forward and made available for expenditures for the same
34 purpose for any following fiscal year.

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1 SECTION 9. (a) The Department of Finance and Administration shall
2 enforce this act and promulgate rules and regulations necessary to implement
3 this Act.

4 (b) The State Treasurer, State Auditor and Chief Fiscal Officer of the
5 state is hereby authorized to create any and all funds and accounts necessary
6 for the full implementation of this act.

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8 SECTION 10. Persons who plead guilty or nolo contendere or are found
9 guilty of violating this Act shall be subject to the same penalties as
10 prescribed in the Arkansas Tax Procedure Act (Arkansas Code Annotated Section
11 26-18-101 et. seq.).

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13 SECTION 11. All provisions of this act of a general and permanent
14 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
15 Code Revision Commission shall incorporate the same in the Code.

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17 SECTION 12. If any provision of this act or the application thereof to
18 any person or circumstance is held invalid, such invalidity shall not affect
19 other provisions or applications of the act which can be given effect without
20 the invalid provision or application, and to this end the provisions of this
21 act are declared to be severable.

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23 SECTION 13. All laws and parts of laws in conflict with this act are
24 hereby repealed.

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26 SECTION 14. EMERGENCY. It is hereby found and determined by the
27 General Assembly of the State of Arkansas that the State of Arkansas is
28 lacking adequate funds to provide for the health care of its citizens and the
29 education of its children; that increased funds must be raised to adequately
30 provide for those needs; and this Act is designed to provide the necessary
31 revenues to the state sufficient to meet these needs. Therefore, an emergency
32 is hereby declared to exist and this Act being necessary for the immediate
33 preservation of the public peace, health, and safety, shall be in full force
34 and effective on and after July 1, 1993.

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/s/Pat Flanagan, et al