

1 State of Arkansas *As Engrossed: H3/12/13 H3/20/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

HOUSE BILL 1619

4

5 By: Representative Baine

6 *By: Senator B. Pierce*

7

8

For An Act To Be Entitled

9 AN ACT CONCERNING THE REGULATION OF TOBACCO PRODUCTS;
10 TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT OF
11 1977; TO MAKE TECHNICAL CHANGES; AND FOR OTHER
12 PURPOSES.

13

14

15

Subtitle

16

CONCERNING THE REGULATION OF TOBACCO
17 PRODUCTS; TO AMEND THE ARKANSAS TOBACCO
18 PRODUCTS TAX ACT OF 1977; AND TO MAKE
19 TECHNICAL CHANGES.

20

21

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

23

24 *SECTION 1.* Arkansas Code § 4-75-714(a), concerning the enforcement
25 agents for the Unfair Cigarette Sales Act, is amended to read as follows:

26 (a) ~~The~~ Arkansas Tobacco Control ~~Board~~ is designated as a law
27 enforcement agency.

28

29 *SECTION 2.* Arkansas Code § 20-27-2105(a), concerning certification and
30 product change under the Arkansas Cigarette Fire Safety Standard Act, is
31 amended to read as follows:

32 (a) A manufacturer shall submit to the Director of Arkansas Tobacco
33 Control a written certification attesting that each cigarette listed in the
34 certification:

35 (1) Has been tested within the last *thirty-six (36) months* in
36 accordance with § 20-27-2104; and



1 (2) Meets the performance standard under § 20-27-2104.

2
3 *SECTION 3.* Arkansas Code § 20-27-2404 is amended to read as follows:
4 20-27-2404. Rules – Enforcement.

5 (a) The Arkansas Tobacco Control Board ~~shall~~ may adopt rules to
6 implement this ~~chapter~~ subchapter.

7 (b)(1) The board, Arkansas Tobacco Control, and ~~its~~ their authorized
8 agents may enforce compliance with this ~~chapter~~ subchapter and any rules
9 adopted under this section by the board.

10 (2) ~~The board~~ Arkansas Tobacco Control and its authorized agents
11 may enter ~~upon~~ and inspect the premises of ~~any~~ a public place at ~~any~~ a
12 reasonable time and in a reasonable manner.

13
14 *SECTION 4.* Arkansas Code § 26-57-203 (15) and (16), concerning the
15 definitions to be used under the Arkansas Tobacco Products Tax Act of 1977,
16 are amended to read as follows:

17 (15) “Licensed” means that the person has received a license or
18 permit from the Director of Arkansas Tobacco Control and is otherwise
19 qualified to do business in this state, ~~except that “licensed” does not mean~~
20 ~~that a person is registered as a manufacturer;~~

21 (16)(A) “Manufacturer” means a person that produces a tobacco
22 product for sale, including without limitation federally licensed importers
23 and distributors that deal in tobacco products as manufacturers and that are
24 required under this subchapter to sell only to licensed wholesalers or
25 licensed retailers located in the state.

26 (B) “Manufacturer” includes a sales entity affiliate of
27 the manufacturer;

28
29 *SECTION 5.* Arkansas Code § 26-57-203 (30), concerning the definitions
30 to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to
31 read as follows:

32 (30) “Tobacco products vending machine” means a ~~coin-operated~~
33 vending machine from which tobacco products are sold;

34
35 *SECTION 6.* Arkansas Code § 26-57-203 (33), concerning the definitions
36 to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to

1 read as follows:

2 (33)~~(A)~~ "Wholesaler" means a person other than a manufacturer or
3 a person owned or operated by a manufacturer that:

4 ~~(i)~~ (A) Does business within the state at or from an
5 established place of business that purchases unstamped or untaxed cigarettes
6 or other tobacco products directly from manufacturers that distribute tobacco
7 products in the state; and

8 ~~(ii)~~ (B) Sells to properly licensed cigarette
9 vendors or retailers.

10 ~~(B) However, if an Arkansas city is separated from a city
11 in another state only by a state line, a person that is a resident of the
12 Arkansas city that maintains a warehouse in the adjoining city in the
13 adjoining state may qualify as a wholesaler under this subchapter if that
14 person:~~

15 ~~(i) Is regularly engaged in the sale of tobacco
16 products to licensed retailers within Arkansas as a first sale; and~~

17 ~~(ii) Is eligible to purchase unstamped cigarettes
18 directly from manufacturers.; and~~

19

20 *SECTION 7.* Arkansas Code § 26-57-203, concerning the definitions to be
21 used under the Arkansas Tobacco Products Tax Act of 1977, is amended to add
22 an additional subdivision to read as follows:

23 (34) "Dealer's License" means a license for an entity that:

24 (A) Represents cigarette or tobacco manufacturers for the
25 purpose of promoting the manufacturers' products in the State of Arkansas;
26 and

27 (B) May have manufacturer representative permits issued to
28 its sales representatives.

29

30 *SECTION 8.* Arkansas Code §§ 26-57-205 and 26-57-206 are amended to
31 read as follows:

32 26-57-205. Enforcement of subchapter.

33 It is the duty of all state, county, and city officers to ~~enforce the~~
34 ~~provisions of~~ assist Arkansas Tobacco Control in enforcing this subchapter.

35

36 26-57-206. Rules.

1 The Director of the Department of Finance and Administration ~~and~~, the
2 Director of Arkansas Tobacco Control, and the Arkansas Tobacco Control Board
3 ~~are empowered to~~ may promulgate rules for the proper enforcement of their
4 powers and duties as specifically prescribed by this subchapter, ~~except the~~
5 ~~Director of Arkansas Tobacco Control shall have no authority to promulgate~~
6 ~~rules regarding manufacturers.~~

7
8 *SECTION 9.* Arkansas Code § 26-57-212(d)-(f), concerning reports,
9 payment of tax, and records of wholesalers and warehousemen, is amended to
10 read as follows:

11 (d)(1)~~(A)~~ Every wholesaler and warehouse shall permit personnel of the
12 Department of Finance and Administration and auditors or agents of ~~the~~
13 Arkansas Tobacco Control ~~Board~~ to enter into and to inspect their stock of
14 tobacco products and all books, invoices, and any documents and records
15 relating to receipts and disbursements of tobacco products.

16 ~~(B)~~ (2) Auditors and agents shall not release to the ~~board~~
17 Arkansas Tobacco Control Board or to the public any information identifying
18 customers of the manufacturer, wholesaler, or warehouse except when necessary
19 to notify the board of alleged violations of this subchapter.

20 ~~(2)~~ ~~However, the board shall have no authority under this~~
21 ~~subchapter or any other act, to require any manufacturer or other person to~~
22 ~~disclose any confidential, competitive commercial information furnished by a~~
23 ~~manufacturer, without that manufacturer's written permission.~~

24 ~~(e)(1)(A)~~ ~~Every tobacco product wholesaler doing business in this~~
25 ~~state and whose main warehouse or headquarters is in another state, shall~~
26 ~~keep a record of all purchases and sales transactions involving cigarettes,~~
27 ~~cigars, cigarette papers, snuff, and other tobacco products.~~

28 ~~(B)~~ ~~The record shall be maintained at a facility located~~
29 ~~in Arkansas.~~

30 ~~(C)~~ ~~The record shall be accumulated on or before the~~
31 ~~twentieth day of each month covering the previous calendar month.~~

32 ~~(2)~~ ~~Any person who fails to maintain records required by this~~
33 ~~section shall be subject to a fine of:~~

34 ~~(A)~~ ~~One hundred dollars (\$100) for the first offense;~~

35 ~~(B)~~ ~~Two hundred fifty dollars (\$250) for the second~~
36 ~~offense;~~

1 ~~(C) Five hundred dollars (\$500) and a ninety day~~
2 ~~suspension of license for the third offense; and~~

3 ~~(D) One thousand dollars (\$1000) and permanent revocation~~
4 ~~of license for the fourth and subsequent offenses.~~

5 ~~(f)~~ (e)(1)(A) All purchases of cigars, cigarettes, cigarette papers,
6 smoking tobacco, and other tobacco products for distribution within the State
7 of Arkansas by ~~any~~ a nonresident tobacco products wholesaler shall be
8 evidenced by a separate invoice from the seller correctly showing the date of
9 purchase and the quantity of each of the articles purchased by the wholesaler
10 for distribution within Arkansas.

11 (B) Such stock purchased for distribution within Arkansas
12 shall be kept in an entirely separate part of the building, separate and
13 apart from stock purchased for sale or distribution in another state.

14 (2) At the time of shipping or delivering any cigars,
15 cigarettes, cigarette papers, smoking tobaccos, or other tobacco into the
16 State of Arkansas, ~~every~~ a nonresident tobacco product wholesaler shall make
17 a true duplicate invoice of the transaction ~~which shall show~~ that shows full
18 and complete details of the sale or delivery of those articles and shall
19 retain the duplicate invoice, subject to use and inspection by the department
20 and ~~the board~~ Arkansas Tobacco Control for a period of three (3) years.

21 (3) Nonresident tobacco wholesalers shall also keep a record of
22 all cigarettes, cigarette papers, cigars, smoking tobaccos, and other tobacco
23 products purchased by them for distribution within the State of Arkansas, and
24 all books, records, and memoranda pertaining to the purchase and sale of such
25 products shall be subject to inspection by the department and ~~the board~~
26 Arkansas Tobacco Control.

27
28 *SECTION 10.* Arkansas Code § 26-57-213 is amended to read as follows:

29 26-57-213. Invoices.

30 (a) The tax shall be set out and identified on each invoice or
31 statement as the "Arkansas Cigarette or Tobacco Products Excise Tax" as a
32 separate billing or item.

33 (b) Copies of all invoices for the purchase or sale of any tobacco
34 products shall be retained by each manufacturer, wholesaler, vendor, and
35 retailer for a period of three (3) years, subject to examination by the
36 Director of the Department of Finance and Administration and the Director of

1 Arkansas Tobacco Control or their authorized agents upon demand at any time
2 during regular business hours, ~~except that only the Director of the~~
3 ~~Department of Finance and Administration may examine the invoices of~~
4 ~~manufacturers.~~

5 (c) Retailers shall:

6 (1) Maintain or produce copies of at least the last *thirty (30)*
7 days of tobacco product invoices; and

8 (2) Make the invoices available upon demand during normal
9 business hours in the retail store.

10 (d) Wholesalers, dealers, and manufacturers shall maintain three (3)
11 years of tobacco product invoices that are available upon demand during
12 normal business hours in the permitted location.

13
14 *SECTION 11.* Arkansas Code § 26-57-214(a), concerning the registration
15 and licensing required before doing business under the Arkansas Tobacco
16 Products Tax Act of 1977, is amended to read as follows:

17 (a) ~~No~~ A person shall not deal with, deliver, or cause to be delivered
18 to ~~any~~ a retailer or consumer, or otherwise do business in tobacco products
19 in this state without having first registered with the Director of Arkansas
20 Tobacco Control and obtained a permit or license for that purpose, except
21 that a ~~manufacturer need only to register in accordance with § 26-57-~~
22 215(b)(1) person purchasing an existing permitted retail location may operate
23 under the selling owner's permit for a period not to exceed thirty (30) days
24 from the date of sale to allow the purchasing owner time to secure a permit.

25
26 *SECTION 12.* Arkansas Code § 26-57-214(c), concerning the registration
27 and licensing required before doing business under the Arkansas Tobacco
28 Products Tax Act of 1977, is amended to read as follows:

29 (c) A manufacturer, wholesaler, retailer, general tobacco products
30 vendor, or restricted tobacco products vendor who intends to sell tobacco
31 products at or from one (1) or more places of business owned, rented, or
32 leased by it shall ~~be required to~~ obtain a separate license for each such
33 place of business.

34
35 *SECTION 13.* Arkansas Code § 26-57-215(a), concerning permits and
36 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to

1 read as follows:

2 (a)(1) ~~Every~~ Each person, ~~except manufacturers,~~ listed in this
3 section, before commencing business, or if already in business, before
4 continuing, shall pay an annual privilege fee and secure a permit or license
5 from the Director of Arkansas Tobacco Control.

6 (2) However, a person purchasing an existing permitted retail
7 location may operate under the selling owner's permit for a period not to
8 exceed thirty (30) days from the date of sale to allow the purchasing owner
9 time to secure a permit.

10

11 *SECTION 14.* Arkansas Code § 26-57-215(b)(1), concerning permits and
12 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to
13 read as follows:

14 (b)(1) ~~Every~~ In addition to securing a permit or license under
15 subsection (a) of this section, a manufacturer whose products are sold in
16 this state shall register with the Director of the Department of Finance and
17 Administration. A manufacturer so registered is not licensed for purposes of
18 this subchapter. A manufacturer whose products are sold in this state is not
19 required to obtain a dealer's license for an employee operating as the
20 manufacturer's sales representative if the manufacturer holds a license or
21 permit under subsection (a) of this section.

22

23 *SECTION 15.* Arkansas Code § 26-57-215(b)(5), concerning permits and
24 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to
25 read as follows:

26 (5) ~~Every~~ A person engaged in the business of selling, leasing,
27 renting, or otherwise disposing of or dealing with ~~any~~ a tobacco product
28 vending machine in this state shall secure a ~~dealer's license~~ General Tobacco
29 Products Vending Permit.

30

31 *SECTION 16.* Arkansas Code § 26-57-215, concerning permits and licenses
32 under the Arkansas Tobacco Products Tax Act of 1977, is amended to add three
33 additional subsections to read as follows:

34 (c) Permits and licenses are issued as follows:

35 (1) A permit for a sole proprietor is issued in the sole
36 proprietor's name and in the sole proprietor's fictitious business name, if

1 any;

2 (2)(A) A permit for a partnership or limited liability company
3 is issued in the name of:

4 (i) The managing partner or managing member; and

5 (ii) The partnership or limited liability company.

6 (B) The managing partner or managing member of a limited
7 liability company may not be a partnership, limited liability company, or
8 corporation;

9 (3) A permit for a publicly traded or nonpublicly traded
10 corporation is issued in the name of the president or chief executive officer
11 of the corporation and in the name of the corporation;

12 (4) It is a violation for a permitted entity not to provide
13 written notification to the Director of Arkansas Tobacco Control within
14 thirty (30) days of a change in the following:

15 (A) The managing partner, limited liability company
16 managing member, or president or chief executive officer of a corporation; or

17 (B) The stockholders effecting twenty-five percent (25%)
18 or more of the total voting shares of a nonpublicly traded corporation.

19 (d)(1) When an entity transfers a business permitted under this
20 subchapter, the entity to which the business is transferred shall apply for
21 and may be issued a new permit under this subchapter and may operate under
22 the selling owner's permit only for a period not to exceed thirty (30) days
23 from the date of transfer to allow the purchasing owner time to secure a
24 permit.

25 (2)(A) When a partnership or limited liability company permitted
26 under this subchapter changes, removes, or replaces the managing partner or
27 managing member, the existing permit issued under this subchapter is void,
28 and the partnership or limited liability company shall apply for and may be
29 issued a new permit under this subchapter.

30 (B) However, the partnership or limited liability company
31 may operate under the prior managing partner's or managing member's permit
32 for a period not to exceed thirty (30) days from the date of transfer to
33 allow the purchasing owner time to secure a permit.

34 (3)(A) When a nonpublicly traded corporation permitted under
35 this subchapter changes, removes, or replaces the president or chief
36 executive officer named on the permit or changes, removes, or replaces a

1 stockholder who owns fifty percent (50%) or more of the total voting shares
2 of the nonpublicly traded corporation's stock, the permit issued under this
3 subchapter is void, and the nonpublicly traded corporation shall apply for
4 and may be issued a new permit under this subchapter.

5 (B) However, the nonpublicly traded corporation may
6 operate under the prior permit for a period not to exceed thirty (30) days
7 from the date of removal or change to allow the nonpublicly traded
8 corporation time to secure a new permit.

9 (4)(A) When a publicly traded corporation permitted under this
10 subchapter changes, removes, or replaces the president or chief executive
11 officer named on the permit or changes, removes, or replaces a stockholder
12 who owns fifty percent (50%) or more of the total voting shares of the
13 publicly traded corporation's stock, the permit issued under this subchapter
14 is void, and the publicly traded corporation shall apply for and may be
15 issued a new permit under this subchapter.

16 (B) However, the publicly traded corporation may operate
17 under the prior permit for a period of not more than thirty (30) days from
18 the date of removal or change to allow the publicly traded corporation time
19 to secure a new permit.

20 (e) An entity may apply for and be issued a permit or license under
21 this subchapter in advance of the effective date of the permit or license to
22 facilitate continuity of business operations.

23
24 *SECTION 17.* Arkansas Code § 26-57-216 is amended to read as follows:

25 26-57-216. Permits and licenses – Number and location – Background
26 check required.

27 (a) The Arkansas Tobacco Control Board ~~is empowered to~~ may determine
28 in its reasonable discretion and in accordance with ~~the provisions of~~ this
29 subchapter:

30 (1) The number of licenses to be granted in the state;

31 (2)(A) The locations thereof.

32 (B) However, a retail, wholesale, or manufacturer license
33 or permit shall not be issued to a residential address or for an address not
34 zoned for the business seeking to secure the permit; ~~and~~

35 (3)(A) The persons to whom they are to be granted.

36 (B) However, a license or permit shall not be issued to:

1 (i) A person who has pleaded guilty or nolo
2 contendere to or been found guilty of a felony; or

3 (ii) A business owned or operated, in whole or in
4 part, by a person who has pleaded guilty or nolo contendere to or been found
5 guilty of a felony; and

6 (b) Arkansas Tobacco Control shall conduct a criminal background check
7 on each permit applicant.

8
9 SECTION 18. Arkansas Code §§ 26-57-219 – 26-57-221 are amended to read
10 as follows:

11 26-57-219. Permits and licenses – Annual privilege tax.

12 (a) The annual privilege tax or fee for each permit or license
13 authorized by § 26-57-215 is established as follows:

- 14 (1) Wholesale Cigarette Permit \$ 500.00
- 15 (2) Wholesale Tobacco Permit 500.00
- 16 (3) General Tobacco Products Vending Permit (vendor)
- 17 100.00

- 18 (4) Tobacco Products Vending Machine License, per machine . .
- 19 . . . 10.00

- 20 (5)(A) Retail Cigarette/Tobacco Permit for retailers whose
- 21 weekly gross cigarette and tobacco sales are less than \$5,000
- 22 20.00

- 23 (B) Retail Cigarette/Tobacco Permit for retailers whose
- 24 weekly gross cigarette and tobacco sales are between \$5,000 and \$15,000 . .
- 25 . . . 30.00

- 26 (C) Retail Cigarette/Tobacco Permit for retailers whose
- 27 weekly gross cigarette and tobacco sales are in excess of \$15,000
- 28 50.00

- 29 (6) Wholesale Salesperson’s License 25.00
- 30 (7) Dealer’s License 25.00
- 31 (8) Manufacturer’s Representative Fee 25.00
- 32 (9) Manufacturer Cigarette Permit 500.00
- 33 (10) Manufacturer Tobacco Permit 500.00

34 (b)(1) All permits and licenses issued under this ~~section shall~~
35 subchapter expire on June 30 ~~of the year~~ following the effective date of
36 issuance.

1 (2)(A) Upon the failure to timely ~~pay the annual privilege fee~~
2 renew a license or permit issued under this subchapter, a late fee of two (2)
3 times the amount of ~~any the~~ the license or permit fee in question ~~will~~ shall be
4 owed in addition to the annual privilege fee for the permit or license.

5 (B) An expired permit or license that is not renewed
6 before September 1 following the expiration of the permit or license shall
7 not be renewed, and the holder of the expired permit or license shall submit
8 an application for a new permit or license.

9 (3) ~~No~~ A permit or license shall not be issued to the applicant
10 until the late fee and the license or permit fee ~~has~~ have been paid.

11 (c) ~~No~~ A permit or license issued under this ~~section~~ subchapter shall
12 not be renewed for a permit or license holder who is delinquent more than
13 ninety (90) days on ~~any a~~ a privilege fee, tax relating to the sale or
14 dispensation of cigarettes or tobacco products, or any other state and local
15 tax due the Director of the Department of Finance and Administration.

16 (d) A person who is delinquent more than ninety (90) days on ~~any a~~ a
17 state or local tax may not renew or obtain a permit or license issued under
18 this ~~section~~ subchapter except upon certification that the permit or license
19 holder has entered into a repayment agreement with the Department of Finance
20 and Administration and ~~that the person~~ is current on the payments.

21
22 26-57-220. Permits and licenses – Duration.

23 All permits and licenses issued under this subchapter shall expire on
24 June 30 ~~of the year~~ following the effective date of issuance.

25
26 26-57-221. Permits and licenses – Not transferable.

27 ~~No~~ A license or permit is not transferable, ~~and the location of any~~
28 ~~place of business for which any license is issued may not be changed without~~
29 ~~permission of the Director of Arkansas Tobacco Control;~~

30 (1)(A) Transferable to a subsequent owner or operator.

31 (B) However, a person purchasing an existing permitted
32 retail location may operate under the selling owner's permit for a period not
33 to exceed thirty (30) days from the date of sale to allow the purchasing
34 owner time to secure a permit; or

35 (2) Transferable to a different physical location unless the
36 permit holder obtains permission from the Director of Arkansas Tobacco

1 Control.

2
3 *SECTION 19.* Arkansas Code § 26-57-228(a), concerning the prohibition
4 on purchases from unregistered or unlicensed dealers, is amended to read as
5 follows:

6 (a) It is unlawful for ~~any~~ a retailer of tobacco products to purchase
7 tobacco products from ~~any~~ a person other than a ~~registered~~ licensed
8 manufacturer, licensed wholesaler, or other licensed retailer.

9
10 *SECTION 20.* Arkansas Code § 26-57-229(d), concerning persons who are
11 licensed as a wholesaler and a retailer, is amended to read as follows:

12 (d) ~~When~~ If a wholesaler refuses to keep the records required by or to
13 comply with ~~the provisions of~~ this section, the Director of Arkansas Tobacco
14 Control ~~shall~~ may revoke all permits that have been issued to the wholesaler.

15
16 *SECTION 21.* Arkansas Code §§ 26-57-230 and 26-57-231 are amended to
17 read as follows:

18 26-57-230. Common carriers.

19 (a) Common carriers transporting tobacco products may be required by
20 the Director of the Department of Finance and Administration or the Director
21 of Arkansas Tobacco Control Board to give a statement of all consignments of
22 tobacco products showing date, point of origin, point of delivery, and to
23 whom delivered.

24 (b) All common carriers shall permit their records relating to
25 shipment or receipt of tobacco products to be examined by the Director of the
26 Department of Finance and Administration or the board, the Director of
27 Arkansas Tobacco Control, or their agents.

28 (c) ~~Any~~ A person who fails or refuses to give ~~to the department or the~~
29 ~~board~~ the statement, reports, or invoices required by this section or who
30 refuses to permit the department or the board to examine the person's records
31 is guilty of a Class C misdemeanor.

32
33 26-57-231. Failure to allow inspection unlawful.

34 ~~Any~~ A person required to pay taxes under ~~the provisions of~~ this
35 subchapter who fails or refuses to permit the Department of Finance and
36 Administration or ~~the~~ Arkansas Tobacco Control ~~Board~~ to examine or inspect

1 the person's taxable stock of tobacco products, invoice books, papers, and
2 memoranda considered necessary to secure information directly relating to the
3 enforcement of this subchapter is guilty of a:

- 4 (1) Violation for the first and second offense; and
5 (2) Class C misdemeanor for each additional offense.

6
7 *SECTION 22.* Arkansas Code § 26-57-232(a)(1), concerning the
8 restrictions placed on wholesalers under the Arkansas Tobacco Products Tax
9 Act of 1977, is amended to read as follows:

10 (1) The wholesaler shall secure a permit from the ~~Director of~~
11 Arkansas Tobacco Control Board;

12
13 *SECTION 23.* Arkansas Code § 26-57-233(4)(B), concerning the
14 restrictions placed on salespersons under the Arkansas Tobacco Products Tax
15 Act of 1977, is amended to read as follows:

16 (B) The wholesaler shall retain ~~this~~ the information
17 required under subdivision (4)(A) of this section in a designated place
18 within this state for three (3) years subject to inspection by the Department
19 of Finance and Administration and ~~the~~ Arkansas Tobacco Control ~~Board~~.

20
21 *SECTION 24.* Arkansas Code § 26-57-234(a)(4)-(6), concerning the
22 restrictions placed on retailers and vendors under the Arkansas Tobacco
23 Products Tax Act of 1977, is amended to read as follows:

24 (4)(A) The retailer shall keep records showing the description
25 and date of the receipt of each lot of tobacco products, from whom purchased,
26 and when received on the premises, or any other requirements prescribed by
27 the Director of the Department of Finance and Administration.

28 (B) ~~These~~ The records ~~shall be~~ required under subdivision
29 (a)(4)(A) of this section are subject to inspection by the Department of
30 Finance and Administration and ~~the~~ Arkansas Tobacco Control ~~Board~~;

31 (5) The Director of the Department of Finance and Administration
32 may require retailer reports covering receipts and sales of tobacco products
33 monthly or for any other period;

34 (6) The retailer shall permit the department and ~~the board~~
35 Arkansas Tobacco Control or any peace officer acting under their direction to
36 inspect the retailer's stock of merchandise and premises, including any room

1 or building used in connection with the retailer's business.

2
3 *SECTION 25.* Arkansas Code § 26-57-245(b)(2), concerning the purchase,
4 sale, or receipt of unstamped products or products with unpaid taxes, is
5 amended to read as follows:

6 (2) Each purchase, sale, or offer to sell cigarettes or other
7 tobacco products in violation of subsection (a) of this section constitutes a
8 separate violation.

9
10 *SECTION 26.* Arkansas Code § 26-57-248, concerning fines for the
11 possession or sale of products with unpaid taxes, is amended to add an
12 additional subsection to read as follows:

13 (c) A fine assessed under this section shall be deposited into the
14 tobacco control fund established under § 26-57-247(p).

15
16 *SECTION 27.* Arkansas Code § 26-57-252 is amended to read as follows:
17 26-57-252. No bond for costs required.

18 ~~No~~ A bond for costs ~~shall be~~ is not required of the Department of
19 Finance and Administration ~~or, Arkansas Tobacco Control, or~~ the Arkansas
20 Tobacco Control Board in any court in this state for the prosecution of ~~any a~~
21 violation of this subchapter.

22
23 *SECTION 28.* Arkansas Code § 26-57-255(d), concerning the Arkansas
24 Tobacco Control Board, is amended to read as follows:

25 (d)(1) The board shall ~~have:~~

26 (A) Act as a rulemaking and adjudicatory body for Arkansas
27 Tobacco Control; and

28 (B) Have responsibility for the issuance, suspension, and
29 revocation of the licenses and permits enumerated in § 26-57-219.

30 (2)(A) A minimum of five (5) members is required for a quorum.

31 (B) All action by the board shall be by a majority vote of
32 the ~~full membership of the~~ board members present at the regular or special
33 meeting, and the board may take no official action in connection with ~~any a~~
34 matter except at a regular or special meeting. In the event of a tie vote of
35 the members of the board, the Director of Arkansas Tobacco Control may cast
36 the deciding vote.

1 ~~(3) The board shall have no jurisdiction over manufacturers of~~
2 ~~tobacco products.~~

3
4 *SECTION 29.* Arkansas Code § 26-57-256(a)(1), concerning the powers of
5 the Arkansas Tobacco Control Board, is amended to read as follows:

6 (1) Promulgate rules for the proper enforcement and
7 implementation of this subchapter and the Unfair Cigarette Sales Act, § 4-75-
8 701 et seq., ~~subject to the restrictions in § 26-57-212(d);~~

9
10 *SECTION 30.* Arkansas Code § 26-57-257(c), concerning the Director of
11 Arkansas Tobacco Control, is amended to read as follows:

12 (c) The Director of Arkansas Tobacco Control may employ ~~such~~ other
13 personnel as he or she deems necessary, ~~subject to the approval of the board~~
14 and as authorized by the General Assembly.

15
16 *SECTION 31.* Arkansas Code § 26-57-257(1), concerning the Director of
17 Arkansas Tobacco Control, is amended to read as follows:

18 (1) The Director of Arkansas Tobacco Control may inspect or cause to
19 be inspected any premises where tobacco products are manufactured, imported,
20 distributed, stored, or sold.

21
22 *SECTION 32.* Arkansas Code § 26-57-257(p), concerning the Director of
23 Arkansas Tobacco Control, is amended to read as follows:

24 (p) The Director of Arkansas Tobacco Control shall have other powers,
25 functions, and duties pertaining to the issuance, suspension, and revocation
26 of the permits and licenses enumerated in § 26-57-219, ~~which that previously~~
27 were granted to the Director of the Department of Finance and Administration,
28 ~~except the authority to regulate manufacturers, and which those that are~~
29 specifically delegated to the Department of Finance and Administration by
30 this subchapter.

31
32 *SECTION 33.* Arkansas Code § 26-57-259(c), concerning nonpreemption
33 under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as
34 follows:

35 (c) Nothing in this act nor any rule or regulation of the board shall
36 be construed or interpreted so as to require any state, county, municipal, or

1 other local authority to exhaust any administrative remedies through the
2 board, ~~including, but not limited to,~~ without limitation the right to seize
3 and forward to the board the state license of any vendor or retailer found to
4 have illegally sold tobacco products to a person less than eighteen (18)
5 years of age, provided that the vendor or retailer shall be given a hearing
6 before the board ~~within five (5) business days of the seizure~~ at the board's
7 next regularly scheduled meeting.

8

9

/s/Baine

10

11

12

APPROVED: 04/16/2013

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36