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2 90th General Assembly  
3 Regular Session, 2015  
4

*As Engrossed: S3/25/15*

# A Bill

SENATE BILL 978

5 By: Senator E. Williams  
6

## For An Act To Be Entitled

8 AN ACT TO REGULATE VAPOR PRODUCTS, ALTERNATIVE  
9 NICOTINE PRODUCTS, AND E-LIQUID PRODUCTS; TO AMEND  
10 CERTAIN LAWS CONCERNING THE REGULATION OF TOBACCO  
11 PRODUCTS; TO DECLARE AN EMERGENCY; AND FOR OTHER  
12 PURPOSES.  
13

## Subtitle

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15  
16 TO REGULATE VAPOR PRODUCTS, ALTERNATIVE  
17 NICOTINE PRODUCTS, AND E-LIQUID PRODUCTS;  
18 TO AMEND CERTAIN LAWS CONCERNING THE  
19 REGULATION OF TOBACCO PRODUCTS; AND TO  
20 DECLARE AN EMERGENCY.  
21

22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code § 26-57-202 is amended to read as follows:  
26 26-57-202. Legislative findings and purpose.

27 (a) It is recognized, found, and determined by the General Assembly  
28 that:

29 (1) The Surgeon General has determined that the smoking of  
30 cigarettes is detrimental to the health of the smoker;

31 (2) The General Assembly had already recognized this hazard many  
32 years ago when it enacted § 5-27-227 regulating the sale of tobacco to  
33 minors, ~~§§ 20-27-701—20-27-703 [repealed]~~ § 20-27-701 et seq. regulating  
34 pricing, establishing a policy for public smoking, and this subchapter, to  
35 provide for close supervision and control of the sale of cigarettes, ~~and~~  
36 other tobacco products, vapor products, alternative nicotine products, and e-



1 liquid products;

2 (3) The state has a very valid governmental interest in  
3 preserving and promoting the public health and welfare of its citizens; and

4 (4) It is the responsibility of the General Assembly to enact  
5 legislation to protect and further this essential governmental interest.

6 (b) It is therefore the intent of this subchapter to:

7 (1) Provide for the close supervision and control of the  
8 licensing of persons to sell cigarettes, ~~and other tobacco products,~~ vapor  
9 products, alternative nicotine products, and e-liquid products in this state  
10 in order to assure that ~~cigarettes and other tobacco~~ when these products are  
11 distributed in the state, they are fresh, not contaminated, and are properly  
12 taxed, stamped, stored, and distributed only to persons authorized to receive  
13 these products; and

14 (2) Impose licenses, fees, taxes, and restrictions on the  
15 privilege of dealing in or otherwise doing business in tobacco products,  
16 vapor products, alternative nicotine products, and e-liquid products in order  
17 to promote the public health and welfare of the citizens of this state and to  
18 protect the revenue collection procedures incorporated within this  
19 subchapter.

20

21 SECTION 2. Arkansas Code § 26-57-203 is amended to read as follows:

22 26-57-203. Definitions.

23 As used in this subchapter:

24 (1) "Alternative nicotine product" means:

25 (A) A product that consists of or contains nicotine that  
26 can be ingested into the body by chewing, smoking, absorbing, dissolving,  
27 inhaling, snorting, sniffing, or by any other means.

28 (B) "Alternative nicotine product" does not include a:

29 (i) Cigarette;

30 (ii) Tobacco product;

31 (iii) Vapor product;

32 (iv) Product that is a drug under 21 U.S.C. §

33 321(g)(1);

34 (v) Product that is a device under 21 U.S.C. §

35 321(h); or

36 (vi) Product that constitutes a combination drug,

1 device, or biological product as described in 21 U.S.C. § 353(g);

2 (2) “Annual” or “annually” means the fiscal year from July 1  
3 through the next June 30;

4 ~~(2)~~(3) “Brand family” means the same as defined in § 26-57-1302;

5 (4)(A) “Child-resistant packaging” means packaging that is  
6 designed or constructed to be:

7 (i) Significantly difficult for children under five  
8 (5) years of age to:

9 (a) Open; or

10 (b) Obtain a toxic or harmful amount of the  
11 substance contained therein within a reasonable time; and

12 (ii) Not difficult for an average adult to use  
13 properly.

14 (B) “Child-resistant packaging” does not mean packaging  
15 that children cannot open or obtain a toxic or harmful amount within a  
16 reasonable time when tested in accordance with the method described in 16  
17 C.F.R. § 1700.20, as it existed on January 1, 2015;

18 ~~(3)~~(5) “Cigar” means any roll of tobacco wrapped in leaf tobacco  
19 or in any substance containing tobacco, other than any roll of tobacco that  
20 is a cigarette;

21 ~~(4)~~(6) “Cigarette” means a cigarette as defined in § 26-57-260  
22 that is subject to federal excise tax;

23 ~~(5)~~(7) “Cigarette inputs” means machinery or other component  
24 parts typically used in the manufacture of cigarettes, including without  
25 limitation tobacco, whether processed or unprocessed, cigarette papers and  
26 tubes, cigarette filters and component parts intended for use in the making  
27 of cigarette filters, and machinery typically used in the making of  
28 cigarettes;

29 ~~(6)~~(8) “Cigarette rolling machine” means a machine, device, or  
30 other type of equipment that is intended to be used or may be used to make  
31 rolled tobacco, or a substitute for rolled tobacco, for smoking from other  
32 tobacco products, including without limitation roll-your-own tobacco and pipe  
33 tobacco;

34 ~~(7)~~(9) “Consumer” means a member of the public at large;

35 ~~(8)~~(10) “Days” means calendar days unless otherwise specified;

36 ~~(9)~~(11) “Dealer’s License” means a license for an entity that:

1 (A) Represents cigarette, ~~or~~ tobacco, vapor product,  
2 alternative nicotine product, or e-liquid product manufacturers for the  
3 purpose of promoting the manufacturers' products in the State of Arkansas;  
4 and

5 (B) May have manufacturer representative permits issued to  
6 its sales representatives;

7 ~~(10)~~(12) "Directory" means:

8 (A) The directory compiled by the Attorney General under §  
9 26-57-1303, if the reference is to the directory used in Arkansas; or

10 (B) The directory compiled under the law in another state,  
11 if the reference is to another state's directory;

12 (13) "E-liquid" and "e-liquid product" means a liquid product,  
13 which may or may not contain nicotine, that is vaporized and inhaled when  
14 using a vapor product, and that may or may not include without limitation  
15 propylene glycol, vegetable glycerin, nicotine from any source, and  
16 flavorings;

17 ~~(11)~~(14) "First sale" means the sale of tobacco products made by  
18 a manufacturer to licensed wholesalers and licensed vendors or a licensed  
19 retailer;

20 ~~(12)~~(A)(15)(A) "General tobacco products, vapor products, and  
21 alternative nicotine products vendor" means a person that:

22 (i) Operates a vending machine or ~~that~~ uses another  
23 mechanical device from which cigarettes, ~~or~~ other tobacco products, or vapor  
24 products, alternative nicotine products, and e-liquid products are delivered  
25 to the consumer by inserting coins into the machine or device; and

26 (ii) Purchases tobacco products or vapor products,  
27 alternative nicotine products, and e-liquid products only from licensed  
28 wholesalers or licensed retailers.

29 (B) A general tobacco products, vapor products, and  
30 alternative nicotine products vendor may operate licensed vending machines on  
31 the general tobacco ~~product~~ products, vapor products, and alternative  
32 nicotine products vendor's own premises and on the premises of others as a  
33 principal business;

34 ~~(13)~~(16) "Gross sales" means the amount received for tobacco  
35 products sold at retail, including both the federal and state taxes of the  
36 tobacco products when purchased by a retailer;

1 ~~(14)(A)~~(17)(A) "Importer" means a person that:

2 (i) ~~That is~~ Is the first person in the United States  
3 to which non-tax paid cigarettes, tobacco products, or vapor products,  
4 alternative nicotine products, and e-liquid products manufactured in a  
5 foreign country are shipped or consigned; or

6 (ii) ~~That removes~~ Removes cigarettes, tobacco  
7 products, or vapor products, alternative nicotine products, and e-liquid  
8 products for sale or consumption in the United States from a customs-bonded  
9 manufacturing warehouse; ~~or~~

10 ~~(iii) That smuggles or otherwise unlawfully brings~~  
11 ~~cigarettes into the United States.~~

12 (B) "Importer" includes a sales entity affiliate of the  
13 importer;

14 ~~(15)(18)~~(A) "Invoice price" means the price that a wholesaler or  
15 retailer of tobacco products, vapor products, alternative nicotine products,  
16 or e-liquid products pays to a manufacturer, importer, ~~or~~ distributor, or any  
17 other seller to acquire ~~for~~ tobacco products, vapor products, alternative  
18 nicotine products, and e-liquid products that the ~~wholesaler or retailer~~  
19 purchaser subsequently sells in the state;.

20 (B) In the absence of proof by the person possessing the  
21 tobacco products, vapor products, alternative nicotine products, or e-liquid  
22 products of the price at which the tobacco products, vapor products,  
23 alternative nicotine products, or e-liquid products were purchased, "invoice  
24 price" shall be the highest price, in the normal course of business and  
25 before any discount, at which the manufacturer of the tobacco products, vapor  
26 products, alternative nicotine products, or e-liquid products sell the  
27 tobacco products, vapor products, alternative nicotine products, or e-liquid  
28 products in question;

29 ~~(16)(19)~~ "Knowing" means, with respect to a violation or  
30 failure, a violation or failure in which the person knowingly engages in  
31 conduct without a good faith belief that the conduct is consistent with this  
32 subchapter;

33 ~~(17)(20)~~ "Licensed" means that the person has received a license  
34 or permit from the Director of Arkansas Tobacco Control and is otherwise  
35 qualified to do business in this state;

36 ~~(18)(A)~~(21)(A) "Manufacturer" means a person that ~~produces or~~

1 ~~offers manufactures, fabricates, assembles, or processes a tobacco product,~~  
 2 ~~vapor product, alternative nicotine product, or e-liquid product for sale,~~  
 3 ~~including without limitation federally licensed importers and distributors~~  
 4 ~~that deal in tobacco products, vapor products, alternative nicotine products,~~  
 5 ~~or e-liquid products as manufacturers and that are required under this~~  
 6 ~~subchapter to sell only to licensed wholesalers or licensed retailers located~~  
 7 ~~in the state.~~

8 (B) "Manufacturer" includes a sales entity affiliate of  
 9 the manufacturer or any other entity representing the manufacturer with  
 10 regard to the sale of tobacco products, vapor products, alternative nicotine  
 11 products, or e-liquid products produced by the manufacturer to wholesalers or  
 12 licensed retailers.

13 (C) "Manufacturer" specifically includes a person that  
 14 mixes, compounds, repackages, or resizes e-liquids or vapor products;

15 ~~(19)(22)~~ "Nonparticipating manufacturer" means the same as  
 16 defined in § 26-57-1302;

17 ~~(20)(A)(23)(A)~~ "Package" means a pack or other container on  
 18 which a stamp could be applied consistent with and as required by this  
 19 subchapter that contains one (1) or more individual cigarettes for sale.

20 (B) "Package" does not include a container of multiple  
 21 packages;

22 ~~(21)(24)~~ "Participating manufacturer" means the same as defined  
 23 in § 26-57-1302;

24 ~~(22)(25)~~ "Person" means an individual, retailer, wholesaler,  
 25 manufacturer, firm, association, company, partnership, limited liability  
 26 company, corporation, joint-stock company, club, agency, syndicate, the State  
 27 of Arkansas, county, municipal corporation or other political subdivision of  
 28 the state, receiver, trustee, fiduciary, or trade association;

29 ~~(23)(26)~~ "Place of business" means the place where orders are  
 30 taken or received or where tobacco products, vapor products, alternative  
 31 nicotine products, or e-liquid products are sold;

32 ~~(24)(27)~~ "Purchase" means an acquisition in any manner or by any  
 33 means for any consideration, including without limitation transporting or  
 34 receiving product in connection with a purchase;

35 ~~(25)(28)~~ "Restricted tobacco products vendor" means a person  
 36 that is licensed to operate vending machines owned by the person only on the

1 person's own premises and is otherwise subject to all other restrictions  
2 imposed on a general tobacco products vendor;

3 (29) "Retail exclusive vapor product and alternative nicotine  
4 product store" means a retail store that generates ninety percent (90%) or  
5 more of its gross revenue from the sale and service of vapor products,  
6 alternative nicotine products, or e-liquid products;

7 ~~(26)~~(30) "Retailer" means a person that purchases tobacco  
8 products, vapor products, alternative nicotine products, or e-liquid products  
9 from licensed wholesalers for the purpose of selling the tobacco products,  
10 vapor products, alternative nicotine products, or e-liquid products over the  
11 counter at retail to consumers;

12 ~~(27)~~(A)(31)(A) "Sale" or "sell" means a transfer, exchange, or  
13 barter in any manner or by any means for any consideration, including  
14 distributing or shipping product in connection with a sale.

15 (B) A sale "in" or "into" a state refers to the state in  
16 which the destination point of the product is located in the sale without  
17 regard to where title was transferred.

18 (C) A sale "from" a state refers to the sale of cigarettes  
19 that are located in that state to the destination in question without regard  
20 to where title was transferred;

21 ~~(28)~~(A)(32)(A) "Sales entity affiliate" means an entity that:

22 (i) Sells cigarettes or other tobacco products that  
23 the entity acquires directly from a manufacturer or importer; and

24 (ii) Is affiliated with the manufacturer or importer  
25 from which the entity acquires the cigarettes or other tobacco products.

26 (B) "Sales entity affiliate" includes entities in a  
27 relationship in which one (1) entity directly or indirectly through one (1)  
28 or more intermediaries controls, is controlled by, or is under common control  
29 with the other entity;

30 ~~(29)~~(33) "Salesperson" means the agent or employee of a  
31 wholesaler that sells or offers for sale to licensed wholesalers or licensed  
32 retailers or that solicits for sale, takes orders for, or in any manner  
33 promotes the sale or use of tobacco products, vapor products, alternative  
34 nicotine products, or e-liquid products;

35 ~~(30)~~(A)(34)(A) "Stamps" means the Arkansas cigarette stamps  
36 denoting the tax on cigarettes.

1 (B) When affixed to a container of cigarettes, the stamps  
2 indicate that the tax has been paid;

3 ~~(31)~~(35) "Tobacco products" means all products containing  
4 tobacco for consumption, including without limitation cigarettes, cigars,  
5 little cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking  
6 tobacco, including pipe tobacco, and smoking tobacco substitutes;

7 ~~(32)~~(36) "Tobacco products, vapor products, alternative nicotine  
8 products, or e-liquid products vending machine" means a vending machine from  
9 which tobacco products, vapor products, alternative nicotine products, or e-  
10 liquid products are sold;

11 ~~(33)~~(37) "Unstamped cigarettes" means cigarettes that are not  
12 contained in a package bearing a stamp permitted under this chapter;

13 (38) "Vapor product" means an electronic oral device of any size  
14 or shape that provides a vapor of nicotine, e-liquid, or any another  
15 substance that when used or inhaled simulates smoking, regardless of whether  
16 a visible vapor is produced, including without limitation a device that:

17 (A) Is composed of a heating element, battery, electronic  
18 circuit, chemical process, mechanical device or a combination of heating  
19 element, battery, electronic circuit, chemical process or mechanical device;

20 (B) Works in combination with a cartridge, other container  
21 or liquid delivery device containing nicotine or any other substance and  
22 manufactured for use with vapor products;

23 (C) Is manufactured, distributed, marketed, or sold as any  
24 type or derivation of a vapor product, e-cigarette, e-cigar, e-pipe, or any  
25 other product name or descriptor; and

26 (D) Does not include a product regulated as a drug or  
27 device by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.,  
28 as it existed on January 1, 2015;

29 ~~(34)~~(39) "Warehouse" means a place where tobacco products, vapor  
30 products, alternative nicotine products, or e-liquid products are stored for  
31 another person and to or from which place the tobacco products, vapor  
32 products, alternative nicotine products, or e-liquid products, are shipped or  
33 delivered upon order by the owner of the tobacco products, vapor products,  
34 alternative nicotine products, or e-liquid products, to the warehouse; and

35 ~~(35)~~(40) "Wholesaler" means a person other than a manufacturer  
36 or a person owned or operated by a manufacturer that:



1 (A) Does business within the state ~~and purchases unstamped~~  
2 ~~or untaxed;~~

3 (B) Purchases cigarettes, ~~or~~ other tobacco products, vapor  
4 products, alternative nicotine products, or e-liquid products ~~directly from~~  
5 ~~manufacturers that distribute tobacco products in the state; and any source;~~

6 ~~(B) Sells to properly licensed cigarette or other tobacco~~  
7 ~~product vendors or retailers~~

8 (C) Distributes or sells the cigarettes, other tobacco  
9 products, vapor products, alternative nicotine products, or e-liquid products  
10 to other wholesalers, vendors, or retailers; and

11 (D) Does not distribute or sell the cigarettes, other  
12 tobacco products, vapor products, alternative nicotine products, or e-liquid  
13 products at retail to consumers.

14  
15 SECTION 3. Arkansas Code § 26-57-207 is amended to read as follows:  
16 26-57-207. Privilege to do business.

17 The business of handling, receiving, possessing, storing, distributing,  
18 taking orders for, ~~for~~ soliciting orders of, selling, offering for sale, and  
19 dealing in, through sale, barter, or exchange, any cigarettes, ~~or~~ other  
20 tobacco products, vapor products, alternative nicotine products, or e-liquid  
21 products is declared to be a privilege under the Arkansas Constitution and  
22 laws of the State of Arkansas.

23  
24 SECTION 4. Arkansas Code §§ 26-57-213 – 26-57-216 are amended to read  
25 as follows:

26 26-57-213. Invoices.

27 (a) The tax shall be set out and identified on each invoice or  
28 statement as the “Arkansas Cigarette or Tobacco Products Excise Tax” as a  
29 separate billing or item.

30 (b) Copies of all invoices for the purchase or sale of any tobacco  
31 products, vapor products, alternative nicotine products, or e-liquid products  
32 shall be retained by each manufacturer, wholesaler, vendor, and retailer for  
33 a period of three (3) years subject to examination by the Director of the  
34 Department of Finance and Administration and the Director of Arkansas Tobacco  
35 Control or their authorized agents upon demand at any time during regular  
36 business hours.

1 (c) Retailers shall:

2 (1) Maintain or produce copies of at least the last thirty (30)  
3 days of tobacco product, vapor product, alternative nicotine product, or e-  
4 liquid product invoices; and

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

7 (d) Wholesalers, dealers, and manufacturers shall maintain three (3)  
8 years of tobacco product, vapor product, alternative nicotine product, or e-  
9 liquid product invoices that are available upon demand during normal business  
10 hours in the permitted location.

11  
12 26-57-214. Registration and licensing required prior to doing  
13 business.

14 (a) A person shall not deal with, deliver, or cause to be delivered to  
15 a retailer or consumer or otherwise do business in tobacco products, vapor  
16 products, alternative nicotine products, or e-liquid products, in this state  
17 without having first registered with the Director of Arkansas Tobacco Control  
18 and obtained a permit or license for that purpose, except that a person  
19 purchasing an existing permitted retail location may operate under the  
20 selling owner's permit for a period not to exceed thirty (30) days from the  
21 date of sale to allow the purchasing owner time to secure a permit.

22 (b) All permits and licenses shall be issued by the director.

23 (c) A manufacturer, wholesaler, retailer, or general tobacco products,  
24 vapor products, or alternative nicotine products vendor, ~~or restricted~~  
25 ~~tobacco products vendor~~ who intends to sell tobacco products, vapor products,  
26 alternative nicotine products, or e-liquid products at or from one (1) or  
27 more places of business owned, rented, or leased by it shall obtain a  
28 separate license for each such place of business.

29 (d)(1) Any person licensed as a wholesaler shall not operate as a  
30 retailer unless a retailer's license is first secured.

31 (2) Any person licensed as a retailer shall not operate as a  
32 wholesaler unless a wholesaler's license is first secured.

33 (e) Any person who pleads guilty or nolo contendere to or is found  
34 guilty of buying, selling, or otherwise doing business in cigarettes, ~~or~~  
35 tobacco products, vapor products, alternative nicotine products, or e-liquid  
36 products in this state without first obtaining the appropriate license or

1 permit is guilty of a ~~Class C~~ Class A misdemeanor.

2  
3 26-57-215. Permits and licenses – Types.

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

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

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

19 (2)(A) Every wholesaler of cigarettes who operates a place of  
20 business shall secure a wholesale cigarette permit, ~~and~~ every wholesaler of  
21 any vapor products, alternative nicotine products, e-liquid products, or  
22 other tobacco products except cigarettes who operates a place of business  
23 shall secure a wholesale tobacco, vapor product, and alternative nicotine  
24 product permit.

25 (B) ~~Any~~ A wholesaler doing business in both cigarettes and  
26 vapor products, alternative nicotine products, e-liquid products, or other  
27 tobacco products shall secure both a wholesale cigarette permit and a  
28 wholesale tobacco, vapor product, and alternative nicotine product permit.

29 (3) Every salesperson of any tobacco product, vapor product,  
30 alternative nicotine product, or e-liquid product who contacts a retailer in  
31 this state for the purpose of soliciting or taking and processing orders for  
32 the sale of tobacco products, vapor products, alternative nicotine products  
33 ,or e-liquid products or who through contact delivers or causes delivery of  
34 any tobacco product, vapor product, alternative nicotine product, or e-liquid  
35 product to a retailer in this state, shall first secure a salesperson's  
36 license. Application shall be made by the wholesaler or general tobacco

1 products vendor who is the salesperson's employer. A salesperson's license is  
2 not transferable to another employer and must be surrendered to the Director  
3 of Arkansas Tobacco Control by the employer upon termination of the  
4 salesperson's employment.

5 (4)(A) Every retailer of cigarettes, other tobacco products,  
6 vapor products, alternative nicotine products, or e-liquid products ~~who that~~  
7 operates a place of business shall secure a retail cigarette, tobacco, vapor  
8 products, alternative nicotine products, or e-liquid products permit, and  
9 every exclusive retailer of ~~any other tobacco products, except cigarettes,~~  
10 vapor products, alternative nicotine products, or e-liquid products ~~who that~~  
11 operates a place of business shall secure a retail ~~tobacco~~ exclusive vapor  
12 product and alternative nicotine product store permit. ~~Any retailer doing~~  
13 ~~business in both cigarettes and other tobacco products shall secure both a~~  
14 ~~retail cigarette permit and a retail tobacco permit.~~

15 (B) ~~Retailers~~ Retail permit holders and dealer license  
16 holders may secure temporary permits to operate at picnics, fairs, carnivals,  
17 circuses, or any other temporary public gathering for periods not to exceed  
18 ten (10) days for a fee of five dollars (\$5.00).

19 (5) A person engaged in the business of selling, leasing,  
20 renting, or otherwise disposing of or dealing with a ~~tobacco product~~ vending  
21 machine containing tobacco products, vapor products, alternative nicotine  
22 products, or e-liquid products in this state shall secure a ~~General Tobacco~~  
23 ~~Products Vending Permit~~ general tobacco products, vapor products, and  
24 alternative nicotine products vending permit.

25 (6)(A)(i) Every general tobacco products, vapor products, and  
26 alternative nicotine products vendor ~~and every restricted tobacco vendor must~~  
27 shall obtain a proper license from the Director of Arkansas Tobacco Control.  
28 However, municipal corporations may license and tax the privilege of doing  
29 business as a general tobacco products, vapor products, and alternative  
30 nicotine products vendor ~~or restricted tobacco vendor~~ in cities where the  
31 vendors maintain an established place of business, provided that the machine  
32 license tax imposed may not exceed fifty percent (50%) of the amounts levied  
33 on the vendors' licenses under this subchapter.

34 (ii) If a municipality by ordinance licenses or  
35 taxes the privilege of doing business as a general tobacco products, vapor  
36 products, and alternative nicotine products vendor ~~or restricted tobacco~~

1 ~~vendor~~, proof that the license is in good standing shall be a mandatory  
2 condition for the issuance of a state license required under this section.

3 (B)(i)(a) In addition, every general tobacco products,  
4 vapor products, and alternative nicotine products ~~vendor or restricted~~  
5 ~~tobacco vendor must~~ shall obtain a permit stamp for each machine of any type  
6 placed in operation in this state for the purpose of vending any tobacco  
7 products, vapor products, alternative nicotine products, or e-liquid  
8 products.

9 (b) This stamp shall be affixed to the machine  
10 in a conspicuous location together with a decal or card reciting the name,  
11 address, and license number of the vendor operating the machine.

12 (ii) No stamp will be issued for any machine upon  
13 which the state gross receipts or state compensating tax has not been paid,  
14 and the Director of ~~the Department of Finance and Administration~~ Arkansas  
15 Tobacco Control shall require proof of payment before the initial issue of a  
16 stamp for any ~~tobacco products~~ vending machine containing tobacco products,  
17 vapor products, alternative nicotine products, or e-liquid products.

18 (c)(1) Permits and licenses are issued as follows:

19 (A) A permit for a sole proprietor is issued in the sole  
20 proprietor's name and in the sole proprietor's fictitious business name, if  
21 any;

22 (B)(i) A permit for a partnership or limited liability  
23 company is issued in the name of:

24 (a) The managing partner or managing member;  
25 and

26 (b) The partnership or limited liability  
27 company.

28 (ii) ~~The~~ If the managing partner or managing member  
29 of a limited liability company ~~may not be~~ is a partnership, limited liability  
30 company, or corporation; ~~and,~~ then the permit shall be issued in the name of:

31 (a) The president or chief executive officer;  
32 and

33 (b) The partnership or limited liability  
34 company.

35 (C) A permit for a publicly traded or nonpublicly traded  
36 corporation is issued in the name of the president or chief executive officer

1 of the corporation and in the name of the corporation.

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

5 (A) The managing partner, limited liability company  
6 managing member, or president or chief executive officer of a corporation,  
7 partnership, or limited liability company; or

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

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

16 (2)(A) When a partnership or limited liability company permitted  
17 under this subchapter changes, removes, or replaces the managing partner, ~~or~~  
18 managing member, president, or chief executive officer, the existing permit  
19 issued under this subchapter is void, and the partnership or limited  
20 liability company shall apply for and may be issued a new permit under this  
21 subchapter.

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

26 (3)(A) When a nonpublicly traded corporation permitted under  
27 this subchapter changes, removes, or replaces the president or chief  
28 executive officer named on the permit or changes, removes, or replaces a  
29 stockholder who owns fifty percent (50%) or more of the total voting shares  
30 of the nonpublicly traded corporation's stock, the permit issued under this  
31 subchapter is void, and the nonpublicly traded corporation shall apply for  
32 and may be issued a new permit under this subchapter.

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

1           (4)(A) *When a publicly traded corporation permitted under this*  
2 *subchapter changes, removes, or replaces the president or chief executive*  
3 *officer named on the permit or changes, removes, or replaces a stockholder*  
4 *who owns fifty percent (50%) or more of the total voting shares of the*  
5 *publicly traded corporation's stock, the permit issued under this subchapter*  
6 *is void, and the publicly traded corporation shall apply for and may be*  
7 *issued a new permit under this subchapter.*

8           (B) *However, the publicly traded corporation may operate*  
9 *under the prior permit for a period of not more than thirty (30) days from*  
10 *the date of removal or change to allow the publicly traded corporation time*  
11 *to secure a new permit.*

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

15  
16           26-57-216. *Permits and licenses – Number and location – Background*  
17 *check required.*

18           *The Arkansas Tobacco Control Board may determine in its reasonable*  
19 *discretion and in accordance with this subchapter:*

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

21           (2)(A) *The locations thereof.*

22           (B) *However, a retail, wholesale, or manufacturer license*  
23 *or permit shall not be issued to a residential address or for an address not*  
24 *zoned appropriately for the business seeking to secure the permit; and*

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

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

27           (i) *A person who has pleaded guilty or nolo*  
28 *contendere to or been found guilty of a felony; or*

29           (ii) *A business owned or operated, in whole or in*  
30 *part, by a person who has pleaded guilty or nolo contendere to or been found*  
31 *guilty of a felony.*

32           (C) *Arkansas Tobacco Control shall conduct a criminal*  
33 *justice background check on each permit applicant and application, utilizing*  
34 *its Arkansas Crime Information Center access as a law enforcement agency, in*  
35 *accordance with §§ 12-12-1008 – 12-12-1011.*

36

SECTION 5. Arkansas Code § 26-57-219 is amended to read as follows:  
26-57-219. Permits and licenses – Annual privilege tax.

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

(1) Wholesale Cigarette Permit . . . . . \$ 500.00

(2) Wholesale Tobacco, Vapor Product, and Alternative Nicotine Product Permit . . . . . 500.00

(3) General Tobacco Products, Vapor Products, and Alternative Nicotine Products Vending Permit (vendor) . . . . . 100.00

(4) Tobacco Products, Vapor Products and Alternative Nicotine Products Vending Machine License, per machine . . . . . 10.00

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

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

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

(5) Retail Cigarette, Tobacco, Vapor Product, and Alternative Nicotine Product Permit . . . . . 50.00

(6) Retail Exclusive Vapor Product and Alternative Nicotine Product Permit . . . . . 100.00

~~(7)~~ Wholesale Salesperson’s License . . . . . 25.00

~~(8)~~ Dealer’s License . . . . . 25.00

~~(9)~~ Manufacturer’s Representative Fee . . . . . 25.00

~~(10)~~ Manufacturer Cigarette Permit . . . . . 500.00

~~(11)(A) Manufacturer Tobacco, Vapor Product, and Alternative Nicotine Product Permit . . . . . 500.00~~

(B) Notwithstanding subdivision (11)(A) of this section, tobacco manufacturers or importers who deal solely in cigars may submit a copy of their current federal tobacco import license or federal tobacco manufacturers license to Arkansas Tobacco Control when applying for a Manufacturer Tobacco, Vapor Product, and Alternative Nicotine Product Permit to receive the permit at no cost.



1           (b)(1) All permits and licenses issued under this subchapter expire on  
2 June 30 following the effective date of issuance.

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

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

11           (3) A permit or license shall not be issued to the applicant  
12 until the late fee and the license or permit fee have been paid.

13           (c) A permit or license issued under this subchapter shall not be  
14 renewed for a permit or license holder who is delinquent more than ninety  
15 (90) days on a privilege fee, tax relating to the sale or dispensation of  
16 cigarettes or tobacco products, or any other state and local tax due the  
17 Director of the Department of Finance and Administration.

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

23           (e) A permit or license who has unpaid fines or an unserved permit or  
24 license suspension may not transfer, sell, or give cigarette, tobacco, vapor  
25 product, alternative nicotine product, or e-liquid product inventory of the  
26 business associated with the permit or license to a third party until all  
27 fines are paid in full and all suspensions are completed successfully nor  
28 shall any third party be issued a new permit or license for the business  
29 location.

30  
31           SECTION 6. Arkansas Code § 26-57-223 is amended to read as follows:  
32           26-57-223. Permits and licenses – Suspension or revocation.

33           (a) All permits and licenses issued under this subchapter may be  
34 suspended or revoked by the Director of Arkansas Tobacco Control for any  
35 violation of this subchapter or the rules pertaining to this subchapter,  
36 subject to an appeal hearing at the next regularly scheduled Arkansas Tobacco

1 Control Board meeting.

2 (b) The director may revoke ~~for one (1) year~~ all permits or licenses  
3 to deal in tobacco products, vapor products, alternative nicotine products,  
4 or e-liquid products associated with ~~of~~ any person who is convicted of  
5 criminally violating this subchapter ~~or the regulations pertaining to this~~  
6 ~~subchapter a second time~~ with the revocation being subject to an appeal to  
7 the board.

8  
9 SECTION 7. Arkansas Code §§ 26-57-226 – 26-57-228 are amended to read  
10 as follows:

11 26-57-226. Penalties.

12 Any person within the jurisdiction of this state who is not licensed to  
13 sell, deliver, or cause to be delivered tobacco products, vapor products,  
14 alternative nicotine products, or e-liquid products to consumers who sells,  
15 takes orders from, delivers, or causes to be delivered immediately or in the  
16 future any tobacco products, vapor products, alternative nicotine products,  
17 or e-liquid products to consumers, is guilty of a\*

18 ~~(1) Class C misdemeanor for the first offense; and~~

19 ~~(2) Class B misdemeanor for each additional offense~~ Class A  
20 misdemeanor.

21  
22 26-57-227. Operation of vending machine without license a public  
23 nuisance – Seizure and sale – Redemption.

24 (a) Any person who engages in the business of owning, operating, or  
25 leasing any ~~tobacco product~~ vending machines containing tobacco products,  
26 vapor products, alternative nicotine products, or e-liquid products without  
27 first obtaining the license described in this subchapter is declared to be  
28 maintaining a public nuisance.

29 (b) Any ~~tobacco product~~ vending machine so operated may be seized and  
30 sold by the Director of Arkansas Tobacco Control at public auction upon the  
31 order of the Pulaski County Circuit Court.

32 (c) These machines may be redeemed prior to sale by the owner upon the  
33 payment of all taxes or fees due on the machine and all costs and expenses  
34 incurred in enforcing this section if the offender pays all taxes, fees, and  
35 costs within ten (10) days after seizure of the machines by the director.

36

1           26-57-228. Purchases from unregistered, unlicensed dealers unlawful.

2           (a) It is unlawful for a retailer of tobacco products, vapor products,  
3 alternative nicotine products, or e-liquid products to purchase tobacco  
4 products, vapor products, alternative nicotine products, or e-liquid products  
5 from a person other than a licensed manufacturer, licensed wholesaler, or  
6 other licensed retailer.

7           (b) Any retailer violating the provisions of this subchapter is guilty  
8 of a Class B misdemeanor for each purchase defined in subsection (a) of this  
9 section.

10  
11           SECTION 8. Arkansas Code §§ 26-57-230 and 26-57-231 are amended to  
12 read as follows:

13           26-57-230. Common carriers.

14           (a) Common carriers transporting tobacco products, vapor products,  
15 alternative nicotine products, or e-liquid products may be required by the  
16 Director of the Department of Finance and Administration or the Director of  
17 Arkansas Tobacco Control to give a statement of all consignments of tobacco  
18 products, vapor products, alternative nicotine products, or e-liquid products  
19 showing date, point of origin, point of delivery, and to whom delivered.

20           (b) All common carriers shall permit their records relating to  
21 shipment or receipt of tobacco products, vapor products, alternative nicotine  
22 products, or e-liquid products to be examined by the Director of the  
23 Department of Finance and Administration, the Director of Arkansas Tobacco  
24 Control, or their agents.

25           (c) A person who fails or refuses to give the statement, reports, or  
26 invoices required by this section or who refuses to permit the Director of  
27 the Department of Finance and Administration or the Director of Arkansas  
28 Tobacco Control to examine the person's records is guilty of a Class C  
29 misdemeanor.

30  
31           26-57-231. Failure to allow inspection unlawful.

32           A person required to pay taxes or obtain a permit under this subchapter  
33 who fails or refuses to permit the Department of Finance and Administration  
34 or Arkansas Tobacco Control to examine or inspect the person's ~~taxable~~  
35 of tobacco products, vapor products, alternative nicotine products, e-liquid  
36 products, invoice books, papers, and memoranda considered necessary to secure

1 information directly relating to the enforcement of this subchapter is guilty  
2 of a+

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

6  
7 SECTION 9. Arkansas Code § 26-57-232(a)(2), concerning wholesaler  
8 restrictions and criminal violations of wholesalers, is amended to read as  
9 follows:

10 (2) Except as otherwise provided herein, the wholesaler may sell  
11 tobacco products, vapor products, alternative nicotine products, or e-liquid  
12 products only to persons properly licensed under this subchapter;

13  
14 SECTION 10. Arkansas Code §§ 26-57-233 and 26-57-234 are amended to  
15 read as follows:

16 26-57-233. Salesperson – Restrictions – Violations.

17 Every salesperson who sells, offers for sale, takes orders, and  
18 solicits for sale any tobacco products, vapor products, alternative nicotine  
19 products, or e-liquid products for immediate or future delivery to  
20 wholesalers of tobacco products, vapor products, alternative nicotine  
21 products, or e-liquid products in this state may do so only under the  
22 following restrictions:

23 (1) The salesperson shall secure a permit from the Director of  
24 Arkansas Tobacco Control;

25 (2) The salesperson may sell to or take orders for tobacco  
26 products, vapor products, alternative nicotine products, or e-liquid products  
27 from licensed wholesalers, provided that the tobacco products, vapor  
28 products, alternative nicotine products, or e-liquid products are consigned  
29 or delivered only to ~~registered~~ licensed manufacturers or licensed  
30 wholesalers;

31 (3) The salesperson may sell to or take orders for tobacco  
32 products, vapor products, alternative nicotine products, or e-liquid products  
33 from licensed retailers, provided that the tobacco, vapor products,  
34 alternative nicotine products, or e-liquid products shall be delivered to the  
35 retailer only by a licensed wholesaler; and

36 (4)(A) The wholesaler shall keep complete records of all sales

1 *or orders taken for dealers in tobacco products, vapor products, alternative*  
2 *nicotine products, or e-liquid products in this state, copies of all*  
3 *invoices, orders taken, and other instruments as evidence of sales or*  
4 *disposition of tobacco products, vapor products, alternative nicotine*  
5 *products, or e-liquid products.*

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

10  
11 *26-57-234. Retailers and vendors – Restrictions – Violations.*

12 *(a) Retailers and vendors shall conduct their businesses subject to*  
13 *the following restrictions:*

14 *(1) Retailers and vendors not possess, place in their stock,*  
15 *have on their premises, sell, or otherwise dispose of any cigarettes to which*  
16 *stamps denoting the tax due thereon have not been affixed;*

17 *(2) Retailers and vendors require that properly cancelled stamps*  
18 *are affixed to all cigarettes purchased or otherwise received or accepted by*  
19 *them before they purchase or otherwise become the owner or possessor of the*  
20 *cigarettes;*

21 *(3) Retailers and vendors require from the wholesaler at the*  
22 *time of each purchase or receipt of cigarettes an invoice showing the*  
23 *quantity, kind, and price of the cigarettes and the stamps required to show*  
24 *that the tax has been paid, and date of sale or delivery;*

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

30 *(B) The records required under subdivision (a)(4)(A) of*  
31 *this section are subject to inspection by the Department of Finance and*  
32 *Administration and Arkansas Tobacco Control;*

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

36 *(6) The retailer shall permit the department and Arkansas*

1 Tobacco Control or any peace officer acting under their direction to inspect  
2 the retailer's stock of merchandise and premises, including any room or  
3 building used in connection with the retailer's business.

4 (b) Upon a retailer's failure to comply with any part of this section,  
5 the Director of Arkansas Tobacco Control may revoke the retailer's permit.

6 (c) ~~Any~~ A retailer or vendor who fails or refuses to retain in his or  
7 her files invoices of tobacco products, vapor products, alternative nicotine  
8 products, or e-liquid products, and stamps, or who fails or refuses to  
9 furnish the statements and information or make the reports concerning  
10 receipts and sales of tobacco products, vapor products, alternative nicotine  
11 products, or e-liquid products, as required by this subchapter or prescribed  
12 by the Director of the Department of Finance and Administration, or who  
13 violates any of the requirements of this section, is guilty of a violation.

14  
15 SECTION 11. Arkansas Code § 26-57-247(b), concerning the seizure,  
16 forfeiture, and disposition of tobacco products and other property, is  
17 amended to read as follows:

18 (b) The Director of Arkansas Tobacco Control may seize and hold for  
19 disposition of the courts or the Arkansas Tobacco Control Board all tobacco  
20 products, vapor products, alternative nicotine products, or e-liquid products  
21 found in the possession of a person dealing in, or a consumer of, tobacco  
22 products, vapor products, alternative nicotine products, or e-liquid products  
23 if:

24 (1) Prima facie evidence exists that the full amount of excise  
25 tax due on the tobacco products has not been paid to the Director of the  
26 Department of Finance and Administration;

27 (2) Tobacco products, vapor products, alternative nicotine  
28 products, or e-liquid products are in the possession of a wholesaler who does  
29 not possess a current Arkansas wholesale cigarette or tobacco product, vapor  
30 product, and alternative nicotine product permit;

31 (3) A retail establishment does not possess a current Arkansas  
32 retail cigarette, ~~and~~ tobacco, vapor product, and alternative nicotine  
33 product permit or retail exclusive vapor product and alternative nicotine  
34 product store permit; or

35 (4) The tobacco products, vapor products, alternative nicotine  
36 products, or e-liquid products have been offered for sale to the public at

1 another location without a current Arkansas retail cigarette, ~~and tobacco,~~  
2 vapor product, and alternative nicotine product permit or retail exclusive  
3 vapor product and alternative nicotine product store permit.  
4

5 SECTION 12. Arkansas Code § 26-57-247(e)(1) and (2), concerning the  
6 seizure, forfeiture, and disposition of tobacco products and other property,  
7 are amended to read as follows:

8 (e) The following are subject to forfeiture under this section upon  
9 order by a circuit court:

10 (1) Tobacco products, vapor products, alternative nicotine  
11 products, or e-liquid products distributed, dispensed, or acquired in  
12 violation of this subchapter;

13 (2) Raw materials, products, or equipment used or intended for  
14 use in manufacturing, compounding, processing, delivering, importing, or  
15 exporting a tobacco product, vapor product, alternative nicotine product, or  
16 e-liquid product in violation of this subchapter;

17  
18 SECTION 13. Arkansas Code § 26-57-247(e)(6) and (7), concerning the  
19 seizure, forfeiture, and disposition of tobacco products and other property,  
20 are amended to read as follows:

21 (6)(A) Except as provided in subdivision (e)(6)(B) of this  
22 section, a thing of value, including:

23 (i) ~~Firearms furnished or intended to be furnished~~  
24 ~~in exchange for a~~ purchased from the proceeds of the sale of untaxed tobacco  
25 ~~product~~ products, vapor products, alternative nicotine products, or e-liquid  
26 products in violation of this subchapter or used in furtherance of a criminal  
27 offense as described in § 26-57-245;

28 (ii) Proceeds or profits traceable to an exchange  
29 described in subdivision (e)(6)(A)(i) of this section; and

30 (iii) Money, negotiable instruments, or security  
31 used or intended to be used to facilitate a violation of this subchapter.

32 (B) Property shall not be forfeited under subdivision  
33 (e)(6)(A) of this section to the extent of the interest of an owner by reason  
34 of an act or omission established by him or her by a preponderance of the  
35 evidence to have been committed or omitted without his or her knowledge or  
36 consent;

1           (7)(A) Money, coins, or currency found in close proximity to a  
2 forfeitable tobacco product, vapor product, alternative nicotine product, or  
3 e-liquid product or a forfeitable record of an importation of a tobacco  
4 product, vapor product, alternative nicotine product, or e-liquid product is  
5 presumed to be forfeitable under this section.

6           (B) The burden of proof is upon a claimant of the money,  
7 coins, or currency to rebut the presumption in subdivision (e)(7)(A) of this  
8 section by a preponderance of the evidence; and

9  
10           SECTION 14. Arkansas Code § 26-57-247(f) and (g), concerning the  
11 seizure, forfeiture, and disposition of tobacco products and other property,  
12 are amended to read as follows:

13           (f) A tobacco product, vapor product, alternative nicotine product, or  
14 e-liquid product that is possessed, transferred, sold, or offered for sale in  
15 violation of this subchapter may be seized and immediately forfeited to the  
16 state.

17           (g)(1) Property subject to forfeiture under this subchapter may be  
18 seized by a law enforcement agent upon process issued by a circuit court  
19 having jurisdiction over the property on petition filed by the prosecuting  
20 attorney of the judicial circuit.

21           (2) Seizure without process may be made if:

22           (A) The seizure is incident to an arrest or a search under  
23 a search warrant or an inspection under ~~an administrative inspection warrant~~  
24 the regulatory authority of Arkansas Tobacco Control;

25           (B) The property subject to seizure has been the subject  
26 of a prior judgment in favor of the state in a criminal injunction or  
27 forfeiture proceeding based upon this subchapter;

28           (C) The seizing law enforcement agency has probable cause  
29 to believe that the property is directly or indirectly dangerous to health or  
30 safety; or

31           (D) The seizing law enforcement agency has probable cause  
32 to believe that the property was used or is intended to be used in violation  
33 of this subchapter.

34  
35           SECTION 15. Arkansas Code § 26-57-247(1)(1)(A)(iv), concerning an  
36 order by a circuit court to seize property, is amended to read as follows:



1 (iv)(a) An aircraft is forfeited to the office of  
2 the Director of Arkansas Tobacco Control and may be used only for tobacco,  
3 vapor product, alternative nicotine product, or e-liquid product smuggling  
4 interdiction efforts within the discretion of the Director of Arkansas  
5 Tobacco Control.

6 (b) However, if the Director of Arkansas  
7 Tobacco Control determines that the aircraft should be sold, ~~the sale shall~~  
8 ~~be conducted under § 5-5-101(e) and (f), and the proceeds shall be deposited~~  
9 ~~into the State Treasury as special revenues to be credited to the Special~~  
10 ~~State Assets Forfeiture Fund~~ the proceeds of the sale shall be distributed as  
11 set forth in subdivision (1)(1)(A)(i)(b) of this section;  
12

13 SECTION 16. Arkansas Code § 26-57-247(1)(1)(A)(vi), concerning an  
14 order by a circuit court to seize property, is amended to read as follows:

15 (vi) A tobacco product, vapor product, alternative  
16 nicotine product, or e-liquid product shall be destroyed pursuant to a court  
17 order;  
18

19 SECTION 17. Arkansas Code § 26-57-249 is amended to read as follows:

20 26-57-249. Destruction of tobacco products upon conviction –  
21 Procedure.

22 (a) Upon conviction of any person charged with a violation of any  
23 tobacco, vapor product, alternative nicotine product, or e-liquid product law  
24 or rule which resulted in the seizure of tobacco products, vapor products,  
25 alternative nicotine products, or e-liquid products, the court shall issue an  
26 order to destroy the tobacco products, vapor products, alternative nicotine  
27 products, or e-liquid products confiscated by the Director of Arkansas  
28 Tobacco Control or by any state, county, or municipal officer in this state.

29 (b) Upon a finding of guilty of any person charged with a violation of  
30 a state tobacco, vapor product, alternative nicotine product, or e-liquid  
31 product law or rule in a proceeding before the Arkansas Tobacco Control Board  
32 that resulted in the seizure of tobacco products, vapor products, alternative  
33 nicotine products, or e-liquid products, the board shall issue an order to  
34 destroy the tobacco products, vapor products, alternative nicotine products,  
35 or e-liquid products, confiscated by the director or by any state, county, or  
36 municipal officer in this state.

1 (c) Every court of record in this state shall notify the director of  
2 the disposition made of each case in the court as to whether the defendant  
3 was convicted or acquitted.

4 (d) Upon application of the director, the board or the court issuing a  
5 destruction order may instead release the tobacco products, vapor products,  
6 alternative nicotine products, or e-liquid products to the use and benefit of  
7 Arkansas Tobacco Control for suitable law enforcement or training purposes.

8  
9 SECTION 18. Arkansas Code § 26-57-254 is amended to read as follows:

10 26-57-254. ~~Health inspections~~ Safety inspections on permitted products  
11 - Restrictions on use of e-liquid products and alternative nicotine products.

12 (a) In order to assure that the citizens of this state receive only  
13 tobacco products, vapor products, alternative nicotine products, or e-liquid  
14 products which that are fresh and not contaminated, and to ensure the safety  
15 of Arkansas youth, the Director of ~~the Department of Health~~ Arkansas Tobacco  
16 Control is authorized under this subchapter to:

17 (1) ~~make reasonable inspection of~~ Inspect or cause to be  
18 inspected any tobacco ~~products~~ product, vapor product, alternative nicotine  
19 product, or e-liquid container in places of storage or distribution  
20 authorized under this subchapter; and

21 (2) ~~may require~~ Require any ~~such~~ tobacco products, vapor  
22 products, alternative nicotine products, or e-liquid containers found to be  
23 contaminated, damaged, or not fresh be removed from stock and be either  
24 returned to the proper wholesaler or manufacturer for disposal according to  
25 law or delivered to the Director of Arkansas Tobacco Control for destruction  
26 or disposal.

27 (b)(1) It is a violation for any person to use a tobacco product,  
28 vapor product, alternative nicotine product, or e-liquid product in or on the  
29 grounds of any school, child care facility, or healthcare facility.

30 (2) As used in this subdivision:

31 (A) "Child care facility" means the same as provided in §  
32 20-78-202(2);

33 (B) "Healthcare facility" means the same as provided in §  
34 20-27-1803(6); and

35 (C) "School" means:

36 (i) Any buildings, parking lots, playing fields,

1 playgrounds, school buses, or other school vehicles; or

2 (ii) Any off-campus school-sponsored or -sanctioned  
3 events with respect to any public, charter, or private school where children  
4 attend classes in kindergarten programs or grades one through twelve (1 -  
5 12).

6 (c) On and after the effective date of this section, all alternative  
7 nicotine products and e-liquid containers containing nicotine sold at retail  
8 in this state shall satisfy the child-resistant packaging effectiveness  
9 standards described in § 26-57-203 when tested in accordance with the method  
10 described by 16 C.F.R. § 1700.20, as it is existed on January 1, 2015.

11 (d) As used in this section, "e-liquid container" means a bottle or  
12 other container of e-liquid that is sold or provided for mixing at retail and  
13 is marketed or intended for use in a vapor product, but does not include e-  
14 liquid contained in a cartridge that is sold, marketed, or intended for use  
15 in a vapor product if the cartridge is prefilled and sealed by the  
16 manufacturer and is not intended to be opened by the consumer.

17  
18 SECTION 19. Arkansas Code § 26-57-255(a)(1) and (2), concerning the  
19 creation of the Arkansas Tobacco Control Board, is amended to read as  
20 follows:

21 (1) Two (2) members of the board shall be ~~tobacco products~~  
22 wholesalers of tobacco products, vapor products, alternative nicotine  
23 products, or e-liquid products;

24 (2) Two (2) members of the board shall be ~~tobacco products~~  
25 retailers of tobacco products, vapor products, alternative nicotine products,  
26 or e-liquid products; and

27  
28 SECTION 20. Arkansas Code § 26-57-256(a)(4) and (5), concerning the  
29 duties of the Arkansas Tobacco Control Board, are amended to read as follows:

30 (4)(A) Cooperate with the Revenue Division of the Department of  
31 Finance and Administration in the enforcement of the tax laws affecting the  
32 sale of tobacco products in this state and in the enforcement of all other  
33 state and local tax laws.

34 (B) To facilitate efforts to cooperate with the division  
35 concerning the enforcement of all other state and local tax laws, the board  
36 shall immediately require that the following additional information be

1 provided by all applicants for permit issuance or renewal:

2 (i) Federal tax identification numbers issued by the  
3 Internal Revenue Service;

4 (ii) Social Security numbers; and

5 (iii) State sales tax account numbers assigned by  
6 the Department of Finance and Administration, if applicable.

7 (C)(i) Each year the board shall provide a list of all  
8 applicants for the issuance or renewal of all tobacco, vapor product,  
9 alternative nicotine product, or e-liquid product permits and licenses to the  
10 Director of the Department of Finance and Administration.

11 (ii) This list shall contain the identifying  
12 information required by subdivision (a)(4)(B) of this section as well as the  
13 name of the permittee and the permittee's current business address;

14 (5)(A) Conduct public hearings when appropriate regarding any  
15 permit and license authorized by this subchapter or in violation of this  
16 subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227,  
17 or any other federal, state, or local statute, ordinance, rule, or regulation  
18 concerning the sale of tobacco products, vapor products, alternative nicotine  
19 products, or e-liquid products, to minors or the rules promulgated by the  
20 board.

21 (B)(i) After a notice and hearing held in accordance with  
22 the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board  
23 finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-  
24 701 et seq., or the rules promulgated by the board, the board may suspend,  
25 revoke, or not renew any or all permits and licenses issued by the board to  
26 any person or entity.

27 (ii) In addition, the board may levy a civil penalty  
28 in an amount not to exceed five thousand dollars (\$5,000) for each violation  
29 against any person or entity found to be in violation.

30 (iii) Each day of the violation shall be deemed a  
31 separate violation.

32 (C) In that regard, the board may examine or cause to be  
33 examined under oath any witness and the books and records of any licensee,  
34 person, or entity; and

35  
36 SECTION 21. Arkansas Code § 26-57-256(f) – (h), concerning the duties

1 of the Arkansas Tobacco Control Board, are amended to read as follows:

2 (f) The board ~~shall~~ may consider the following factors when reviewing  
3 a possible violation:

4 (1) The business has adopted and enforced a written policy  
5 against selling cigarettes, ~~or~~ tobacco products, vapor products, alternative  
6 nicotine products, or e-liquid products to persons less than eighteen (18)  
7 years of age;

8 (2) The business has informed its employees of the applicable  
9 laws regarding the sale of cigarettes, ~~and~~ tobacco products, vapor products,  
10 alternative nicotine products, or e-liquid products to persons less than  
11 eighteen (18) years of age;

12 (3) The business required employees to verify the age of  
13 cigarette, ~~or~~ tobacco product, vapor product, alternative nicotine product,  
14 e-liquid product, or e-liquid customers by way of photographic  
15 identification;

16 (4) The business has established and imposed disciplinary  
17 sanctions for noncompliance; and

18 (5) The appearance of the purchaser of the tobacco in any form,  
19 vapor products, alternative nicotine product, or cigarette papers was such  
20 that an ordinary prudent person would believe him or her to be of legal age  
21 to make the purchase.

22 (g)(1) A penalty under subsection (d) of this section for a violation  
23 of § 5-27-227 shall not be imposed upon a retailer or agent or employee of a  
24 retailer who can establish an affirmative defense that before the date of the  
25 violation the retailer or agent or employee of the retailer furnishing the  
26 tobacco in any form, vapor products, alternative nicotine products, or e-  
27 liquid products or cigarette papers reasonably relied upon proof of age that  
28 identified the person receiving the tobacco in any form, vapor products,  
29 alternative nicotine products, e-liquid products, or cigarette papers as  
30 being eighteen (18) years of age or older.

31 (2) As used in this section, "proof of age" means any document  
32 issued by a governmental agency containing a description of the person or the  
33 person's photograph, or both, and giving the person's date of birth and  
34 includes without limitation a passport, military identification card, or  
35 driver's license.

36 (h) Any cigarettes, ~~or~~ tobacco products, vapor products, alternative

1 nicotine products, or e-liquid products found in the possession of a person  
2 less than eighteen (18) years of age may be confiscated.

3  
4 SECTION 22. Arkansas Code § 26-57-257(1) is amended to read as  
5 follows:

6 (1) The Director of Arkansas Tobacco Control may inspect or cause to  
7 be inspected any premises where tobacco products, vapor products, alternative  
8 nicotine products, or e-liquid products are manufactured, imported,  
9 distributed, stored, or sold.

10  
11 SECTION 23. Arkansas Code § 26-57-257(r) is amended to read as  
12 follows:

13 (r) The enforcement of state laws relating to the prohibition of the  
14 barter or sale of tobacco in any form, vapor products, alternative nicotine  
15 products, e-liquid products, or cigarette papers to minors by multiple state  
16 agencies shall be coordinated to avoid duplicative inspections of the same  
17 retailer by multiple state agencies.

18  
19 SECTION 24. Arkansas Code § 26-57-257, concerning the duties of the  
20 Director of the Arkansas Tobacco Control, is amended to add an additional  
21 subsection to read as follows:

22 (s)(1) Child safety being of paramount concern when dealing with  
23 alternative nicotine products and e-liquid products, the Director of Arkansas  
24 Tobacco Control may adopt safety and hygiene rules for persons that prepare  
25 or mix e-liquid products or alternative nicotine products that include  
26 without limitation:

27 (A) Child-resistant packaging effectiveness standards in  
28 accordance with § 26-57-254;

29 (B) Regulation of the production of custom or "create your  
30 own" e-liquids, or alternative nicotine product mixes; and

31 (C) Workplace safety rules for any location where e-  
32 liquids or alternative nicotine products are mixed or prepared, including  
33 without limitation:

34 (i) The availability and requirement for use of hand  
35 washing sinks in the preparation area for employee use that have hot and cold  
36 water, soap, hand-drying equipment, and a waste collection container;

1 (ii) Cleanliness and maintenance of e-liquid  
2 preparation and mixing equipment;

3 (iii) Employee use of protective gloves or other  
4 items when using e-liquid preparation and mixing equipment;

5 (iv) Prohibition of food and drink consumption and  
6 vapor, cigarette, or tobacco use in any e-liquid preparation or mixing area;  
7 and

8 (v) Prohibition of the presence of any animals in  
9 any e-liquid preparation or mixing area.

10 (2) The rules promulgated under subdivision (s)(1) of this  
11 section shall not apply to an e-liquid in a cartridge that is sold, marketed,  
12 or intended for use in a vapor product if the cartridge is prefilled and  
13 sealed by the manufacturer and is not intended to be opened by the consumer.  
14

15 SECTION 25. Arkansas Code § 26-57-259 is amended to read as follows:  
16 26-57-259. Nonpreemption.

17 (a) This act and the rules, ~~regulations~~, and other actions of the  
18 Arkansas Tobacco Control Board shall not be construed or interpreted so as to  
19 preempt or in any other manner qualify or limit the enactment and enforcement  
20 of any federal, state, county, municipal, or other local regulation of the  
21 manufacture, sale, storage, or distribution of tobacco products that is more  
22 restrictive than this act or the rules and regulations promulgated by the  
23 board.

24 (b) This act and the rules, ~~regulations~~, and other actions of the  
25 board shall not be construed or interpreted so as to preempt or otherwise  
26 limit any legal or equitable claims or causes of action brought under the  
27 common law or any federal or state statutes.

28 (c) Nothing in this act nor any rule ~~or regulation~~ of the board shall  
29 be construed or interpreted so as to require any state, county, municipal, or  
30 other local authority to exhaust any administrative remedies through the  
31 board, including without limitation the right to seize and forward to the  
32 board the state license of any vendor or retailer found to have illegally  
33 sold tobacco products, vapor products, alternative nicotine products, or e-  
34 liquid products to a person less than eighteen (18) years of age, provided  
35 that the vendor or retailer shall be given a hearing before the board at the  
36 board's next regularly scheduled meeting.

1  
2           SECTION 26. Arkansas Code § 26-57-265(b), concerning reports by  
3 wholesalers to Arkansas Tobacco Control, is amended to read as follows:

4           (b) The report required under subsection (a) of this section shall  
5 contain the following information for the preceding calendar month's  
6 deliveries:

7                   (1) The name of each retailer or wholesaler;

8                   (2) The address of each retailer or wholesaler to which the  
9 wholesaler delivered cigarettes, cigars, ~~or~~ other tobacco products, vapor  
10 products, alternative nicotine products, or e-liquid products;

11                   (3) The address of each retailer or wholesaler that obtained  
12 cigarettes, cigars, ~~or~~ other tobacco products, vapor products, alternative  
13 nicotine products, or e-liquid products from the wholesaler at the  
14 wholesaler's location;

15                   (4) The Arkansas permit number of each retailer or wholesaler or  
16 the equivalent permit number if the retailer or wholesaler resides outside of  
17 the state; and

18                   (5) The monthly net deliveries made to each retailer or  
19 wholesaler, including without limitation:

20                           (A) The quantity, units, and brand styles of the  
21 cigarettes in stamped and unstamped packages that were delivered to each  
22 retailer or wholesaler; ~~and~~

23                           (B) The quantity, units, and brand styles of the cigars  
24 and other tobacco products delivered to the retailer or wholesaler; and

25                           (C) The quantity, units, and brand styles of the vapor  
26 products, alternative nicotine products, and e-liquid products delivered to  
27 the retailer or wholesaler.

28  
29           SECTION 27. Arkansas Code Title 26, Chapter 57, Subchapter 2, is  
30 amended to add additional sections to read as follows:

31           26-57-266. Enforcement Agents – Selection – Qualifications –  
32 Authority.

33           (a) Arkansas Tobacco Control is designated as a law enforcement  
34 agency.

35           (b) The Director of Arkansas Tobacco Control shall assign personnel as  
36 agents of Arkansas Tobacco Control to conduct investigations of violations of



1 tobacco laws in this state.

2 (c) Personnel assigned as agents of Arkansas Tobacco Control shall:

3 (1) Be considered fulltime law enforcement officers by the  
4 Arkansas Commission on Law Enforcement Standards and Training under § 12-9-  
5 101 et seq.; and

6 (2) Have statewide law enforcement authority.

7  
8 26-57-267. Preemption for vapor products, alternative nicotine  
9 products, and e-liquid products.

10 This subchapter and the rules and other actions of the Arkansas Tobacco  
11 Control Board shall preempt:

12 (1) The enactment and enforcement of any county, municipal, or  
13 other local regulation of the manufacture, sale, storage, or distribution of  
14 vapor products or alternative nicotine products that is more restrictive than  
15 this act or the rules promulgated by the board; and

16 (2) Any legal or equitable claims or causes of action brought  
17 under the common law or any state statutes.

18  
19 SECTION 28. Arkansas Code § 19-6-301, concerning the enumeration of  
20 special revenues, is amended to add an additional subdivision to read as  
21 follows:

22 (253) All permit and license fees received by Arkansas Tobacco Control  
23 under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

24  
25 SECTION 29. Arkansas Code Title 19, Chapter 6, Subchapter 8, is  
26 amended to add an additional section to read as follows:

27 19-6-829. Arkansas Tobacco Control Revenue Fund.

28 (a) There is created on the books of the Treasurer of State, the  
29 Auditor of the State, the Chief Fiscal Officer of the State a special revenue  
30 fund to be known as the "Arkansas Tobacco Control Revenue Fund".

31 (b)(1) All permit and license fees received by Arkansas Tobacco  
32 Control under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et  
33 seq., shall be deposited into the State Treasury as special revenues to the  
34 credit of the fund.

35 (2) The fund shall also consist of any other revenues authorized  
36 by law.

1 (c)(1) The fund shall be used for expenses incurred by Arkansas  
2 Tobacco Control in the organization, maintenance, operation, and merchant  
3 education and training with regard to enforcement of § 5-27-227, the Arkansas  
4 Tobacco Products Tax Act of 1977, § 26-57-201 et seq., and the Unfair  
5 Cigarette Sales Act, § 4-75-701 et seq.

6 (2) Expenditures of moneys in the fund are subject to the  
7 General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., the  
8 Arkansas Procurement Law, § 19-11-201 et seq., and other applicable fiscal  
9 laws.

10 (3) The receipts and disbursements of Arkansas Tobacco Control  
11 shall be audited annually by the Division of Legislative Audit.

12  
13 SECTION 30. Arkansas Code § 5-27-227 is amended to read as follows:

14 5-27-227. Providing minors with tobacco products, vapor products,  
15 alternative nicotine products, e-liquid products, and cigarette papers –  
16 Purchase, use, or possession prohibited – Self-service displays prohibited –  
17 Placement of tobacco vending machines.

18 (a)(1) It is unlawful for any person to give, barter, or sell to a  
19 minor:

20 (A) Tobacco in any form; ~~or~~

21 (B) ~~A cigarette~~ Cigarette paper; or

22 (C) A vapor product, alternative nicotine product, e-  
23 liquid product, or any component of a vapor product, alternative nicotine  
24 product, or e-liquid product.

25 (2) Except as provided in subdivision (a)(3) of this section,  
26 a person who pleads guilty or nolo contendere to or is found guilty of  
27 violating subdivision (a)(1) of this section is guilty of a ~~violation and is~~  
28 ~~subject to a fine not to exceed one hundred dollars (\$100) per violation~~  
29 Class A misdemeanor.

30 (3) An employee or owner of an ~~Arkansas Retail Cigarette,~~ and  
31 ~~Tobacco permit holder~~ a retail location permitted under § 26-57-215 who  
32 violates subdivision (a)(1) of this section while inside the retail location  
33 upon conviction is subject to a fine not to exceed one hundred dollars (\$100)  
34 per violation.

35 (b)(1) It is unlawful for a minor to:

36 (A) Use or possess or to purchase, or attempt to purchase:

1 (i) Tobacco in any form; ~~or~~

2 (ii) Cigarette papers; or

3 (iii) A vapor product, alternative nicotine product,  
4 e-liquid product, or any component of a vapor product, alternative nicotine  
5 product, or e-liquid product; or

6 (B) For the purpose of obtaining or attempting to obtain  
7 tobacco in any form, a vapor product, alternative nicotine product, e-liquid  
8 product, any component of a vapor product, alternative nicotine product, or  
9 e-liquid product, or cigarette papers, falsely represent himself or herself  
10 to be eighteen (18) years of age or older by displaying proof of age that is  
11 false, fraudulent, or not actually proof of the minor's age.

12 (2) Any cigarettes, tobacco products, or cigarette papers found  
13 in the possession of a minor may be confiscated and destroyed by a law  
14 enforcement officer.

15 (c)(1) It is not an offense under subsection (b) of this section if:

16 (A) The minor was acting at the direction of an authorized  
17 agent of ~~the~~ Arkansas Tobacco Control ~~Board~~ to enforce or ensure compliance  
18 with laws relating to the prohibition of the sale of tobacco in any form, a  
19 vapor product, alternative nicotine product, e-liquid product, any component  
20 of a vapor product, alternative nicotine product, or e-liquid product, or  
21 cigarette papers to minors;

22 (B) The minor was acting at the direction of an authorized  
23 agent of the Division of Behavioral Health Services to compile statistical  
24 data relating to the sale of tobacco in any form, a vapor product,  
25 alternative nicotine product, e-liquid product, any component of a vapor  
26 product, alternative nicotine product, or e-liquid product, or cigarette  
27 papers to minors;

28 (C) The minor was acting at the request of an Arkansas  
29 Retail Cigarette, ~~and~~ Tobacco, Vapor Product, and Alternative Nicotine  
30 Product permit holder or a retail exclusive vapor product and alternative  
31 nicotine product store permit holder to assist the permit holder by  
32 performing a check on the permit holder's own retail business to see if the  
33 permit holder's employees would sell tobacco, a vapor product, alternative  
34 nicotine product, e-liquid product, any component of a vapor product,  
35 alternative nicotine product, or e-liquid product, or cigarette papers to the  
36 minor; or

1 (D) The minor was acting as an agent of a retail permit  
2 holder within the scope of employment.

3 (2) A minor performing activities under subdivision (c)(1) of  
4 this section shall:

5 (A) Display the appearance of a minor;

6 (B) Have the written consent of the minor's parent or  
7 guardian to perform the activity on file with the agency utilizing the minor;  
8 and

9 (C)(i) Present a true and correct identification if asked.

10 (ii) Any failure on the part of a minor to provide  
11 true and correct identification upon request is a defense to any action under  
12 this section or a civil action under § 26-57-256.

13 (d) Any person who sells tobacco in any form, a vapor product,  
14 alternative nicotine product, e-liquid product, any component thereof, or a  
15 cigarette paper has the right to deny the sale of any tobacco in any form, a  
16 vapor product, alternative nicotine product, e-liquid product, any component  
17 of a vapor product, alternative nicotine product, or e-liquid product, or a  
18 cigarette paper to any person.

19 (e) It is unlawful for any person who has been issued a permit or a  
20 license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et  
21 seq., to fail to display in a conspicuous place or on each vending machine a  
22 sign indicating that the sale of tobacco products, vapor products,  
23 alternative nicotine products, e-liquid products, or any component of a vapor  
24 product, alternative nicotine product, or e-liquid product to or purchase or  
25 possession of tobacco products by a minor is prohibited by law.

26 (f) It is unlawful for any manufacturer whose tobacco product, vapor  
27 product, alternative nicotine product, e-liquid product, or any component of  
28 a vapor product, alternative nicotine product, or e-liquid product is  
29 distributed in this state and any person who has been issued a permit or  
30 license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et  
31 seq., to distribute a free sample of any tobacco product, vapor product,  
32 alternative nicotine product, e-liquid product, or any component of a vapor  
33 product, alternative nicotine product, or e-liquid product or coupon that  
34 entitles the holder of the coupon to any free sample of any tobacco product, ,  
35 vapor product, alternative nicotine product, e-liquid product, or any  
36 component of a vapor product, alternative nicotine product, or e-liquid

1 product:

2 (1) In or on any public street or sidewalk within five hundred  
3 feet (500') of any playground, public school, or other facility when the  
4 playground, public school, or other facility is being used primarily by  
5 minors for recreational, educational, or other purposes; or

6 (2) To any minor.

7 (g)(1)(A) It is unlawful for any person that has been issued a permit  
8 or license under the Arkansas Tobacco Products Act of 1977, § 26-57-201 et  
9 seq., to sell or distribute a cigarette product, vapor product, alternative  
10 nicotine product, e-liquid product, or any component of a vapor product,  
11 alternative nicotine product, or e-liquid product through a self-service  
12 display.

13 (B) Subdivision (g)(1)(A) of this section does not apply  
14 to a:

15 (i) Vending machine that complies with subdivision  
16 (h)(1)(A) of this section; ~~or~~

17 (ii) Retail tobacco store; or

18 (iii) Retail exclusive vapor product or alternative  
19 nicotine product store.

20 (2) As used in subdivision (g)(1) of this section:

21 (A) "Retail exclusive vapor product or alternative  
22 nicotine product store" means the same as defined in § 26-57-203;

23 (B) "Retail tobacco store" means a retail store utilized  
24 primarily for the sale of tobacco products, other than vapor products,  
25 alternative nicotine products, e-liquid products, and accessories, and in  
26 which the sale of other products is merely incidental; and

27 (C) "Self-service display" means a display:

28 (i) That contains a cigarette product, vapor  
29 product, alternative nicotine product, e-liquid product, or any component of  
30 a vapor product, alternative nicotine product, or e-liquid product;

31 (ii) That is located in an area where customers are  
32 permitted; and

33 (iii) In which the cigarette product, vapor product,  
34 alternative nicotine product, e-liquid product, or any component of a vapor  
35 product, alternative nicotine product, or e-liquid product is readily  
36 accessible to a customer without the assistance of a salesperson.

1           (h)(1)(A) Except as provided in subdivision (h)(2) of this section, it  
2 is unlawful for any person who owns or leases a tobacco, vapor product,  
3 alternative nicotine product, or e-liquid product vending machine to place a  
4 tobacco, vapor product, alternative nicotine product, or e-liquid product  
5 vending machine in a public place.

6           (B) As used in subdivision (h)(1)(A) of this section,  
7 “public place” means a publicly or privately owned place to which the public  
8 or a substantial number of people have access.

9           (2) A tobacco, vapor product, alternative nicotine product, or  
10 e-liquid product vending machine may be placed in a:

11           (A) Restricted area within a factory, business, office, or  
12 other structure to which a member of the general public is not given access;

13           (B) Permitted premises that has a permit for the sale or  
14 dispensing of an alcoholic beverage for on-premises consumption that  
15 restricts entry to a person twenty-one (21) years of age or older; or

16           (C) Place where the tobacco, vapor product, alternative  
17 nicotine product, or e-liquid product vending machine is under the  
18 supervision of the owner or an employee of the owner.

19           (i) Any retail permit holder or license holder who violates any  
20 provision in this section is deemed guilty of a violation and subject to  
21 penalties under § 26-57-256.

22           (j)(1) A notice of alleged violation of this section shall be given to  
23 the holder of a retail permit or license or an agent of the holder within ten  
24 (10) days of the alleged violation.

25           (2)(A) The notice shall contain the date and time of the alleged  
26 violation.

27           (B)(i) The notice shall also include either the name of  
28 the person making the alleged sale or information reasonably necessary to  
29 determine the location in the store that allegedly made the sale.

30           (ii) When appropriate, information under subdivision  
31 (j)(2)(B)(i) of this section should include, but not be limited to, the:

32                   (a) Cash register number;

33                   (b) Physical location of the sale in the  
34 store; and

35                   (c) If possible, the lane or aisle number.

36           (k) Notwithstanding the provisions of subsection (i) of this section,

1 the court shall consider the following factors when reviewing a possible  
2 violation:

3 (1) The business has adopted and enforced a written policy  
4 against selling cigarettes, ~~or~~ tobacco products, vapor products, alternative  
5 nicotine products, or e-liquid products to minors;

6 (2) The business has informed its employees of the applicable  
7 laws regarding the sale of cigarettes, ~~and~~ tobacco products, vapor products,  
8 alternative nicotine products, and e-liquid products to minors;

9 (3) The business has required employees to verify the age of a  
10 cigarette, ~~or~~ tobacco product, vapor product, alternative nicotine product,  
11 or e-liquid product customer by way of photographic identification;

12 (4) The business has established and imposed disciplinary  
13 sanctions for noncompliance; and

14 (5) That the appearance of the purchaser of the tobacco in any  
15 form, vapor product, alternative nicotine product, e-liquid product, or  
16 cigarette papers was such that an ordinary prudent person would believe him  
17 or her to be of legal age to make the purchase.

18 (1) A person convicted of violating any provision of this section  
19 whose permit or license to distribute or sell a tobacco product, vapor  
20 product, alternative nicotine product, or e-liquid product is suspended or  
21 revoked upon conviction shall surrender to the court any permit or license to  
22 distribute or sell a tobacco product, and the court shall transmit the permit  
23 or license to distribute or sell a tobacco product, vapor product,  
24 alternative nicotine product, or e-liquid product to the Director of ~~the~~  
25 ~~Department of Finance and Administration and instruct the Director of~~  
26 ~~Arkansas Tobacco Control:~~

27 (1) To suspend or revoke the person's permit or license to  
28 distribute or sell a tobacco product, vapor product, alternative nicotine  
29 product, or e-liquid product and to not renew the permit or license; and

30 (2) Not to issue any new permit or license to that person for  
31 the period of time determined by the court in accordance with this section.

32

33 SECTION 31. Arkansas Code § 4-16-101 is repealed.

34 ~~4-16-101. Providing alternative nicotine products to minors prohibited~~  
35 ~~—Procedures.~~

36 ~~(a) As used in this section:~~

1 ~~(1)(A) “Alternative nicotine product” means:~~  
2 ~~(i) An electronic cigarette; or~~  
3 ~~(ii) Any other product that consists of or contains~~  
4 ~~nicotine that can be ingested into the body by chewing, smoking, absorbing,~~  
5 ~~dissolving, inhaling, or by any other means.~~

6 ~~(B) “Alternative nicotine product” does not include a:~~  
7 ~~(i) Cigarette as defined in § 20-27-2103 or other~~  
8 ~~tobacco product as defined in § 20-27-705;~~  
9 ~~(ii) Product that is a drug under 21 U.S.C. §~~  
10 ~~321(g)(1);~~  
11 ~~(iii) Product that is a device under 21 U.S.C. §~~  
12 ~~321(h); or~~  
13 ~~(iv) Combination product described in 21 U.S.C. §~~  
14 ~~353(g); and~~

15 ~~(2)(A) “Electronic cigarette” means an electronic product or~~  
16 ~~device that produces a vapor that delivers nicotine or another substance to~~  
17 ~~the person inhaling from the device to simulate smoking, and that is likely~~  
18 ~~to be offered to or purchased by consumers as an electronic cigarette,~~  
19 ~~electronic cigar, electronic cigarillo, or electronic pipe.~~

20 ~~(B) “Electronic cigarette” does not include a:~~  
21 ~~(i) Cigarette as defined in § 20-27-2103 or other~~  
22 ~~tobacco product;~~  
23 ~~(ii) Product that is a drug under 21 U.S.C. §~~  
24 ~~321(g)(1);~~  
25 ~~(iii) Product that is a device under 21 U.S.C. §~~  
26 ~~321(h); or~~  
27 ~~(iv) Combination product described in 21 U.S.C. §~~  
28 ~~353(g).~~

29 ~~(b) A person shall not sell, offer for sale, give, or furnish any~~  
30 ~~alternative nicotine product, or a cartridge or component of an alternative~~  
31 ~~nicotine product, to an individual under eighteen (18) years of age either~~  
32 ~~directly or indirectly by an agent or employee or by a vending machine owned~~  
33 ~~by the person or located in the person’s establishment.~~

34 ~~(c) Before selling, offering for sale, giving, or furnishing an~~  
35 ~~alternative nicotine product or a cartridge or component of an alternative~~  
36 ~~nicotine product to an individual, the person shall verify that the~~



1 ~~individual is at least eighteen (18) years of age by:~~

2 ~~(1) Examining from an individual that appears to be under~~  
3 ~~twenty-seven (27) years of age a government-issued photographic~~  
4 ~~identification card that establishes the individual is at least eighteen (18)~~  
5 ~~years of age; or~~

6 ~~(2) For sales made through the Internet or another remote sales~~  
7 ~~method, performing an age verification through an independent, third-party~~  
8 ~~age verification service that compares information available from public~~  
9 ~~records to the personal information entered by the individual during the~~  
10 ~~ordering process that establishes that the individual is eighteen (18) years~~  
11 ~~of age or older.~~

12  
13 SECTION 32. Arkansas Code § 4-75-714 is repealed.

14 ~~4-75-714. Enforcement Agents—Selection—Qualifications—Authority.~~

15 ~~(a) Arkansas Tobacco Control is designated as a law enforcement~~  
16 ~~agency.~~

17 ~~(b) The Director of Arkansas Tobacco Control shall assign personnel as~~  
18 ~~agents of Arkansas Tobacco Control to conduct investigations of violations of~~  
19 ~~tobacco laws in this state.~~

20 ~~(c) Personnel assigned as agents of Arkansas Tobacco Control shall:~~

21 ~~(1) Be considered a law enforcement officer by the Arkansas~~  
22 ~~Commission on Law Enforcement Standards and Training under § 12-9-101 et~~  
23 ~~seq.; and~~

24 ~~(2) Have statewide law enforcement authority.~~

25  
26 SECTION 33. Arkansas Code § 5-27-233 is repealed.

27 ~~5-27-233. Providing minors with e-cigarettes and e-cigarette products~~  
28 ~~prohibited—Purchase, use, or possession prohibited—Self-service displays~~  
29 ~~and vending machines prohibited.~~

30 ~~(a) As used in this section:~~

31 ~~(1) “E-cigarette” means an electronic oral device that provides~~  
32 ~~a vapor of nicotine or another substance that, when used or inhaled,~~  
33 ~~simulates smoking, including without limitation a device that:~~

34 ~~(A) Is composed of a heating element, battery, electronic~~  
35 ~~circuit, or a combination of heating element, battery, or electronic circuit;~~

36 ~~(B) Works in combination with a liquid nicotine delivery~~

1 ~~device composed either, in whole or in part, of pure nicotine and~~  
2 ~~manufactured for use with e-cigarettes; and~~

3 ~~(C) Is manufactured, distributed, marketed, or sold as an~~  
4 ~~e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor;~~  
5 ~~and~~

6 ~~(2) "Self-service display or vending machine" means a display or~~  
7 ~~vending machine:~~

8 ~~(A) That contains e-cigarettes or e-cigarette products;~~

9 ~~(B) That is located in an area where customers are~~  
10 ~~permitted; and~~

11 ~~(C) In which e-cigarettes or e-cigarette products are~~  
12 ~~readily accessible to a customer without the assistance of a salesperson.~~

13 ~~(b)(1) It is unlawful for a person or business to give, barter, or~~  
14 ~~sell to a minor:~~

15 ~~(A) An e-cigarette; or~~

16 ~~(B) An e-cigarette product.~~

17 ~~(2) A business owner who pleads guilty or nolo contendere to or~~  
18 ~~is found guilty of violating subdivision (b)(1) of this section is guilty of~~  
19 ~~a violation and is subject to a fine not to exceed one hundred dollars (\$100)~~  
20 ~~per violation.~~

21 ~~(3) An employee of a business who violates subdivision (b)(1) of~~  
22 ~~this section is subject to a fine not to exceed one hundred dollars (\$100)~~  
23 ~~per violation.~~

24 ~~(c)(1) It is unlawful for a minor to:~~

25 ~~(A) Use or possess or to purchase or attempt to purchase:~~

26 ~~(i) An e-cigarette; or~~

27 ~~(ii) An e-cigarette product; or~~

28 ~~(B) For the purpose of obtaining or attempting to obtain~~  
29 ~~e-cigarettes or e-cigarette products, falsely represent himself or herself to~~  
30 ~~be eighteen (18) years of age or older by displaying proof of age that is~~  
31 ~~false, fraudulent, or not actually proof of the minor's age.~~

32 ~~(2) An e-cigarette or e-cigarette product found in the~~  
33 ~~possession of a minor may be confiscated and destroyed by a law enforcement~~  
34 ~~officer.~~

35 ~~(d) It is not an offense under subsection (c) of this section if the~~  
36 ~~minor was acting as an agent of a business within the scope of employment.~~

1 ~~(e) A person or business that sells e-cigarettes or e-cigarette~~  
2 ~~products has the right to deny the sale of e-cigarettes or e-cigarette~~  
3 ~~products to any person.~~

4 ~~(f) It is unlawful for a business to fail to display in a conspicuous~~  
5 ~~place or on each vending machine a sign indicating that the sale of e-~~  
6 ~~cigarettes or e-cigarette products to or purchase or possession of e-~~  
7 ~~cigarettes or e-cigarette products by a minor is prohibited by law.~~

8 ~~(g) It is unlawful for a manufacturer to distribute a free sample of~~  
9 ~~an e-cigarette or e-cigarette product or a coupon that entitles the holder of~~  
10 ~~the coupon to a free sample of an e-cigarette or e-cigarette product:~~

11 ~~(1) In or on a public street or sidewalk within five hundred~~  
12 ~~feet (500') of a playground, public school, or other facility when the~~  
13 ~~playground, public school, or other facility is being used primarily by~~  
14 ~~minors for recreational, educational, or other purposes; or~~

15 ~~(2) To a minor.~~

16 ~~(h) It is unlawful for a person or business to sell or distribute e-~~  
17 ~~cigarettes or e-cigarette products through a self-service display or vending~~  
18 ~~machine that is accessible to minors.~~

19 ~~(i) A court shall consider the following factors when reviewing a~~  
20 ~~possible violation of this section:~~

21 ~~(1) The business has adopted and enforced a written policy~~  
22 ~~against selling e-cigarettes or e-cigarette products to minors;~~

23 ~~(2) The business has informed its employees of the applicable~~  
24 ~~laws regarding the sale of e-cigarettes or e-cigarette products to minors;~~

25 ~~(3) The business has required employees to verify the age of an~~  
26 ~~e-cigarette or e-cigarette products customer by way of photographic~~  
27 ~~identification;~~

28 ~~(4) The business has established and imposed disciplinary~~  
29 ~~sanctions for noncompliance; and~~

30 ~~(5) That the appearance of the purchaser of the e-cigarettes or~~  
31 ~~e-cigarette products was such that an ordinary prudent person would believe~~  
32 ~~him or her to be of legal age to make the purchase.~~

33  
34 SECTION 34. EMERGENCY CLAUSE. It is found and determined by the  
35 General Assembly of the State of Arkansas that the state must be able to plan  
36 and give effective notice for the new comprehensive permits created by this

1 act; that it is essential to the operation of Arkansas Tobacco Control and  
2 the tobacco, vapor product, and alternative nicotine product industry that  
3 this act be effective on the renewal date for permits issued by Arkansas  
4 Tobacco Control to ensure proper funding for the enforcement of the new  
5 regulations and requirements of this act; that a delay in the effectiveness  
6 of this act after the renewal date of permits and regulations issued by  
7 Arkansas Tobacco Control may cause irreparable harm upon the proper  
8 administration and provision of essential governmental programs; and that  
9 this act is necessary to ensure that the industry and the citizens of  
10 Arkansas are provided guidance regarding permits for vapor products and  
11 alternative nicotine products. Therefore, an emergency is declared to exist,  
12 and this act being necessary for the preservation of the public peace,  
13 health, and safety shall become effective on May 1, 2015.

14  
15 /s/E. Williams  
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