

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 785 of the Regular Session

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: H3/19/09 H3/23/09

A Bill

HOUSE BILL 1858

5 By: Representative Betts  
6  
7

8 **For An Act To Be Entitled**

9 AN ACT TO AMEND VARIOUS ARKANSAS LAWS CONCERNING  
10 THE REGULATION OF TOBACCO PRODUCTS; AND FOR OTHER  
11 PURPOSES.  
12

13 **Subtitle**

14 TO AMEND VARIOUS ARKANSAS LAWS  
15 CONCERNING THE REGULATION OF TOBACCO  
16 PRODUCTS.  
17

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 4-75-702(6), concerning the definition of  
22 director, is amended to read as follows:

23 (6) "Director" means the Director of ~~the~~ Arkansas Tobacco  
24 Control ~~Board~~;  
25

26 SECTION 2. Arkansas Code § 4-75-706 is amended to read as follows:

27 4-75-706. Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ – Powers and  
28 duties.

29 (a)(1) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ shall  
30 prescribe, adopt, and enforce rules ~~and regulations~~ relating to the  
31 administration and enforcement of this subchapter.

32 (2)(A) The director is empowered to and may from time to time  
33 undertake and make or cause to be made one (1) or more cost surveys for the  
34 state or such trading area as he or she shall define, and when the cost  
35 survey shall have been made by or approved by the director, it shall be



1 permissible to use the cost survey as provided in § 4-75-711(b).

2 (B) The director is also empowered to investigate price  
3 fixing.

4 (3) The director may revoke or suspend the license issued under  
5 the provisions of this subchapter of any person who refuses or neglects to  
6 comply with any provisions of this subchapter or any rule ~~or regulation~~ of  
7 the director prescribed under this subchapter.

8 (b) Whenever any person fails to comply with any provision of this  
9 subchapter or any rule ~~or regulation~~ of the director promulgated under this  
10 subchapter, the director, upon a hearing, after giving the person ten (10)  
11 days' notice in writing specifying the time and place of the hearing and  
12 requiring the person to show cause why his or her license should not be  
13 revoked, may revoke or suspend the license held by the person.

14 (c) Any ruling, order, or decision of the director shall be subject to  
15 review, as provided by law, in any court of competent jurisdiction in the  
16 county in which the person affected resides.

17  
18 SECTION 3. Arkansas Code § 4-75-707(b), concerning the issuance of  
19 licenses by the Director of the Arkansas Tobacco Control Board, is amended to  
20 read as follows:

21 (b) All such licenses shall be issued by the Director of ~~the~~ Arkansas  
22 Tobacco Control ~~Board~~, or his or her designated agent, who shall make rules  
23 ~~and regulations~~ respecting applications therefor and issuance thereof.

24  
25 SECTION 4. Arkansas Code § 4-75-713(a), concerning remedies for  
26 violations of the Unfair Cigarette Sales Act, is amended to read as follows:

27 (a) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ or any person  
28 injured by any violation or who would suffer injury from any threatened  
29 violation of this subchapter may maintain an action in any court of equitable  
30 jurisdiction to prevent, restrain, or enjoin the violation or threatened  
31 violation.

32  
33 SECTION 5. Arkansas Code § 4-75-714 is amended to read as follows:

34 4-75-714. Enforcement Agents – Selection – Qualifications – Authority.

35 ~~The Director of the Arkansas Tobacco Control Board shall designate the~~  
36 ~~personnel assigned as agents of the Arkansas Tobacco Control Board, who, upon~~

1 ~~meeting the qualifications established by the Arkansas Commission on Law~~  
 2 ~~Enforcement Standards and Training, shall have the powers of specialized law~~  
 3 ~~enforcement officers for the purpose of conducting investigations pertaining~~  
 4 ~~to violations of tobacco laws in this state.~~

5 (a) The Arkansas Tobacco Control Board is designated as a law  
 6 enforcement agency.

7 (b) The Director of Arkansas Tobacco Control shall assign personnel as  
 8 agents of Arkansas Tobacco Control to conduct investigations of violations of  
 9 tobacco laws in this state.

10 (c) Personnel assigned as agents of the board shall:

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

14 (2) Have statewide law enforcement authority.

15  
 16 *SECTION 6. Arkansas Code § 5-27-227 is amended to read as follows:*

17 *5-27-227. Providing minors with tobacco products and cigarette papers –*  
 18 *Purchase, use, or possession prohibited – Self-service displays prohibited –*  
 19 *Placement of tobacco vending machines.*

20 *(a)(1) It is unlawful for any person to give, barter, or sell to a*  
 21 *minor:*

22 ~~*(1)(A) Tobacco in any form; or*~~

23 ~~*(2)(B) A cigarette paper.*~~

24 *(2) A person who pleads guilty or nolo contendere to or is found*  
 25 *guilty of violating subdivision (a)(1) of this section is guilty of a*  
 26 *violation and is subject to a fine not to exceed one hundred dollars (\$100)*  
 27 *per violation.*

28 *(3) An employee of an Arkansas Retail Cigarette and Tobacco*  
 29 *permit holder who violates subdivision (a)(1) of this section is subject to a*  
 30 *fine not to exceed one hundred dollars (\$100) per violation.*

31 ~~*(b) It is unlawful for any minor:*~~

32 ~~*(1) Unless acting as an agent of the minor's employer within the*~~  
 33 ~~*scope of employment, to use or possess:*~~

34 ~~*(A) Tobacco in any form; or*~~

35 ~~*(B) A cigarette paper;*~~

36 ~~*(2) To purchase or attempt to purchase;*~~

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

2 ~~(B) A cigarette paper; or~~

3 ~~(3) For the purpose of obtaining or attempting to obtain tobacco~~  
4 ~~in any form or a cigarette paper, to use any:~~

5 ~~(A) Falsified identification; or~~

6 ~~(B) Identification other than his or her own.~~

7 ~~(c)(1) It is not an offense under subdivisions (b)(1) or (2) of this~~  
8 ~~section if a minor was acting at the direction of an employee or authorized~~  
9 ~~agent of a governmental agency authorized to enforce or ensure compliance~~  
10 ~~with a law relating to the prohibition of the sale of tobacco in any form or~~  
11 ~~a cigarette paper to a minor.~~

12 ~~(2) Any minor used in the manner described in subdivision (c)(1)~~  
13 ~~of this section by a governmental agency shall display the appearance of a~~  
14 ~~minor.~~

15 ~~(3)(A) If questioned by a retailer or an agent or employee of a~~  
16 ~~retailer about his or her age, the minor shall state his or her actual age~~  
17 ~~and shall present a true and correct identification if verbally asked to~~  
18 ~~present it.~~

19 ~~(B) If verbally asked for it, any failure on the part of~~  
20 ~~the minor to provide true and correct identification is a defense to any~~  
21 ~~action pursuant to this section or a civil action under § 26-57-257.~~

22 ~~(4) No minor is subject to arrest or search by any law~~  
23 ~~enforcement officer merely on the ground that the minor has or may have~~  
24 ~~possession of tobacco or a cigarette paper.~~

25 ~~(d) No person shall engage or direct a minor to violate any provision~~  
26 ~~of this section for purposes of determining compliance with a provision of~~  
27 ~~this section unless the person has procured the written consent of a parent~~  
28 ~~or guardian of the minor to so engage or direct the minor and the person is:~~

29 ~~(1) An officer having authority to enforce a provision of this~~  
30 ~~section;~~

31 ~~(2) An employee of the Arkansas Tobacco Control Board or a~~  
32 ~~prosecuting attorney;~~

33 ~~(3) An authorized representative of a business acting pursuant~~  
34 ~~to a self-compliance program designed to increase compliance with this~~  
35 ~~section;~~

36 ~~(4) An employee or authorized representative of the Department~~

1 ~~of Health; or~~

2 ~~(5) An employee or authorized agent of a governmental agency~~  
3 ~~authorized to enforce or ensure compliance with a provision of this section.~~

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

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

6 (i) Tobacco in any form; or

7 (ii) Cigarette papers; or

8 (B) For the purpose of obtaining or attempting to obtain  
9 tobacco in any form 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 or  
19 cigarette papers to minors;

20 (B) The minor was acting at the direction of an authorized  
21 agent of the Office of Alcohol and Drug Abuse Prevention to compile  
22 statistical data relating to the sale of tobacco in any form or cigarette  
23 papers to minors;

24 (C) The minor was acting at the request of an Arkansas  
25 Retail Cigarette and Tobacco permit holder to assist the permit holder by  
26 performing a check on the permit holder's own retail business to see if the  
27 permit holder's employees would sell tobacco or cigarette papers to the  
28 minor; or

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

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

33 (A) Display the appearance of a minor;

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

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

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

5 ~~(e)(d)~~ Any person who sells tobacco in any form or a cigarette paper  
6 has the right to deny the sale of any tobacco in any form or a cigarette  
7 paper to any person.

8 ~~(f)(e)~~ It is unlawful for any person who has been issued a permit or a  
9 license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et  
10 seq., to fail to display in a conspicuous place or on each vending machine a  
11 sign indicating that the sale of tobacco products to or purchase or  
12 possession of tobacco products by a minor is prohibited by law.

13 ~~(g)(f)~~ It is unlawful for any manufacturer whose tobacco product is  
14 distributed in this state and any person who has been issued a permit or  
15 license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et  
16 seq., to distribute a free sample of any tobacco product or coupon that  
17 entitles the holder of the coupon to any free sample of any tobacco product:

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

22 (2) To any minor.

23 ~~(h)(g)(1)(A)~~ It is unlawful for any person that has been issued a  
24 permit or license under the Arkansas Tobacco Products Act of 1977, § 26-57-  
25 201 et seq., to sell or distribute a cigarette product through a self-service  
26 display.

27 (B) Subdivision ~~(h)(1)(A)~~ (g)(1)(A) of this section does  
28 not apply to a:

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

31 (ii) Retail tobacco store.

32 (2) As used in subdivision ~~(h)(1)(g)(1)~~ of this section:

33 (A) "Retail tobacco store" means a retail store utilized  
34 primarily for the sale of tobacco products and accessories and in which the  
35 sale of other products is merely incidental; and

36 (B) "Self-service display" means a display:

- 1                   (i) That contains a cigarette product;  
 2                   (ii) That is located in an area where customers are  
 3 permitted; and  
 4                   (iii) In which the cigarette product is readily  
 5 accessible to a customer without the assistance of a salesperson.

6           ~~(i)(h)(1)(A)~~ Except as provided in subdivision ~~(i)(2)(h)(2)~~ of this  
 7 section, it is unlawful for any person who owns or leases a tobacco vending  
 8 machine to place a tobacco vending machine in a public place.

9                   (B) As used in subdivision ~~(i)(1)(A)(h)(1)(A)~~ of this  
 10 section, "public place" means a publicly or privately owned place to which  
 11 the public or a substantial number of people have access.

12           (2) A tobacco vending machine may be placed in a:

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

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

18                   (C) Place where the tobacco vending machine is under the  
 19 supervision of the owner or an employee of the owner.

20           ~~(j)(i)(1)~~ Any retail permit holder or license holder who violates any  
 21 provision in this section is deemed guilty of a violation and subject to ~~the~~  
 22 ~~following~~ penalties under § 26-57-256+.

23                   ~~(A) If the alleged violator has received a notice of an~~  
 24 ~~alleged violation from the Arkansas Tobacco Control Board or other agency or~~  
 25 ~~official with the authority to assess a penalty containing the information~~  
 26 ~~specified in this subchapter, a fine not to exceed two hundred fifty dollars~~  
 27 ~~(\$250) for a first violation within a forty-eight month period;~~

28                   ~~(B) For a second violation within a forty-eight month~~  
 29 ~~period;~~

30                   ~~(i) A fine not to exceed five hundred dollars~~  
 31 ~~(\$500); and~~

32                   ~~(ii) Suspension of the license or permit enumerated~~  
 33 ~~in § 26-57-219 for a period not to exceed two (2) days;~~

34                   ~~(C) For a third violation within a forty-eight month~~  
 35 ~~period;~~

36                   ~~(i) A fine not to exceed one thousand dollars~~

1 ~~(\$1,000); and~~

2 ~~(ii) Suspension of the license or permit enumerated~~  
 3 ~~in § 26-57-219 for a period not to exceed seven (7) days;~~

4 ~~(D) For a fourth or subsequent violation within a forty-~~  
 5 ~~eight month period;~~

6 ~~(i) A fine not to exceed two thousand dollars~~  
 7 ~~(\$2,000); and~~

8 ~~(ii) Suspension of the license or permit enumerated~~  
 9 ~~in § 26-57-219 for a period not to exceed fourteen (14) days; and~~

10 ~~(E) For a fifth violation within a forty-eight month~~  
 11 ~~period, the license or permit enumerated in § 26-57-219 may be revoked.~~

12 ~~(2) Upon any revocation or suspension of a permit or license~~  
 13 ~~under a provision of subdivision (j)(1) of this section, the person shall not~~  
 14 ~~be issued any new permit or license to distribute or sell a tobacco product~~  
 15 ~~during the period of suspension or revocation.~~

16 ~~(k)(j)(1)~~ A notice of alleged violation of this section shall be given  
 17 to the holder of a retail permit or license or an agent of the holder within  
 18 ten (10) days of the alleged violation.

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

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

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

26 (a) Cash register number;

27 (b) Physical location of the sale in the  
 28 store; and

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

30 ~~(l)(k)~~ Notwithstanding the provisions of subsection ~~(j)(i)~~ of this  
 31 section, the court shall consider the following factors when reviewing a  
 32 possible violation:

33 (1) The business has adopted and enforced a written policy  
 34 against selling cigarettes or tobacco products to minors;

35 (2) The business has informed its employees of the applicable  
 36 laws regarding the sale of cigarettes and tobacco products to minors;



1           (3) *The business has required employees to verify the age of a*  
2 *cigarette or tobacco product customer by way of photographic identification;*

3           (4) *The business has established and imposed disciplinary*  
4 *sanctions for noncompliance; and*

5           (5) *That the appearance of the purchaser of the tobacco in any*  
6 *form or cigarette papers was such that an ordinary prudent person would*  
7 *believe him or her to be of legal age to make the purchase.*

8           ~~(m) Any cigarette or tobacco product found in the possession of a~~  
9 ~~minor may be confiscated.~~

10           ~~(n) An employee of a permit holder who violates § 5-27-227 is subject~~  
11 ~~to a fine not to exceed one hundred dollars (\$100) per violation.~~

12           ~~(o)~~(1) *A person convicted of violating any provision of this section*  
13 *whose permit or license to distribute or sell a tobacco product is suspended*  
14 *or revoked upon conviction shall surrender to the court any permit or license*  
15 *to distribute or sell a tobacco product and the court shall transmit the*  
16 *permit or license to distribute or sell a tobacco product to the Director of*  
17 *the Department of Finance and Administration and instruct the Director of the*  
18 *Arkansas Tobacco Control Board:*

19           (1) *To suspend or revoke the person's permit or license to*  
20 *distribute or sell a tobacco product and to not renew the permit or license;*  
21 *and*

22           (2) *Not to issue any new permit or license to that person for*  
23 *the period of time determined by the court in accordance with this section.*  
24

25           SECTION 7. Arkansas Code § 26-57-203(8), concerning the definition of  
26 licensed under the Arkansas Tobacco Products Tax Act of 1977, is amended to  
27 read as follows:

28           (8) "Licensed" means that the person has received a license or  
29 permit from the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ and is  
30 otherwise qualified to do business in this state, except that "licensed" does  
31 not mean that a person is registered as a manufacturer;  
32

33           SECTION 8. Arkansas Code § 26-57-206 is amended to read as follows:  
34 26-57-206. Rules ~~and regulations~~.

35           The Director of the Department of Finance and Administration and the  
36 Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ are empowered to promulgate

1 rules ~~and regulations~~ for the proper enforcement of their powers and duties  
2 as specifically prescribed by this subchapter, except the Director of ~~the~~  
3 Arkansas Tobacco Control ~~Board~~ shall have no authority to promulgate rules  
4 ~~and regulations~~ regarding manufacturers.

5  
6 SECTION 9. Arkansas Code § 26-57-213(b), concerning the retention of  
7 invoices for the purchase or sale of tobacco products, is amended to read as  
8 follows:

9 (b) Copies of all invoices for the purchase or sale of any tobacco  
10 products shall be retained by each manufacturer, wholesaler, vendor, and  
11 retailer for a period of three (3) years, subject to examination by the  
12 Director of the Department of Finance and Administration and the Director of  
13 ~~the~~ Arkansas Tobacco Control ~~Board~~ or their authorized agents upon demand at  
14 any time during regular business hours, except that only the Director of the  
15 Department of Finance and Administration may examine the invoices of  
16 manufacturers.

17  
18 SECTION 10. Arkansas Code § 26-57-214 is amended to read as follows:

19 26-57-214. Registration and licensing required prior to doing business.

20 (a) *No person shall deal with, deliver or cause to be delivered to any*  
21 *retailer or consumer,* or otherwise do business in tobacco products in this  
22 state without having first registered with the Director of ~~the~~ Arkansas  
23 Tobacco Control ~~Board~~ and obtained a permit or license for that purpose,  
24 except that a manufacturer need only to register in accordance with § 26-57-  
25 215(b)(1).

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

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

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

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

35 (e) Any person who pleads guilty or nolo contendere to or is found  
36 guilty of buying, selling, or otherwise doing business in cigarettes or

1 tobacco products in this state without first obtaining the appropriate  
2 license or permit is guilty of a Class C misdemeanor.

3  
4 SECTION 11. Arkansas Code § 26-57-215(a), concerning licensure by the  
5 Director of the Arkansas Tobacco Control Board, is amended to read as  
6 follows:

7 (a) Every person, except manufacturers, listed in this section, before  
8 commencing business, or if already in business, before continuing, shall pay  
9 an annual privilege fee and secure a permit or license from the Director of  
10 ~~the~~ Arkansas Tobacco Control Board.

11  
12 SECTION 12. Arkansas Code § 26-57-215(b)(3), concerning the  
13 surrendering of a salesperson's license to the Director of the Arkansas  
14 Tobacco Control Board, is amended to read as follows:

15 *(3) Every salesperson of any tobacco product ~~in this state~~*  
16 *who contacts a retailer in this state for the purpose of soliciting or taking*  
17 *and processing orders for the sale of tobacco products, or who through*  
18 *contact delivers or causes delivery of any tobacco product to a retailer in*  
19 *this state, shall first secure a salesperson's license. Application shall be*  
20 *made by the wholesaler or general tobacco products vendor who is the*  
21 *salesperson's employer. A salesperson's license is not transferable to*  
22 *another employer and must be surrendered to the Director of ~~the~~ Arkansas*  
23 *Tobacco Control Board by the employer upon termination of the salesperson's*  
24 *employment.*

25  
26 SECTION 13. Arkansas Code § 26-57-215(b)(6)(A)(i), concerning  
27 obtaining a license from the Director of the Arkansas Tobacco Control Board,  
28 is amended to read as follows:

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

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SECTION 14. Arkansas Code §§ 26-57-221 through 26-57-223 are amended to read as follows:

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

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

26-57-222. Permits and licenses – Duplicates.

When a permit or license is lost by a holder, a duplicate permit or license may be issued upon application and for a fee of five dollars (\$5.00) when sufficient proof has been given the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~.

26-57-223. Permits and licenses – Suspension or revocation.

(a) All permits and licenses issued under this subchapter may be suspended or revoked by the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ for any violation of this subchapter or the ~~regulations~~ rules pertaining to this subchapter.

(b) The director may revoke for one (1) year all licenses or permits to deal in tobacco products of any person who is convicted of violating this subchapter or the regulations pertaining to this subchapter a second time.

SECTION 15. Arkansas Code § 26-57-227(b), concerning the seizure of tobacco vending machines by the Director of the Arkansas Tobacco Control Board, is amended to read as follows:

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

SECTION 16. Arkansas Code § 26-57-229(d), concerning the revocation of permits by the Director of the Arkansas Tobacco Control Board, is amended to read as follows:

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

1 wholesaler.

2

3 SECTION 17. Arkansas Code § 26-57-232(a)(1), concerning wholesale  
4 permits issued by the Director of the Arkansas Tobacco Control Board, is  
5 amended to read as follows:

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

8

9 SECTION 18. Arkansas Code § 26-57-232(b), concerning violations of  
10 certain provisions of the Arkansas Tobacco Products Act of 1977, is amended  
11 to read as follows:

12 (b) Any wholesaler who fails or refuses to affix or cancel the stamps  
13 or who fails or refuses to keep the records or who fails or refuses to  
14 furnish the statements and information or make the reports as required by  
15 this subchapter or as prescribed by the Director of the Department of Finance  
16 and Administration and the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~, or  
17 who violates any of the requirements of §§ 26-57-212, 26-57-229, and 26-57-  
18 242 is guilty of a violation for the first offense and a Class C misdemeanor  
19 for each additional offense.

20

21 SECTION 19. Arkansas Code § 26-57-233(1), concerning salespersons  
22 permits obtained from the Director of the Arkansas Tobacco Control Board, is  
23 amended to read as follows:

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

26

27 SECTION 20. Arkansas Code § 26-57-234(b), concerning the revocation of  
28 retail permits by the Director of the Arkansas Tobacco Control Board, is  
29 amended to read as follows:

30 (b) Upon a retailer's failure to comply with any part of this section,  
31 the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ may revoke the retailer's  
32 permit.

33

34 SECTION 21. Arkansas Code § 26-57-242(c), concerning the revocation of  
35 wholesaler's permits by the Director of the Arkansas Tobacco Control Board,  
36 is amended to read as follows:

1 (c) Upon violation of this section by a wholesaler, the Director of  
2 ~~the~~ Arkansas Tobacco Control ~~Board~~ shall revoke the wholesaler's permit.

3  
4 SECTION 22. Arkansas Code § 26-57-247(b), concerning the seizure of  
5 tobacco products by the Director of the Arkansas Tobacco Control Board, is  
6 amended to read as follows:

7 (b) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ may seize and  
8 hold for disposition of the courts all tobacco products found in the  
9 possession of any person dealing in or a consumer of tobacco products which  
10 have not been handled according to this subchapter.

11  
12 SECTION 23. Arkansas Code § 26-57-248 is amended to read as follows:  
13 26-57-248. Possession or sale of products with unpaid taxes –  
14 Supplemental fines — ~~Liquidated damages.~~

15 (a) Any person who places in his or her stock or who has in his or her  
16 possession or on his or her premises, or who sells or offers for sale, any  
17 tobacco products on which the tax prescribed by law has not been paid in  
18 addition to the other fines and forfeitures ~~shall~~ may be subject to a fine  
19 of:

20 (1) Twenty-five dollars (\$25.00) for each package of cigarettes,  
21 little cigars, and cigarillos up to twenty (20) packages and fifty dollars  
22 (\$50.00) for each package in excess of twenty (20) packages, so held, sold,  
23 or offered for sale; and

24 (2) Fifty dollars (\$50.00) for each box of cigars and twenty-  
25 five dollars (\$25.00) for each unit of other tobacco products so held, sold,  
26 or offered for sale.

27 (b) The penalty shall be held to be in the nature of ~~liquidated~~  
28 ~~damages~~ a civil penalty and may be collected by civil action and may be  
29 levied by the Arkansas Tobacco Control Board or any circuit court of this  
30 state.

31  
32 SECTION 24. Arkansas Code § 26-57-249 is amended to read as follows:  
33 26-57-249. ~~Sale~~ Destruction of products upon conviction – Procedure.

34 (a) Upon conviction of any ~~defendant~~ person charged with ~~the~~ a  
35 violation of ~~this subchapter~~ any tobacco law or rule which resulted in the  
36 seizure of tobacco products, the court shall issue an order to destroy the

1 tobacco products confiscated by the Director of ~~the~~ Arkansas Tobacco Control  
2 ~~Board~~ or by any state, county, or municipal officer in this state, ~~which were~~  
3 ~~possessed or owned by the defendant and which have not been handled according~~  
4 ~~to the provisions of this subchapter.~~

5 (b) Upon a finding of guilty of any person charged with a violation of  
6 a state tobacco law or rule in a proceeding before the Arkansas Tobacco  
7 Control Board that resulted in the seizure of tobacco products, the Arkansas  
8 Tobacco Control Board shall issue an order to destroy the tobacco products  
9 confiscated by the director or by any state, county, or municipal officer in  
10 this state.

11 ~~(b)~~(c) Every court of record in this state shall notify the director  
12 of the disposition made of each case in the court as to whether the defendant  
13 was convicted or acquitted.

14 (d) Upon application of the director, the Arkansas Tobacco Control  
15 Board or the court issuing a destruction order may instead release the  
16 tobacco products to the use and benefit of Arkansas Tobacco Control for  
17 suitable law enforcement or training purposes.

18  
19 SECTION 25. Arkansas Code § 26-57-251(a), concerning civil and  
20 criminal actions brought in the name of the Director of the Arkansas Tobacco  
21 Control Board, is amended to read as follows:

22 (a) All civil actions arising under this subchapter shall be brought  
23 by and in the name of the Director of the Department of Finance and  
24 Administration or the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~,  
25 whichever is appropriate under the provisions of this subchapter.

26  
27 SECTION 26. Arkansas Code § 26-57-255(d)(2), concerning votes by the  
28 Arkansas Tobacco Control Board, is amended to read as follows:

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

34  
35 SECTION 27. Arkansas Code § 26-57-256 is amended to read as follows:  
36 26-57-256. Powers of the Arkansas Tobacco Control Board.

1 (a) The Arkansas Tobacco Control Board shall:

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

5 (2) Receive applications for and issue, refuse, suspend, and  
6 revoke licenses and permits listed in § 26-57-219;

7 (3) Prescribe forms of applications for permits and licenses  
8 under this subchapter;

9 (4)(A) Cooperate with the Revenue Division of the Department of  
10 Finance and Administration in the enforcement of the tax laws affecting the  
11 sale of tobacco products in this state and in the enforcement of all other  
12 state and local tax laws.

13 (B) To facilitate efforts to cooperate with the division  
14 concerning the enforcement of all other state and local tax laws, the board  
15 shall immediately require that the following additional information be  
16 provided by all applicants for permit issuance or renewal:

17 (i) Federal tax identification numbers issued by the  
18 Internal Revenue Service;

19 (ii) Social Security numbers; and

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

22 (C)(i) Each year the board shall provide a list of all  
23 applicants for the issuance or renewal of all tobacco permits and licenses to  
24 the Director of the Department of Finance and Administration.

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

28 (5)(A) Conduct public hearings when appropriate regarding any  
29 permit and license authorized by this subchapter or in violation of this  
30 subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227,  
31 or any other federal, state, or local statute, ordinance, rule, or regulation  
32 concerning the sale of tobacco products to minors or the rules ~~and~~  
33 ~~regulations~~ promulgated by the board.

34 (B)(i) After a notice and hearing held in accordance with  
35 the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board  
36 finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-



1 701 et seq., or the rules ~~and regulations~~ promulgated by the board, the board  
2 may suspend, revoke, or not renew any or all permits and licenses issued by  
3 the board to any person or entity.

4 (ii) In addition, the board may levy a civil penalty  
5 in an amount not to exceed ~~one thousand dollars (\$1,000)~~ five thousand  
6 dollars (\$5,000) for each violation against any person or entity found to be  
7 in violation.

8 (iii) Each day of the violation shall be deemed a  
9 separate violation.

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

13 (6) When requested by the written petition of at least three (3)  
14 interested parties, conduct public hearings to receive testimony on the facts  
15 relevant to the issuance of any license or permit under this subchapter.

16 (b) Unless the civil penalty assessed under this section is paid  
17 within fifteen (15) days following the date for an appeal from the order, the  
18 Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ shall have the power to  
19 institute a civil action in the Pulaski County Circuit Court to recover the  
20 civil penalties assessed pursuant to the provisions of this subchapter.

21 (c)(1) The board shall have no authority in criminal prosecutions or  
22 the assessment or collection of any taxes ~~or penalties~~ related to the taxing  
23 of tobacco products.

24 (2) However, the board shall refuse to issue, suspend, revoke,  
25 or refuse renewal of any permit or license issued by the board for the  
26 failure to pay taxes or fees imposed on tobacco products or any permit or  
27 license fees imposed by this subchapter or any other state and local taxes.

28 (d) The board may assess penalties for a violation of § 5-27-227  
29 according to the following schedule:

30 (1) If the alleged violator has received a notice of an  
31 alleged violation from the board or other agency or official with the  
32 authority to assess penalties containing the information specified in this  
33 subchapter, a civil penalty not to exceed two hundred fifty dollars (\$250)  
34 for a first violation within a forty-eight-month period;

35 (2) A civil penalty not to exceed five hundred dollars  
36 (\$500) for a second violation within a forty-eight-month period and

1 suspension of the license or permit enumerated in § 26-57-219 for a period  
2 not to exceed two (2) days;

3 (3) A civil penalty not to exceed one thousand dollars  
4 (\$1,000) for a third violation within a forty-eight-month period and  
5 suspension of the license or permit enumerated in § 26-57-219 for a period  
6 not to exceed seven (7) days;

7 (4) A civil penalty not to exceed two thousand dollars  
8 (\$2,000) for a fourth or subsequent violation within a forty-eight-month  
9 period and suspension of the license or permit enumerated in § 26-57-219 for  
10 a period not to exceed fourteen (14) days; and

11 (5) For a fifth or subsequent violation within a forty-  
12 eight month period, in addition to any civil penalties authorized by this  
13 section, the license or permit under § 26-57-219 may be revoked.

14 (e)(1) A notice of an alleged violation of § 5-27-227 shall be given  
15 to the holder of a retail permit or license within ten (10) days of the  
16 alleged violation.

17 (2) The notice shall contain the date and time of the  
18 alleged violation.

19 (3)(A) The notice shall also include either the name of  
20 the person making the alleged unlawful sale or information reasonably  
21 necessary to determine the location in the store that where the alleged  
22 unlawful sale was made.

23 (B) Information under subdivision (e)(3)(A) of this  
24 section shall include when appropriate without limitation, the cash register  
25 number, physical location of the sale in the store, and, if possible, the  
26 lane or aisle number.

27 (f) The board shall consider the following factors when reviewing a  
28 possible violation:

29 (1) The business has adopted and enforced a written policy  
30 against selling cigarettes or tobacco products to persons less than eighteen  
31 (18) years of age;

32 (2) The business has informed its employees of the  
33 applicable laws regarding the sale of cigarettes and tobacco products to  
34 persons less than eighteen (18) years of age;

35 (3) The business required employees to verify the age of  
36 cigarette or tobacco product customers by way of photographic identification;

1                   (4) The business has established and imposed disciplinary  
2 sanctions for noncompliance; and

3                   (5) The appearance of the purchaser of the tobacco in any  
4 form or cigarette papers was such that an ordinary prudent person would  
5 believe him or her to be of legal age to make the purchase.

6                   (g)(1) A penalty under subsection (d) of this section for a violation  
7 of § 5-27-227 shall not be imposed upon a retailer or agent or employee of a  
8 retailer who can establish an affirmative defense that before the date of the  
9 violation the retailer or agent or employee of the retailer furnishing the  
10 tobacco in any form or cigarette papers reasonably relied upon proof of age  
11 which identified the person receiving the tobacco in any form or cigarette  
12 papers as being eighteen (18) years of age or older.

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

18                   (h) Any cigarettes or tobacco products found in the possession of a  
19 person less than eighteen (18) years of age may be confiscated.

20                   (i) An employee of a permit holder who violates § 5-27-227 is subject  
21 to a civil penalty not to exceed one hundred dollars (\$100) per violation.

22                   (j)(1) For a corporation or business with more than one (1) retail  
23 location, to determine the number of accumulated violations for purposes of  
24 the penalty schedule set forth in subsection (d) of this section, violations  
25 of § 5-27-227 by one (1) retail location shall not be accumulated against  
26 other retail locations of that same corporation or business.

27                   (2) For a retail location, for purposes of the penalty  
28 schedule set forth in subsection (d) of this section, violations accumulated  
29 and assessed against a prior owner of the retail location shall not be  
30 accumulated against a new owner of the same retail location.

31                   (k) All penalties collected under this section shall be deposited into  
32 the State Treasury.

33  
34                   SECTION 28. Arkansas Code § 26-57-257 is amended to read as follows:  
35                   26-57-257. Director of Arkansas Tobacco Control ~~Board~~.

36                   (a)(1) The Governor shall employ a person to serve as Director of ~~the~~

1 Arkansas Tobacco Control ~~Board~~.

2 (2) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ shall  
3 serve at the pleasure of the Governor.

4 (b) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ shall present  
5 all evidence tending to prove violations of law or regulations at hearings  
6 held by the Arkansas Tobacco Control Board.

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

10 (d) Any personnel employed by the Director of ~~the~~ Arkansas Tobacco  
11 Control ~~Board~~ shall serve at his or her pleasure.

12 (e)(1) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ and the  
13 board each may adopt, keep, and use a common seal.

14 (2) This seal shall be used for authentication of the records,  
15 process, and proceedings of the Director of ~~the~~ Arkansas Tobacco Control  
16 ~~Board~~ and the board, respectively.

17 (3) Judicial notice shall be taken of each use of this seal in  
18 all of the courts of the state.

19 (f) Any process, notice, or other paper which the Director of ~~the~~  
20 Arkansas Tobacco Control ~~Board~~ may be authorized by law to issue shall be  
21 deemed sufficient if signed by the Director of ~~the~~ Arkansas Tobacco Control  
22 ~~Board~~ and authenticated by the seal of the Director of ~~the~~ Arkansas Tobacco  
23 Control ~~Board~~.

24 (g) Any process, notice, or other paper which the board may be  
25 authorized by law to issue shall be deemed sufficient if signed by the chair  
26 of the Arkansas Tobacco Control Board and authenticated by the seal of the  
27 board.

28 (h) All acts, orders, proceedings, rules, regulations, entries,  
29 minutes, and other records of the Director of ~~the~~ Arkansas Tobacco Control  
30 ~~Board~~ and all reports and documents filed with the Director of ~~the~~ Arkansas  
31 Tobacco Control ~~Board~~ may be proved in any court of this state by a copy  
32 thereof certified to by the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~  
33 with the seal of the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ attached.

34 (i) All acts, orders, proceedings, rules, ~~regulations~~, entries,  
35 minutes, and other records of the board and all reports and documents filed  
36 with the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ may be proved in any

1 court of this state by a copy thereof certified to by the chair of the board  
2 with the seal of the board attached.

3 (j)(1) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ shall  
4 maintain records of all permits and licenses issued, suspended, denied, or  
5 revoked by the board.

6 (2) The records shall be in such form as to provide ready  
7 information as to the identity of the licensees, including the names of major  
8 stockholders and directors of corporations holding licenses or permits and  
9 the location of the licensed or permitted premises.

10 (k) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ shall recognize  
11 the Office of Alcohol and Drug Abuse Prevention as the agency responsible for  
12 ensuring full compliance with the Public Health Service Act, § 1926(b), 42  
13 U.S.C. § 300x-26(b), and shall call upon administrative departments of the  
14 state, county, and city governments, sheriffs, city police departments, or  
15 other law enforcement officers for such information and assistance as the  
16 Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ may deem necessary in the  
17 performance of the duties imposed upon him or her by this subchapter.

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

21 (m) ~~In the conduct of any hearings, the~~ The Director of ~~the~~ Arkansas  
22 Tobacco Control ~~Board~~ may:

23 (1) Examine or cause to be examined any person under oath and  
24 examine or cause to be examined books and records of any licensee;

25 (2) Hear testimony and take proof material to his or her  
26 information and the discharge of his or her duties under this section;

27 (3) Administer oaths or cause oaths to be administered; and

28 (4)(A) Issue subpoenas to require the attendance of witnesses  
29 and the production of books and records.

30 (B) Any circuit court by written order may require the  
31 attendance of witnesses or the production of relevant books or other records  
32 subpoenaed by the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~, and the  
33 court may compel obedience to its order by proceedings for contempt.

34 (n) All hearings and appeals from any hearing shall be conducted in  
35 accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et  
36 seq.

1 (o) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ shall exercise  
2 other powers, functions, and duties as are or may be imposed or conferred  
3 upon him or her by law or the board.

4 (p) The Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ shall have  
5 other powers, functions, and duties pertaining to the issuance, suspension,  
6 and revocation of the permits and licenses enumerated in § 26-57-219 which  
7 previously were granted to the Director of the Department of Finance and  
8 Administration, except the authority to regulate manufacturers, and which are  
9 specifically delegated to the Department of Finance and Administration by  
10 this subchapter.

11 (q)(1)(A) The power and duty to collect taxes imposed on tobacco and  
12 tobacco products is specifically exempted from the powers and duties granted  
13 or assigned to the board or the department.

14 (B) However, a permit or license holder's failure to pay  
15 taxes or fees imposed on tobacco products or any permit or license fees  
16 imposed by this subchapter in a timely manner is grounds for the nonissuance,  
17 suspension, revocation, or nonrenewal of any permits or licenses issued by  
18 the board.

19 (C) Failure to timely and fully pay any other state and  
20 local taxes as reported by the Director of the Department of Finance and  
21 Administration shall also constitute grounds for the nonissuance, suspension,  
22 revocation, or nonrenewal of any permits or licenses issued by the board.

23 (2)(A) Each year the Director of the Department of Finance and  
24 Administration shall report to the ~~board~~ Director of Arkansas Tobacco Control  
25 ~~any and~~ all permit and license holders who are more than ninety (90) days  
26 delinquent on any state and local taxes.

27 (B) The ~~board~~ Director of Arkansas Tobacco Control shall  
28 not issue or renew any permit or license issued under this section for any  
29 permit or license holder more than ninety (90) days delinquent on any  
30 privilege fee or tax addressed in this section unless the permittee or  
31 licensee demonstrates that he or she is current under a valid repayment  
32 agreement for the delinquent tax.

33 (3)(A) Each year the ~~board~~ Director of Arkansas Tobacco Control  
34 shall send notices to all permit and license holders more than ninety (90)  
35 days delinquent on any state and local taxes.

36 (B) This notice shall inform the permit or license holder

1 that he or she is delinquent on payment of state and local taxes due the  
2 Director of the Department of Finance and Administration and that the permit  
3 or license holder will be unable to obtain or renew the permit or license  
4 that he or she holds until such time as the person becomes current in the  
5 payment of the tax due the Director of the Department of Finance and  
6 Administration, or until such time as the person enters into a valid  
7 repayment agreement with the department for the payment of the delinquent  
8 tax.

9 ~~(r) The board may assess penalties for violation of § 5-27-227(a)~~  
10 ~~according to the following schedule:~~

11 ~~(1) If the alleged violator has received a notice of an alleged~~  
12 ~~violation from the board or other agency or official with the authority to~~  
13 ~~assess penalties containing the information specified in this subchapter, a~~  
14 ~~civil penalty not to exceed two hundred fifty dollars (\$250) for a first~~  
15 ~~violation within a forty-eight month period;~~

16 ~~(2) A civil penalty not to exceed five hundred dollars (\$500)~~  
17 ~~for a second violation within a forty-eight month period and suspension of~~  
18 ~~the license or permit enumerated in § 26-57-219 for a period not to exceed~~  
19 ~~two (2) days;~~

20 ~~(3) A civil penalty not to exceed one thousand dollars (\$1,000)~~  
21 ~~for a third violation within a forty-eight month period and suspension of the~~  
22 ~~license or permit enumerated in § 26-57-219 for a period not to exceed seven~~  
23 ~~(7) days;~~

24 ~~(4) A civil penalty not to exceed two thousand dollars (\$2,000)~~  
25 ~~for a fourth or subsequent violation within a forty-eight month period and~~  
26 ~~suspension of the license or permit enumerated in § 26-57-219 for a period~~  
27 ~~not to exceed fourteen (14) days; and~~

28 ~~(5) For a fifth violation within a forty-eight month period, the~~  
29 ~~license or permit enumerated in § 26-57-219 may be revoked.~~

30 ~~(s)(1) A notice of an alleged violation of § 5-27-227 shall be given~~  
31 ~~to the holder of a retail permit or license within ten (10) days of the~~  
32 ~~alleged violation.~~

33 ~~(2) The notice must contain the date and time of the alleged~~  
34 ~~violation.~~

35 ~~(3)(A) It shall also include either the name of the person~~  
36 ~~making such alleged sale or information reasonably necessary to determine the~~

1 ~~location in the store that allegedly made such sale.~~

2 ~~(B) Such information should include when appropriate but~~  
3 ~~not be limited to, the cash register number, physical location of the sale in~~  
4 ~~the store, and, if possible, the lane or aisle number.~~

5 ~~(t) Notwithstanding the provisions of subsection (r) of this section,~~  
6 ~~the board shall consider the following factors when reviewing a possible~~  
7 ~~violation:~~

8 ~~(1) The business has adopted and enforced a written policy~~  
9 ~~against selling cigarettes or tobacco products to persons less than eighteen~~  
10 ~~(18) years of age;~~

11 ~~(2) The business has informed its employees of the applicable~~  
12 ~~laws regarding the sale of cigarettes and tobacco products to persons less~~  
13 ~~than eighteen (18) years of age;~~

14 ~~(3) The business required employees to verify the age of~~  
15 ~~cigarette or tobacco product customers by way of photographic 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 ~~or cigarette papers was such that an ordinary prudent person would believe~~  
20 ~~him or her to be of legal age to make the purchase.~~

21 ~~(u) Notwithstanding the provisions of subsection (r) of this section,~~  
22 ~~no penalty for a violation of § 5-27-227 shall be imposed upon a retailer or~~  
23 ~~agent or employee of such retailer who can establish an affirmative defense~~  
24 ~~that prior to the date of the violation the retailer or agent or employee of~~  
25 ~~the retailer furnishing the tobacco in any form or cigarette papers~~  
26 ~~reasonably relied upon proof of age which identified the person receiving the~~  
27 ~~tobacco in any form or cigarette papers as being eighteen (18) years of age~~  
28 ~~or older.~~

29 ~~(v) "Proof of age" means any document issued by a governmental agency~~  
30 ~~containing a description of the person, the person's photograph, or both, and~~  
31 ~~giving the person's date of birth and includes, without being limited to, a~~  
32 ~~passport, military identification card, or driver's license.~~

33 ~~(w) Any cigarettes or tobacco products found in the possession of a~~  
34 ~~person less than eighteen (18) years of age may be confiscated.~~

35 ~~(x) An employee of a permit holder who violates § 5-27-227 shall be~~  
36 ~~subject to a civil penalty not to exceed one hundred dollars (\$100) per~~



1 violation.

2 ~~(y)(1) In the case of a corporation or business with more than one (1)~~  
3 ~~retail location, to determine the number of accumulated violations for~~  
4 ~~purposes of the penalty schedule set forth in subsection (r) of this section,~~  
5 ~~violations of § 5-27-227(a) by one (1) retail location shall not be~~  
6 ~~accumulated against other retail locations of that same corporation or~~  
7 ~~business.~~

8 ~~(2) In the case of a retail location, for purposes of the~~  
9 ~~penalty schedule set forth in subsection (r) of this section, violations~~  
10 ~~accumulated and assessed against a prior owner of the retail location shall~~  
11 ~~not be accumulated against a new owner of the same retail location.~~

12 ~~(z) If a penalty has been assessed pursuant to this section against~~  
13 ~~any person, business, or corporation for a single specific violation of § 5-~~  
14 ~~27-227(a) or § 5-27-227(b), the person, business, or corporation shall not be~~  
15 ~~prosecuted under § 5-27-227(a) or § 5-27-227(b) for a violation based on the~~  
16 ~~same facts or specific incident for which the penalty was assessed under this~~  
17 ~~section.~~

18 ~~(aa) If any person, business, or corporation has been prosecuted for a~~  
19 ~~single specific violation of § 5-27-227(a) or § 5-27-227(b), the person,~~  
20 ~~business, or corporation shall not be assessed a civil penalty under this~~  
21 ~~section based on the same facts or specific incident upon which the~~  
22 ~~prosecution under § 5-27-227(a) or § 5-27-227(b) was based.~~

23 ~~(bb)(r)~~ The enforcement of state laws relating to the prohibition of  
24 the barter or sale of tobacco in any form or cigarette papers to minors by  
25 multiple state agencies shall be coordinated to avoid duplicative inspections  
26 of the same retailer by multiple state agencies.

27 ~~(cc) All penalties collected pursuant to the authority of this section~~  
28 ~~shall be deposited into the State Treasury.~~

29

30 SECTION 29. Arkansas Code § 26-57-262(c)(3) and (4), concerning the  
31 powers of the Arkansas Tobacco Control Board, are amended to read as follows:

32 (3) The Arkansas Tobacco Control Board ~~shall~~ may revoke a  
33 wholesale or retail license of any person who sells or holds for sale  
34 cigarette packages to which is affixed a tax stamp in violation of this  
35 section.

36 (4) The Department of Finance and Administration or ~~the~~

1 ~~board~~ Arkansas Tobacco Control may seize and destroy or sell to the  
2 manufacturer only for export packages that do not comply with this section.

3  
4 SECTION 30. Arkansas Code § 26-57-804(b)(3)(C), concerning revocations  
5 of certain permits or licenses by the Director of the Arkansas Tobacco  
6 Control Board, is amended to read as follows:

7 (C) A violation of this subdivision (b)(3) shall be  
8 grounds for the suspension or revocation of a permit or license issued by the  
9 Director of ~~the~~ Arkansas Tobacco Control ~~Board~~.

10  
11 SECTION 31. Arkansas Code § 26-57-1302(c), concerning the definition  
12 of director as applied to enforcement enhancements, is amended to read as  
13 follows:

14 (c) "Director" means the Director of ~~the~~ Arkansas Tobacco Control  
15 ~~Board~~.

16  
17 SECTION 32. Arkansas Code § 26-57-1303(c), concerning prohibitions  
18 against the stamping, sale or import of cigarettes not listed in the  
19 directory of tobacco product manufacturers or brand families, is amended to  
20 read as follows:

21 (c) Prohibition Against Stamping, Sale, or Import of Cigarettes Not in  
22 Directory.

23 (1) It is unlawful for any person or entity to:

24 (A) Affix a tax stamp to a package or other container of  
25 cigarettes of a tobacco product manufacturer or brand family that the person  
26 or entity knows is not included in the directory maintained by the Attorney  
27 General pursuant to subsection (b) of this section; or

28 (B) Sell, offer, or possess ~~for sale~~ in this state, or  
29 import for personal consumption in this state, cigarettes of a tobacco  
30 product manufacturer or brand family that the person or entity knows is not  
31 included in the directory maintained by the Attorney General pursuant to  
32 subsection (b) of this section.

33 (2) Persons and entities are deemed to have received notice that  
34 cigarettes of a tobacco product manufacturer or a brand family are not  
35 included in the directory maintained by the Attorney General pursuant to  
36 subsection (b) of this section at the time the Attorney General's website

1 fails to list any such cigarettes in the directory or at the time the  
2 Attorney General removes the cigarettes from the directory.

3 (3) A person or entity purchasing cigarettes for resale shall  
4 not be in violation of this subchapter if:

5 (A) At the time of purchase the manufacturer and brand  
6 families of the cigarettes are included in the directory maintained by the  
7 Attorney General pursuant to subsection (b) of this section and the  
8 cigarettes are lawfully stamped and sold within twenty-one (21) days of the  
9 date the manufacturer and brand families were removed from the directory; or

10 (B)(i) In the case of a retailer, the cigarettes are sold  
11 or delivered to retail customers within twenty-one (21) days after receipt of  
12 delivery of such cigarettes from a wholesaler so long as the cigarettes in  
13 question were lawfully purchased from the same wholesaler and the twenty-one-  
14 day period has not expired.

15 (ii) Possession of cigarettes after the twenty-one-  
16 day day period in subdivision (c)(3)(B)(i) of this section has expired is a  
17 violation of subdivision (c)(1) of this section.

18 (4) No brand families may be purchased by or delivered to a  
19 wholesaler once the manufacturer and brand families are removed from the  
20 directory.

21 (5) Any manufacturer, wholesaler, or retailer selling cigarettes  
22 for resale of a manufacturer or brand family that has been removed from the  
23 directory maintained by the Attorney General pursuant to subsection (b) of  
24 this section shall notify the purchaser of such cigarettes of that fact at  
25 the time of delivery of the cigarettes.

26 (6)(A) Unless otherwise provided by contract or purchase  
27 agreement, a purchaser shall be entitled to a refund of the purchase price  
28 from the manufacturer, wholesaler, or retailer from whom the cigarettes were  
29 purchased of any cigarettes that are the product of a manufacturer or a brand  
30 family that has been removed from the directory maintained by the Attorney  
31 General pursuant to subsection (b) of this section.

32 (B) The Department of Finance and Administration may by  
33 ~~regulation~~ rule provide for a refund of the price of tax stamps that have  
34 been lawfully affixed to cigarettes that may not be sold under this  
35 subsection.

36

1 SECTION 33. Arkansas Code § 26-57-1306(a)(1), concerning the  
2 revocation of licenses and permits by the Director of the Arkansas Tobacco  
3 Control Board, is amended to read as follows:

4 (1) In addition to or in lieu of any other civil or criminal  
5 remedy provided by law, upon a determination that a licensee or permittee has  
6 violated § 26-57-1303(c) or any ~~regulation~~ rule adopted under this  
7 subchapter, the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ may revoke or  
8 suspend the licensee's licenses or permits pursuant to law and the Arkansas  
9 Tobacco Control Board's rules ~~and regulations~~ governing the procedure for  
10 revocation or suspension of the licenses or permits.

11  
12 SECTION 34. Arkansas Code § 26-57-1307(b), concerning the renewal of  
13 permits or licenses by the Director of the Arkansas Tobacco Control Board, is  
14 amended to read as follows:

15 (b) Applicants for Licenses. No person or entity shall be issued a  
16 license or permit or granted a renewal of a license or permit by the Director  
17 of ~~the~~ Arkansas Tobacco Control ~~Board~~ unless the person or entity has  
18 certified in writing under penalty of perjury that the person or entity will  
19 comply fully with this subchapter.

20  
21 /s/ Betts

22  
23 **APPROVED: 4/3/2009**