

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas As Engrossed: H2/13/97 H2/27/97 H3/6/97 H3/18/97 S3/27/97 S4/2/97 S4/3/97

2 81st General Assembly

A Bill

3 Regular Session, 1997

HOUSE BILL 1530

4 By: Representatives McKissack, Wagner, Wren, Choate, Young, Terry Smith, McGinnis, Faris, Booker, Goodwin, Fletcher, Dietz,

5 Johnson, Simmons, Rorie, *McGee, Allison, Trammell, Wilkins, and Willems*

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For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE TOBACCO PRODUCTS
10 TAX ACT; TO CREATE THE TOBACCO CONTROL BOARD; AND FOR
11 OTHER PURPOSES."

12

13

Subtitle

14 "TO AMEND VARIOUS SECTIONS OF THE
15 TOBACCO PRODUCTS TAX ACT; TO CREATE THE
16 TOBACCO CONTROL BOARD; AND FOR OTHER
17 PURPOSES."

18

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

20

21 SECTION 1. Arkansas Code 26-57-203 is amended to read as follows:

22 "26-57-203. Definitions.

23 As used in this subchapter, unless the context otherwise requires:

24 (1) Annual or annually means the fiscal year from July 1 through the
25 next June 30;

26 (2) Cigarette means all rolled tobacco, or substitutes therefor, for
27 smoking which is wrapped in paper or any substitute other than natural leaf
28 tobacco in its natural state;

29 ~~(3) Director means the Director of the Department of Finance and
30 Administration or his authorized agents;~~

31 ~~(4)(3) Consumer means a person who purchases at retail or who receives
32 in any way or comes into possession of tobacco products for the purpose of
33 consuming them, giving them away, or disposing of them in any other way than
34 by sale, barter, or exchange member of the public at large;~~

35 ~~(5)(4) First sale means the sale of tobacco products made by a
36 manufacturer to licensed wholesalers and licensed vendors or a licensed~~

1 retailer only;

2 ~~(6)~~(5) Gross sales means the amount received for tobacco products sold
3 at retail, including both the federal and state taxes of the tobacco products
4 when purchased by a retailer;

5 ~~(7)~~(6) Licensed means that the person has received a license or permit
6 from the ~~director~~ Director of the Tobacco Control Board and is otherwise
7 qualified to do business in this *state* except that licensed does not mean
8 that a person is registered as a manufacturer;

9 ~~(8)~~(7) Manufacturer means any person ~~outside the State of Arkansas~~ who
10 produces any tobacco product for sale and includes, but is not limited to,
11 importers and distributors ~~outside of this state~~ who deal in tobacco products
12 as manufacturers and who are required under this subchapter to sell only to
13 licensed wholesalers or licensed retailers located in Arkansas;

14 (8) Restricted tobacco products vendor means a vendor who is licensed
15 to operate vending machines owned by him on his own premises, and be otherwise
16 subject to all other restrictions imposed on a general tobacco products
17 vendor;

18 (9) Person means any individual, retailer, wholesaler, manufacturer,
19 firm, association, company, partnership, limited liability company,
20 corporation, joint-stock company, club, agency, syndicate, the State of
21 Arkansas, county, municipal corporation or other political subdivision of this
22 state, receiver, trustee, fiduciary, or trade association;

23 (10) Place of business means the place where orders are taken or
24 received or where tobacco products are sold;

25 (11) Retailer means any person who purchases tobacco products from
26 licensed wholesalers for the purpose of selling them over the counter at
27 retail to consumers;

28 (12) Salesman means the agent or employee of a ~~manufacturer or~~
29 wholesaler who sells or offers for sale to licensed wholesalers or licensed
30 retailers or who solicits for sale, takes orders for, or in any manner
31 promotes the sale or use of tobacco products;

32 (13) The pronouns he, his, him, they, or any other pronoun shall apply
33 to any person covered by this subchapter;

34 (14) Stamps means the Arkansas cigarette stamps denoting the tax on
35 cigarettes. When affixed to a container of cigarettes, the stamps shall
36 indicate that the tax has been paid;

1 (15) Tobacco products means all products containing tobacco for
2 consumption and includes, but is not limited to, cigarettes, cigars, little
3 cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking
4 tobacco, including pipe tobacco, and smoking tobacco substitutes;

5 (16) Tobacco products vending machine means any coin operated vending
6 machine from which tobacco products are sold;

7 (17) General tobacco products vendor or vendor means any person who
8 operates a vending machine or who uses any other mechanical device, from which
9 cigarettes or other tobacco products are delivered to the consumer by
10 inserting coins therein, and who purchases tobacco products only from licensed
11 wholesalers. A general vendor is authorized to operate licensed vending
12 machines, on his own premises and on the premises of others, as a principal
13 business;

14 (18) Warehouse means a place where tobacco products are stored for
15 another person and to or from which place the tobacco products are shipped or
16 delivered upon order by the owner of the tobacco products to the warehouse;

17 (19) Wholesaler means any individual or person, not a manufacturer or
18 owned or operated by a manufacturer, who does business within this state at or
19 from an established place of business ~~located within this state,~~ who purchases
20 unstamped or untaxed cigarettes or other tobacco products directly from
21 manufacturers that distribute tobacco products in Arkansas, and who sells to
22 properly licensed cigarette vendors or retailers. However, where an Arkansas
23 city is separated from a city in another state only by a state line, a
24 resident of the Arkansas city who maintains a warehouse in the adjoining city
25 in the adjoining state may qualify as a wholesaler under this subchapter if
26 that person is regularly engaged in the sale of tobacco products to licensed
27 retailers within Arkansas as a first sale and is eligible to purchase
28 unstamped cigarettes direct from manufacturers."

29

30 SECTION 2. Arkansas Code 26-57-206 is amended to read as follows:

31 "26-57-206. Rules and Regulations.

32 The ~~director is~~ Director of the Department of Finance and Administration
33 and the Director of the Tobacco Control Board are empowered to promulgate
34 rules and regulations for the proper enforcement ~~and implementation of this~~
35 ~~act of their powers and duties as specifically prescribed by this subchapter,~~
36 except the Director of the Tobacco Control Board shall have no authority to

1 promulgate rules and regulations regarding manufacturers."

2

3 SECTION 3. Arkansas Code 26-57-208(2) is amended to read as follows:

4 "(2) The excise or privilege tax on tobacco products, other than
5 cigarettes, on the first sale to by wholesalers or to retailers, or by
6 licensed retailers to the Director of the Department of Finance and
7 Administration, within the state is sixteen percent (16%) of the
8 manufacturers selling price. The tax shall be computed on the actual
9 manufacturer invoice price before discounts and deals and shall be paid by the
10 wholesaler, or by the retailer if he purchases directly from the
11 manufacturer."

12

13 SECTION 4. Arkansas Code 26-57-210 is amended to read as follows:

14 "26-57-210. Waiver of tax.

15 The ~~director~~ Director of the Department of Finance and Administration
16 has the authority to waive the tax on any tobacco products donated or given to
17 inmates of correctional institutions or patients of hospitals by any patriotic
18 or charitable organization or by the United States Government in the manner
19 prescribed by the director."

20

21 SECTION 5. Arkansas Code 26-57-211(b) through (d) are amended to read
22 as follows:

23 "(b)(1) On or before the fifteenth day of each month, every wholesaler
24 shall file a report for the previous months tax collections with the ~~director~~
25 Director of the Department of Finance and Administration.

26 (2) The report shall provide the information prescribed by the ~~director~~
27 Director of the Department of Finance and Administration.

28 (c)(1) When the report is filed, the wholesaler shall remit the full
29 amount of the tax due for the previous month to the ~~director~~ Director of the
30 Department of Finance and Administration.

31 ~~(2) No discount shall be allowed for an early or on-time remittance of~~
32 ~~the tax.~~

33 ~~(3)(2)~~ In the event the payment of any tax due becomes delinquent, the
34 taxpayer shall remit the full amount of the tax due plus penalty.

35 (d)(1) The ~~director~~ Director of the Department of Finance and
36 Administration may add a penalty of ten percent (10%) of the tax due to the

1 tax due for the failure to file a report or for the failure to remit the taxes
2 at the time required, or for both.

3 (2) In the event the ~~director~~ Director of the Department of Finance and
4 Administration determines there has been an attempt to evade the tax, a
5 penalty of not more than fifty percent (50%) of the tax due shall be added to
6 the tax due."

7

8 SECTION 6. Arkansas Code 26-57-212(a) through (d) are amended to read
9 as follows:

10 "(a) Every licensed wholesaler and warehouseman who handles, receives,
11 stores, sells, and disposes of tobacco products in any manner, ~~whose place of~~
12 ~~business is located~~ in this state, shall file a report with the ~~director~~
13 Director of the Department of Finance and Administration on or before the
14 *fifteenth day of each month.*

15 (b) The report shall include a statement of the tobacco products on hand
16 at the beginning of the preceding month, the receipts and disbursements of
17 tobacco products handled during the preceding month, and any other information
18 about the purchases and sales as may be prescribed by the ~~director~~ Director of
19 the Department of Finance and Administration.

20 (c) All taxes due for the preceding month shall be remitted to the
21 ~~director~~ Director of the Department of Finance and Administration at the time
22 the report is filed.

23 (d) Every wholesaler and warehouseman shall permit ~~the director~~ personnel
24 of the Department of Finance and Administration and auditors of the Tobacco
25 Control Board to enter into and to inspect his stock of tobacco products and
26 all books, invoices, and any documents and records relating to receipts and
27 disbursements of tobacco products. Auditors shall not release to the Tobacco
28 Control Board or to the public any information identifying customers of the
29 manufacturer, wholesaler, or warehouseman except when necessary to notify the
30 board of alleged violations of this subchapter. Provided, however, that the
31 Tobacco Control Board shall have no authority under this or any other act, to
32 require any manufacturer or other person to disclose any confidential,
33 competitive commercial information furnished by a manufacturer, without that
34 manufacturers written permission."

35

36 SECTION 7. Arkansas Code 26-57-212(f)(2) and (3) are amended to read as

1 follows:

2 "(2) Every nonresident tobacco product wholesaler shall, at the time of
3 shipping or delivering any cigars, cigarettes, cigarette papers, smoking
4 tobaccos, or other tobacco into the State of Arkansas, make a true duplicate
5 invoice of the transaction which shall show full and complete details of the
6 sale or delivery of those articles and shall retain the same, subject to use
7 and inspection by the ~~taxing authority~~ Department of Finance and
8 Administration and the Tobacco Control Board for a period of three (3) years.

9 (3) Nonresident tobacco wholesalers shall also keep a record of all
10 cigarettes, cigarette papers, cigars, smoking tobaccos, and other tobacco
11 products purchased by them for distribution within the State of Arkansas, and
12 all books, records, and memoranda pertaining to the purchase and sale of such
13 products shall be subject to inspection by the ~~taxing authority~~ Department of
14 Finance and Administration and the Tobacco Control Board."

15

16 SECTION 8. Arkansas Code 26-57-213(b) is amended to read as follows:

17 "(b) Copies of all invoices for the purchase or sale of any tobacco
18 products shall be retained by each manufacturer, wholesaler, vendor, and
19 retailer for a period of three (3) years, subject to examination by the
20 ~~director~~ Director of the Department of Finance and Administration and the
21 Director of the Tobacco Control Board or ~~his~~ their authorized ~~agent~~ agents
22 upon demand at any time during regular business hours; ~~except that only the~~
23 Director of the Department of Finance and Administration may examine the
24 invoices of manufacturers."

25

26 SECTION 9. Arkansas Code 26-57-214(a) and (b) are amended to read as
27 follows:

28 "(a) No person shall deal with, or otherwise do business in, tobacco
29 products in this state without having first registered with the ~~director~~
30 Director of the Tobacco Control Board and obtained a permit or license for
31 that purpose, except that a manufacturer need only to register in accordance
32 with Arkansas Code 26-57-215(1).

33 (b) All permits and licenses shall be issued by the ~~director~~ Director
34 of the Tobacco Control Board."

35

36 SECTION 10. Arkansas Code 26-57-215 is amended to read as follows:

1 "26-57-215. Permits and licenses - Types.

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

6 (1) Every manufacturer whose products are sold in this state shall
7 register with the ~~director~~ Director of Finance and Administration. A
8 manufacturer so registered is not licensed for purposes of this chapter.

9 (2) Every wholesaler of cigarettes who operates a place of business shall
10 secure a wholesale cigarette permit and every wholesaler of any other tobacco
11 products except cigarettes who operates a place of business shall secure a
12 wholesale tobacco permit. Any wholesaler doing business in both cigarettes and
13 other tobacco products shall secure both a wholesale cigarette permit and a
14 wholesale tobacco permit.

15 (3) Every salesman of any tobacco product in this state shall secure a
16 salesmans license. Application shall be made by the ~~manufacturer~~, wholesaler,
17 or general vendor who is the salesmans employer. A salesmans license is not
18 transferable to another employer and must be surrendered to the ~~director~~
19 Director of the Tobacco Control Board by the employer upon termination of the
20 salesmans employment.

21 (4)(A) Every retailer of cigarettes who operates a place of business
22 shall secure a retail cigarette permit and every retailer of any other tobacco
23 products, except cigarettes, who operates a place of business shall secure a
24 retail tobacco permit. Any retailer doing business in both cigarettes and
25 other tobacco products shall secure both a retail cigarette permit and a
26 retail tobacco permit.

27 (B) Retailers may secure temporary permits to operate at picnics,
28 fairs, carnivals, circuses, or any other temporary public gathering for
29 periods not to exceed ten (10) days for a fee of five dollars (\$5.00).

30 (5) Every person engaged in the business of selling, leasing, renting, or
31 otherwise disposing of or dealing with any tobacco product vending machine in
32 this state shall secure a dealers license.

33 (6)(A) Every general tobacco products vendor and every restricted tobacco
34 products vendor must obtain a proper license from the ~~director~~ Director of the
35 Tobacco Control Board. However, municipal corporations may license and tax the
36 privilege of doing business as a general or restricted vendor in cities where

1 such vendors maintain an established place of business, provided that the
2 machine license tax imposed may not exceed fifty percent (50%) of the amounts
3 levied on such vendors licenses under this subchapter. If a municipality, by
4 ordinance, licenses or taxes the privilege of doing business as a general or
5 restricted vendor in tobacco products, proof that such a license is in good
6 standing shall be a mandatory condition for the issuance of a state license
7 required under this section.

8 (B) In addition, every general or restricted tobacco products vendor
9 must obtain a permit stamp for each machine of any type placed in operation in
10 this state for the purpose of vending any tobacco products. This stamp shall
11 be affixed to the machine in a conspicuous location together with a decal or
12 card reciting the name, address, and license number of the vendor operating
13 the machine. No stamp will be issued for any machine upon which the state
14 gross receipts or state compensating tax has not been paid, and the ~~director~~
15 Director of the Department of Finance and Administration shall require proof
16 of payment before the initial issue of a stamp for any tobacco products
17 vending machine."
18

19 SECTION 11. Arkansas Code 26-57-216 is amended to read as follows:

20 "26-57-216. Permits and licenses - Number and location.

21 The ~~director~~ Tobacco Control Board is empowered to determine in ~~his~~ its
22 reasonable discretion, and in accordance with the provisions of this
23 subchapter, the number of licenses to be granted in the state, the locations
24 thereof, and the persons to whom they are to be granted."
25

26 SECTION 12. Arkansas Code 26-57-217 and 218 are repealed.

27 ~~"26-57-217. Permits and licenses - Residency requirement.~~

28 ~~—— (a)(1) No wholesale cigarette permit, wholesale tobacco permit, or~~
29 ~~general tobacco products vending permit shall be granted to any individual or~~
30 ~~person who is not a citizen and bona fide resident of the State of Arkansas~~
31 ~~and who has not been domiciled in the state continuously for at least one (1)~~
32 ~~year next preceding the date of application for permit.~~

33 ~~—— (2) No wholesale cigarette permit, wholesale tobacco permit, or general~~
34 ~~tobacco products vending permit shall be granted to any person who has a~~
35 ~~manager, director, officer, member, or principal stockholder who would be~~
36 ~~ineligible to obtain a permit under provisions of this subsection.~~

1 ~~— (b) Notwithstanding any provisions of this subchapter, any person who~~
2 ~~held a current valid wholesale cigarette permit or general tobacco products~~
3 ~~vending permit on February 25, 1983, and who on that date was actually engaged~~
4 ~~in selling cigarettes at wholesale in Arkansas shall continue to be eligible~~
5 ~~to be so licensed as a wholesaler or distributor of cigarettes and tobacco~~
6 ~~products for distribution in Arkansas, even though that person may not be a~~
7 ~~resident of Arkansas.~~

8 ~~— 26-57-218. Permits and licenses - Public hearings.~~

9 ~~— The Director of the Department of Finance and Administration is~~
10 ~~authorized, if he deems it necessary or if requested by the written petition~~
11 ~~of three (3) or more interested parties, to hold public hearings to receive~~
12 ~~testimony on the facts relevant to the issuance of any license or permit under~~
13 ~~this subchapter."~~

14

15 SECTION 13. Arkansas Code 26-57-219 is amended to read as follows:

16 "26-57-219. Permits and licenses - Annual privilege tax.

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

19	(1) Wholesale Cigarette Permit	\$ 50.00	<u>500.00</u>
20	(2) Wholesale Tobacco Permit	25.00	<u>500.00</u>
21	(3) General Tobacco Products Vending Permit (<u>vend</u> or).....	100.00	
22	(4) Restricted Tobacco Products Vending Permit (1-2 machines) .	50.00	
23	(5) (4) Tobacco Products Vending Machine License, per machine	10.00	
24	(6)(i) <u>Retail Cigarette Permit/Tobacco Permit</u>		
25	<u>for retailers whose weekly gross sales are</u>		
26	<u>less than \$5,000</u>	10.00	<u>20.00</u>
27	<u>(ii) Retail Cigarette/Tobacco Permit for</u>		
28	<u>retailers whose weekly gross sales are</u>		
29	<u>between \$5,000 and \$15,000</u>		<u>30.00</u>
30	<u>(iii) Retail Cigarette/Tobacco Permit for</u>		
31	<u>retailers whose weekly gross sales are in</u>		
32	<u>excess of \$15,000</u>		<u>50.00</u>
33	(7) Retail Tobacco Permit.....		1.00
34	(7) Salesmans License	10.00	<u>25.00</u>
35	(8) Dealers License		25.00
36	(9) Manufacturer s Representative Fee.....		<u>25.00</u>

1 (b) All permits and licenses issued hereunder shall expire on June 30
2 of the year following the effective date of issuance."

3

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

6 "26-57-221. Permits and licenses - Not transferable.

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

10 26-57-222. Permits and licenses - Duplicates.

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

15 26-57-223. Permits and licenses - Suspension or revocation.

16 (a) All permits and licenses issued under this subchapter may be
17 suspended or revoked by the ~~director~~ Director of the Tobacco Control Board for
18 any violation of this subchapter or the regulations pertaining thereto.

19 (b) The ~~director~~ Director of the Tobacco Control Board shall revoke for
20 one (1) year all licenses or permits to deal in tobacco products of any person
21 who is convicted of violating this subchapter or the regulations pertaining
22 thereto a second time."

23

24 SECTION 15. Arkansas Code 26-57-224(b) pertaining to tobacco vendor
25 surety bonds is amended to read as follows:

26 "(b) The bond shall be conditioned upon the faithful performance of the
27 duties and obligations imposed by this subchapter and the regulations
28 promulgated by the ~~director~~ Director of the Department of Finance and
29 Administration."

30

31 SECTION 16. Arkansas Code 26-57-224(d) pertaining to tobacco vendor
32 surety bonds is amended to read as follows:

33 "(d) This bond shall be executed by a solvent surety company authorized
34 to do business in this state or such other responsible surety approved by the
35 ~~director~~ Director of the Department of Finance and Administration."

36

1 SECTION 17. Arkansas Code 26-57-227 is amended to read as follows:

2 "26-57-227. Operation of vending machine without license a public
3 nuisance - Seizure, sale - Redemption.

4 (a) Any person who engages in the business of owning, operating, or
5 leasing any tobacco product vending machines without first obtaining the
6 license described in this subchapter is declared to be maintaining a public
7 nuisance.

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

11 (c) These machines may be redeemed prior to sale by the owner upon the
12 payment of all taxes due on the machine and all costs and expenses incurred in
13 enforcing this section if the offender pays all taxes and costs within ten
14 (10) days after seizure of the machines by the ~~director~~ Director of the
15 Tobacco Control Board."

16

17 SECTION 18. Arkansas Code 26-57-229(b) through (d) are amended to read
18 as follows:

19 "(b) Every wholesaler who maintains a business as a retailer shall keep
20 a record of his wholesale operations showing the amount of stamps purchased,
21 if any, and all purchases from whatever source, and all sales whether to
22 himself as retailer or to another. This record shall be subject to inspection
23 by the ~~director~~ Department of Finance and Administration and the Tobacco
24 Control Board.

25 (c) Records shall be kept on forms prescribed by the ~~director~~ Director
26 of the Department of Finance and Administration.

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

30

31 SECTION 19. Arkansas Code 26-57-230 through 238 are amended to read as
32 follows:

33 "26-57-230. Common carriers.

34 (a) Common carriers transporting tobacco products may be required by
35 the ~~director~~ Director of the Department of Finance and Administration or the
36 Tobacco Control Board to give a statement of all consignments of tobacco

1 products showing date, point of origin, point of delivery, and to whom
2 delivered.

3 (b) All common carriers shall permit their records relating to shipment
4 or receipt of tobacco products to be examined by the ~~director~~ Department of
5 Finance and Administration or the Tobacco Control Board.

6 (c) Any person who fails or refuses to give to the ~~director~~ Department of
7 Finance and Administration or the Tobacco Control Board the statement,
8 reports, or invoices required by this section or who refuses to permit the
9 ~~director~~ Department of Finance and Administration or the Tobacco Control Board
10 to examine his records is guilty of a ~~violation~~ Class C misdemeanor.

11 26-57-231. Failure to allow inspection unlawful.

12 Any person required to pay taxes under the provisions of this subchapter
13 who fails or refuses to permit the ~~director~~ Department of Finance and
14 Administration or the Tobacco Control Board to examine or inspect his taxable
15 stock of tobacco products, invoice books, papers, and memoranda considered
16 necessary to secure information directly relating to the enforcement of this
17 subchapter is guilty of a violation for the first and second offense and is
18 guilty of a Class C misdemeanor for each additional offense.

19 26-57-232. Wholesalers - Restrictions - Criminal violations.

20 (a) Wholesalers shall conduct their business subject to the following
21 restrictions:

22 (1) The wholesaler shall secure a permit from the ~~director~~ Director of
23 the Tobacco Control Board;

24 (2) Except as otherwise provided herein, the wholesaler may sell tobacco
25 products only to persons properly licensed under this subchapter;

26 ~~(3) They shall print or write their name and address on each carton or~~
27 ~~container containing more than twenty (20) cigarettes immediately after~~
28 ~~receiving them on their premises;~~

29 ~~(4)~~(3) They shall, before selling, delivering, or otherwise disposing of
30 cigarettes to retailers in this state, affix stamps of the proper
31 denominations to show that the tax has been paid. The stamp shall be affixed
32 in the manner prescribed by the ~~director~~ Director of the Department of Finance
33 and Administration;

34 ~~(5) They shall, before selling or delivering any cigarettes to retailers~~
35 ~~in this state, cancel the stamps affixed thereon by printing or writing on the~~
36 ~~stamp such figures, words, symbols, or characters as may be prescribed by the~~

1 ~~director;~~ and

2 ~~(6)~~(4)(A) They shall, with each sale of cigarettes, supply the retailer
3 with an invoice showing the quantity, kind, and price of cigarettes sold, and
4 shall supply the stamps required to show that the tax has been paid.

5 (B) They shall retain a copy of this information in their files for
6 three (3) years subject to the inspection by the ~~director~~ Department of
7 Finance and Administration and the Tobacco Control Board.

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

16 26-57-233. Salesmen - Restrictions - Violations.

17 *Every salesman who sells, offers for sale, takes orders, and solicits for sale*
18 *any tobacco products for immediate or future delivery to wholesalers of*
19 *tobacco products in this state may do so only under the following*
20 *restrictions:*

21 (1) The salesman shall secure a permit from the ~~director~~ Director of the
22 Tobacco Control Board;

23 (2) The salesman may sell to or take orders for tobacco products from
24 licensed wholesalers provided that the tobacco products are consigned or
25 delivered only to registered manufacturers or licensed wholesalers;

26 (3) The salesman may sell to or take orders for tobacco products from
27 licensed retailers provided that the tobacco products shall be delivered to
28 the retailer only by a licensed wholesaler ~~or licensed retailer located in~~
29 ~~this state;~~

30 (4)(A) The ~~salesman~~ wholesaler shall keep complete records of all sales
31 or orders taken for dealers in tobacco products in this state, copies of all
32 invoices, orders taken, and other instruments as evidence of sales or
33 disposition of tobacco products.

34 (B) He shall retain this information in a designated place within this
35 state for three (3) years subject to inspection by the ~~director;~~ and
36 Department of Finance and Administration and the Tobacco Control Board.

1 ~~(5) The salesman, on or before the tenth day of each month, shall furnish~~
2 ~~the director a statement of the location of his records, the names and~~
3 ~~addresses of all purchasers, the quantity and kind of tobacco products sold or~~
4 ~~orders taken, the date of the sale or orders taken or copies of the~~
5 ~~manufacturers or wholesalers invoices of sales in Arkansas for the preceding~~
6 ~~month, and any other information concerning his dealings in tobacco products~~
7 ~~as may be prescribed by the director.~~

8 ~~— (b) Any salesman for a manufacturer who fails or refuses to secure a~~
9 ~~permit or who fails or refuses to keep the records prescribed by the director~~
10 ~~or who fails or refuses to provide such information and reports as prescribed~~
11 ~~by the director is guilty of a violation.~~

12 26-57-234. Retailers and vendors - Restrictions - Violations.

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

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

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

21 ~~(3) They shall purchase, receive, or take into their possession only~~
22 ~~cigarettes which have written or printed on the carton or container the name~~
23 ~~and address of the wholesaler from whom received;~~

24 ~~(4)~~(3) They shall require from the wholesaler at the time of each
25 purchase or receipt of cigarettes an invoice showing the quantity, kind, and
26 price of the cigarettes and the stamps required to show that the tax has been
27 paid, and date of sale or delivery;

28 ~~(5)~~(4) The retailer shall keep records showing the description and date
29 of the receipt of each lot of tobacco products, from whom purchased, and when
30 received on the premises, or any other requirements prescribed by the ~~director~~
31 Director of the Department of Finance and Administration. These records shall
32 be subject to inspection by the ~~director~~ Department of Finance and
33 Administration and the Tobacco Control Board;

34 ~~(6)~~(5) The ~~director~~ Director of the Department of Finance and
35 Administration may require retailer reports covering receipts and sales of
36 tobacco products monthly or for any other period;

1 ~~(7)~~(6) The retailer shall permit the ~~director~~ Department of Finance and
2 Administration and the Tobacco Control Board or any peace officer acting under
3 ~~the direction of the director~~ their direction to inspect his stock of
4 merchandise and premises, including any room or building used in connection
5 with his business.

6 (b) Upon a retailers failure to comply with any part of this section,
7 the ~~director~~ Director of the Tobacco Control Board may revoke the retailers
8 permit.

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

15 26-57-235. Cigarette stamps generally.

16 (a) The purpose of the stamps is to provide a method for collecting the
17 tax imposed on cigarettes sold in this state.

18 (b) The ~~director~~ Director of the Department of Finance and Administration
19 shall prescribe the kind of stamps to be used in the administration of this
20 subchapter.

21 (c)(1) The ~~director~~ Director of the Department of Finance and
22 Administration shall prepare and maintain an adequate supply of cigarette
23 stamps.

24 (2) He shall require a printers certificate with each set of stamps
25 delivered.

26 (3) The cost of printing the stamps shall be paid from the appropriation
27 made for the administration of the Department of Finance and Administration.

28 26-57-236. Stamp deputies.

29 (a) The ~~director~~ Director of the Department of Finance and
30 Administration shall furnish stamps to licensed wholesalers directly or
31 through stamp deputies.

32 (b) The ~~director~~ Director of the Department of Finance and Administration
33 may appoint and commission stamp deputies, who shall be the owners or officers
34 of wholesalers, to handle the stamps and collect the tax on ~~cigarettes~~ tobacco
35 products before sales of ~~cigarettes~~ tobacco products are made to the
36 retailers.

1 (c) Stamp deputies are, within the scope of their authority, agents of
2 the ~~director~~ Director of the Department of Finance and Administration and
3 shall be accountable as such for any wrongful acts.

4 (d) Each stamp deputy shall furnish a bond in an amount and in the form
5 as prescribed by the ~~director~~ Director of the Department of Finance and
6 Administration.

7 ~~(e) A stamp deputys open account shall not exceed seventy-five percent~~
8 ~~(75%) of the total amount of the bond provided by the stamp deputy.~~

9 ~~(f)~~(e) Stamp deputies shall keep records of all stamp sales and tax
10 collections and shall make the reports prescribed by the ~~director~~ Director of
11 the Department of Finance and Administration.

12 ~~(g)~~(f) A commission shall be paid by the ~~director~~ Director of the
13 Department of Finance and Administration to stamp deputies for the sale of
14 stamps for cigarettes and the collection of cigarette taxes. The commission
15 *paid shall not be less than three and eight-tenths percent (3.8%) of the total*
16 *aggregate cigarette tax collected.*

17 ~~(h)~~(g) All deposits held by any bank for a stamp deputy which represent
18 the sales of stamps are trust funds and shall be held as a special deposit. In
19 the event of the failure or insolvency of the bank, the deposits shall be
20 classed and considered as preferred claims due the State of Arkansas.

21 26-57-237. Cigarette stamps - Sale or delivery.

22 (a) The ~~director~~ Director of the Department of Finance and
23 Administration or his stamp deputy may sell or deliver cigarette stamps only
24 to licensed wholesalers ~~and licensed retailers~~.

25 (b) No person shall have in his possession any cigarette stamps except
26 such as have been issued in the regular way in the manner provided for in this
27 subchapter.

28 (c)(1) Any cigarette or tobacco products wholesaler or any other person
29 required by law to affix cigarette tax stamps to cigarettes sold or offered
30 for sale in this state shall have the option to receive the stamps directly
31 from the Director of the Department of Finance and Administration or to
32 request that the stamps be shipped to the person in a manner to be selected by
33 the director.

34 (2) When the stamps are shipped to the wholesaler or other person, the
35 shipping and insurance cost shall be borne by the wholesaler. The wholesaler
36 or other person to whom the stamps are shipped shall be liable for payment of

1 the stamps only upon actual receipt thereof.

2 (3) The receipt of tax stamps by a cigarette or tobacco products
3 wholesaler or other person to whom the stamps are shipped shall be evidenced
4 by a written receipt signed by the person to whom the stamps are shipped or a
5 person designated by him.

6 (4) A wholesaler or other person who chooses a method of shipment other
7 than the method selected by the ~~director~~ Director of the Department of Finance
8 and Administration shall pay the director for the stamps prior to shipment.

9 26-57-238. Cigarette stamps - Refund on unsold, returned cigarettes.

10 Where cigarettes to which stamps have been affixed are unsold and are
11 returned, by the retailer or the wholesaler who paid tax on them, to the
12 wholesaler or manufacturer from whom they were originally purchased, refund of
13 the tax paid on such cigarettes may be made in the manner prescribed by the
14 ~~director~~ Director of the Department of Finance and Administration."

15

16 SECTION 20. Arkansas Code 26-57-242(c) is amended to read as follows:

17 "(c) Upon violation of this section by a wholesaler, the ~~director~~
18 Director of the Tobacco Control Board shall revoke the wholesalers permit."

19

20 SECTION 21. Arkansas Code 26-57-247(b) is amended to read as follows:

21 "(b) The ~~director~~ Director of the Tobacco Control Board ~~shall~~ may seize
22 and hold for disposition of the courts all tobacco products found in the
23 possession of any person dealing in, or a consumer of, tobacco products which
24 have not been handled according to this subchapter."

25

26 SECTION 22. Arkansas Code 26-57-249 through 252 are amended to read as
27 follows:

28 "26-57-249. Sale of products upon conviction - Procedure.

29 (a)(1) Upon conviction of any defendant charged with the violation of
30 this subchapter, the court shall issue an order to sell the tobacco products
31 confiscated by the ~~director~~ Director of the Tobacco Control Board, or any
32 state, county, or municipal officer in this state, which were possessed or
33 owned by the defendant and which have not been handled according to the
34 provisions of this subchapter.

35 (2) The proceeds of the sale of the confiscated tobacco products together
36 with all fines collected for the violations of this subchapter shall be paid

1 into the ~~county state~~ treasury of the county in which the defendant was
2 ~~convicted, for the use and benefit of the county school fund~~ as general
3 revenues.

4 (b) When tobacco products are sold by order of the court, the ~~director~~
5 Director of the Tobacco Control Board or the officer serving the court shall
6 deliver the tobacco products to an Arkansas licensed wholesaler who shall sell
7 the required stamps to the purchaser of the tobacco products.

8 (c) Every court of record in this state shall notify the ~~director~~
9 Director of the Tobacco Control Board of the disposition made of each case in
10 said court as to whether the defendant was convicted or acquitted.

11 26-57-250. Civil action to recover tax and penalties - Party defendants.

12 (a) Where the ~~director~~ Director of the Department of Finance and
13 Administration finds from investigation that the state has lost tax revenue
14 because of the evasion of any provision of this subchapter, he may bring suit
15 in the proper court to recover such tax and penalties.

16 (b) The action shall lie against the person evading the tax and against
17 any person who aided, abetted, or assisted in such evasion.

18 26-57-251. Civil and criminal actions brought in name of director -
19 Prosecution.

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

24 (b) ~~They~~ All criminal actions shall be brought and prosecuted by the
25 ~~Attorney General or the proper prosecuting attorney. However, the director~~
26 ~~may employ an attorney or other assistant.~~

27 26-57-252. No bond for costs required.

28 No bond for costs shall be required of the ~~director~~ Department of
29 Finance and Administration or the Tobacco Control Board in any court in this
30 state for the prosecution of any violation of this subchapter."

31

32 SECTION 23. Subchapter 2 of Chapter 57 of Title 26 of the Arkansas Code
33 is amended by inserting additional sections at the end thereof to read as
34 follows:

35 "26-57-255. Tobacco Control Board.

36 (a) There is hereby created the Arkansas Tobacco Control Board to

1 consist of eight (8) members appointed by the Governor. The board shall be
2 constituted as follows: Two (2) members of the board shall be tobacco
3 products wholesalers; two (2) members of the board shall be tobacco products
4 retailers; and four (4) members of the board shall be members of the public
5 at-large who are not public employees or officials, at least one of which
6 shall be an African American, and two (2) of whom shall be selected from a
7 list of at least eight (8) candidates supplied to the Governor by the Arkansas
8 Medical Society.

9 (b) The Governor shall designate which member of the Tobacco Control
10 Board shall act as chairman, and that person shall serve as chairman for two
11 (2) years unless his membership on the board ceases prior to the end of the
12 two (2) year period.

13 (c) All members of the Tobacco Control Board must be residents of the
14 State of Arkansas and confirmed by the Senate. The term of office shall be
15 five (5) years, except that the initial board shall be appointed to staggered
16 terms in that the term of one member expires each year.

17 (d) The Tobacco Control Board shall have responsibility for the
18 issuance, suspension, and revocation of the licenses and permits enumerated in
19 § 26-57-219. All action by the Tobacco Control Board shall be by a majority
20 vote of the full membership of the board, and the board may take no official
21 action in connection with any matter except at a regular or special meeting.
22 In the event of a tie vote of the members of the board, the Director of the
23 Tobacco Control Board may cast the deciding vote. The Tobacco Control Board
24 shall have no jurisdiction over manufacturers of tobacco products.

25 (e) No person who is not a citizen of the United States and who has
26 not resided in the State of Arkansas for at least two (2) consecutive years
27 immediately preceding the date of appointment may be appointed to the Tobacco
28 Control Board nor employed by the board.

29 (f) Each member of the Tobacco Control Board and the Director of the
30 Tobacco Control Board shall take and subscribe to an oath that he will support
31 and enforce the provisions of this act, the tobacco control laws of this
32 state, the Constitution of the State of Arkansas, and the Constitution of the
33 United States of America.

34 "26-57-256. Powers of the Board.

35 (a) The Tobacco Control Board shall:

36 (1) promulgate regulations for the proper enforcement and

1 implementation of the Arkansas Tobacco Products Tax Act, as amended, and the
2 Arkansas Unfair Cigarette Sales Act, as amended, subject to the restrictions
3 in § 26-57-212(d);

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

6 (3) prescribe forms of applications for permits and licenses
7 under this subchapter;

8 (4) cooperate with the Revenue Division, Department of Finance
9 and Administration in the enforcement of the tax laws affecting the sale of
10 tobacco products in this state;

11 (5) conduct public hearings where appropriate regarding any
12 permit and license authorized by this subchapter or violation of this
13 subchapter, the Arkansas Tobacco Products Tax Act, or the Arkansas Unfair
14 Cigarette Sales Act and take appropriate actions regarding issuance, refusal,
15 suspension or revocation of any permit and license enumerated in § 26-57-219.

16 In addition to any mandatory duties of the Tobacco Control Board under § 5-
17 27-227 to suspend, revoke, and not renew licenses and permits, the Tobacco
18 Control Board may suspend, revoke, or not renew any or all permits and
19 licenses issued by the board to any person or entity that violates § 5-27-227
20 or any other federal, state, or local statute, ordinance, rule or regulation
21 concerning the sale of tobacco products to minors. In that regard, the board
22 is authorized to examine or cause to be examined under oath any witness and
23 the books and records of any licensee; and

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

27 (b) The Tobacco Control Board shall have no authority in criminal
28 prosecutions or the assessment or collection of any taxes or penalties related
29 to the taxing of tobacco products..

30 26-57-257. Director of Tobacco Control Board.

31 (a) The Governor shall employ a person to serve as Director of the
32 Tobacco Control Board. The director shall serve at the pleasure of the
33 Governor.

34 (b) The Director of the Tobacco Control Board shall present all
35 evidence tending to prove violations of law or regulations at hearings held by
36 the board.

1 (c) The Director of the Tobacco Control Board may employ such other
2 personnel as he deems necessary, subject to approval of the board and as
3 authorized by the General Assembly.

4 (d) Any personnel employed by the Director of the Tobacco Control
5 Board shall serve at his pleasure.

6 (e) The Director of the Tobacco Control Board and the board each may
7 adopt, keep, and use a common seal. This seal shall be used for
8 authentication of the records, process, and proceedings of the director and
9 board respectively. Judicial notice shall be taken of each use of this seal
10 in all of the courts of the state.

11 (f) Any process, notice, or other paper which the Director of the
12 Tobacco Control Board may be authorized by law to issue shall be deemed
13 sufficient if signed by the director and authenticated by the seal of the
14 director.

15 (g) Any process, notice, or other paper which the board may be
16 authorized by law to issue shall be deemed sufficient if signed by the
17 chairman of the board and authenticated by the seal of the board.

18 (h) All acts, orders, proceedings, rules, regulations, entries,
19 minutes, and other records of the Director of the Tobacco Control Board and
20 all reports and documents filed with the director may be proved in any court
21 of this state by copy thereof, certified to by the director with the seal of
22 the director attached.

23 (i) All acts, orders, proceedings, rules, regulations, entries,
24 minutes, and other records of the Tobacco Control Board and all reports and
25 documents filed with the boards director may be proved in any court of this
26 state by copy thereof, certified to by the chairman of the board with the seal
27 of the board attached.

28 (j) The Director of the Tobacco Control Board shall maintain records
29 of all permits and licenses issued, suspended, denied, or revoked by the
30 board. The records shall be in such form as to provide ready information as
31 to the identity of the licensees including the names of major stockholders and
32 directors of corporations holding licenses or permits and the location of the
33 license or permitted premises.

34 (k) The Director of the Tobacco Control Board shall recognize the
35 Arkansas Department of Health, Bureau of Alcohol and Drug Abuse Prevention as
36 the agency responsible for ensuring full compliance with Section 1926(b) of

1 the Public Health Service Act and shall call upon administrative departments
2 of the state, county, and city governments, sheriffs, city police departments,
3 or other law enforcement officers for such information and assistance as the
4 director may deem necessary in the performance of the duties imposed upon him
5 by this act.

6 (1) The Director of the Tobacco Control Board may inspect or cause to
7 be inspected any premises where tobacco products are distributed, stored or
8 sold.

9 (m) In the conduct of any hearings, the Director of the Tobacco
10 Control Board may:

11 (1) examine or cause to be examined any person under oath and
12 examine or cause to be examined books and records of any licensee;

13 (2) hear testimony and take proof material to his information
14 and the discharge of his duties hereunder;

15 (3) administer or cause to be administered oaths;

16 (4) issue subpoenas to require the attendance of witnesses and
17 the production of books and records. Any circuit court may, by written order,
18 require the attendance of witnesses or the production of relevant books or
19 other records subpoenaed by the director and the court may compel obedience to
20 its order by proceedings for contempt.

21 (n) All hearings and appeals from any hearing shall be conducted in
22 accordance with the Arkansas Administrative Procedure Act.

23 (o) The Director of the Tobacco Control Board shall exercise other
24 powers, functions, and duties as are or may be imposed or conferred upon him
25 by law or the board;

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

32 (q) The power and duty to collect taxes imposed on tobacco and tobacco
33 products, is specifically exempted from the powers and duties granted or
34 assigned to the board or the department. However, a permit or license
35 holders failure to pay taxes or fees imposed on tobacco products or any
36 permit or license fees imposed by this subchapter, in a timely manner, is

1 grounds for the non-issuance, suspension, revocation, or non-renewal of any
2 permits or licenses issued by the board.

3 26-57-258. All permits, licenses, certifications, determinations,
4 regulations, and other actions of the Department of Finance and Administration
5 under this subchapter in effect on June 30, 1997, shall continue in full force
6 and effect until modified by the Tobacco Control Board."

7

8 SECTION 24. Arkansas Code 5-27-227(g) is amended to read as follows:

9 "(g) The person convicted of violating any provision of this section
10 whose permit or license to distribute or sell tobacco products is suspended or
11 revoked shall, upon conviction, surrender to the court all such permits or
12 licenses, and the court shall transmit those permits and licenses to the
13 Director of the Department of Finance and Administration and instruct the
14 Director of the ~~Department of Finance and Administration~~ Tobacco Control Board
15 to suspend or revoke, and not renew, the persons permit or license to
16 distribute or sell tobacco products, and not to issue any new permit or
17 license to that person for the period of time determined by the court in
18 accordance with this section."

19

20 SECTION 25. *It is anticipated that revenues generated from the*
21 *provisions of Arkansas Code Annotated §26-57-219 as amended herein will meet*
22 *or exceed sixty six thousand dollars (\$66,000) each fiscal year of the 1997-99*
23 *biennium. If the monies generated by Arkansas Code Annotated §26-57-219 do*
24 *not meet sixty six thousand dollars (\$66,000) each fiscal year any general*
25 *revenues utilized to support the Tobacco Control Board will expire on June 30,*
26 *1999.*

27

28 SECTION 26. NONPREEMPTION. This act and the rules, regulations and
29 other actions of the Tobacco Control Board shall not be construed or
30 interpreted so as to preempt or in any other manner qualify or limit the
31 enactment and enforcement of any federal, state, county, municipal or other
32 local regulation of the manufacture, sale, storage or distribution of tobacco
33 products that is more restrictive than this act or the rules and regulations
34 promulgated by the Tobacco Control Board. This act and the rules, regulations
35 and other actions of the Tobacco Control Board shall not be construed or
36 interpreted so as to preempt or otherwise limit any legal or equitable claims

1 or causes of action brought under the common law or any federal or state
2 statutes. Nothing in this act, nor any rule or regulation of the Tobacco
3 Control Board, shall be construed or interpreted so as to require any state,
4 county, municipal or other local authority to exhaust any administrative
5 remedies through the Tobacco Control Board including, but not limited to, the
6 right to seize and forward to the Tobacco Control Board the state license of
7 any vendor or retailer found to have illegally sold tobacco products to a
8 person under eighteen (18) years of age; provided the vendor or retailer shall
9 be given a hearing before the Tobacco Control Board within five (5) business
10 days of the seizure.

11

12 SECTION 27. All provisions of this act of a general and permanent
13 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
14 Code Revision Commission shall incorporate the same in the Code.

15

16 SECTION 28. If any provision of this act or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 act are declared to be severable.

21

22 SECTION 29. All laws and parts of laws in conflict with this act are
23 hereby repealed.

24

25 SECTION 30. EMERGENCY. It is hereby found and determined by the
26 General Assembly that the regulation of the manufacture, distribution, and
27 sale of tobacco products in this state should be transferred from the
28 Department of Finance and Administration to an independent agency; that this
29 act establishes the Arkansas Tobacco Control Board as such independent agency;
30 that the transfer of duties should occur at the beginning of the next fiscal
31 year; and that unless this emergency clause is adopted, the transfer will most
32 likely not occur until after the beginning of the next fiscal year.
33 Therefore, an emergency is hereby declared to exist, and this act being
34 immediately necessary for the preservation of the public peace, health, and
35 safety shall be in full force and effect from and after July 1, 1997.

36

/s/Rep. McKissack et al