

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.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 1140

4
5 By: Senator Faris
6
7

For An Act To Be Entitled

8
9 AN ACT TO REVISE TOBACCO LAWS; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12
13 AN ACT TO REVISE TOBACCO LAWS.
14
15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

18 SECTION 1. Arkansas Code § 26-57-202 is amended to read as follows:
19 26-57-202. Legislative findings and purpose.

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

22 (1) The Surgeon General of the United States has determined that
23 the smoking of cigarettes is detrimental to the health of the smoker;

24 (2) The Arkansas General Assembly had already recognized this
25 hazard many years ago when it enacted § 5-27-227 regulating the sale of
26 tobacco to minors, §§ 20-27-701 - 20-27-703 establishing a policy for public
27 smoking, and this subchapter to provide for close supervision and control of
28 the sale of cigarettes and other tobacco products;

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

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

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

34 (1) Provide for the close supervision and control of the
35 licensing of persons to sell cigarettes and other tobacco products in this
36 state in order to assure that cigarettes and other tobacco products



1 distributed in the state are fresh, not contaminated, and are properly taxed,
 2 stamped, stored, and distributed only to persons authorized to receive these
 3 products; and

4 (2) Impose licenses, fees, taxes, and restrictions on the
 5 privilege of dealing in or otherwise doing business in cigarettes or tobacco
 6 products in order to promote the public health and welfare of the citizens of
 7 this state and to protect the revenue collection procedures incorporated
 8 within this subchapter.

9
 10 SECTION 2. Arkansas Code § 26-57-203 is amended to read as follows:
 11 26-57-203. Definitions.

12 As used in this subchapter and Subchapters 8 and 11 of Chapter 57 of
 13 this title, unless the context otherwise requires:

14 (1) "Annual" or "annually" means the fiscal year from July 1
 15 through the next June 30;

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

19 (3) "Cigarette manufacturer" means any person who manufactures,
 20 fabricates, assembles, processes, or labels a finished cigarette;

21 (4) "Cigarette retailer" means any person, whether located
 22 within or outside of the state, who sells or distributes cigarettes to a
 23 consumer in the state;

24 (5)(A) "Cigarette wholesaler" means any individual or person,
 25 whether located within or outside of the state, other than a cigarette
 26 retailer, who sells or distributes cigarettes within or into the state.

27 (B) "Cigarette wholesaler" shall not include any person
 28 who holds a permit as a cigarette manufacturer, export warehouse proprietor,
 29 or importer under 26 U.S.C. § 5712, as it existed on January 1, 2005, if the
 30 person sells or distributes cigarettes in the state only to licensed
 31 cigarette wholesalers, or to another person with a permit under 26 U.S.C. §
 32 5712, as it existed on January 1, 2005, as an export warehouse proprietor or
 33 manufacturer;

34 ~~(3)~~(6) "Consumer" means a member of the public at large;

35 ~~(4)~~(7) "First sale" means the sale of cigarettes or tobacco
 36 products made by a manufacturer to licensed wholesalers and licensed vendors

1 or a licensed retailer only;

2 ~~(17)~~(8) "General ~~tobacco products~~ vendor" or "vendor" means any
3 person who operates a vending machine or who uses any other mechanical
4 device, from which cigarettes or other tobacco products are delivered to the
5 consumer by inserting coins therein, and who purchases tobacco products only
6 from licensed wholesalers. A general vendor is authorized to operate
7 licensed vending machines, on his or her own premises and on the premises of
8 others, as a principal business;

9 ~~(5)~~(9) "Gross sales" means the amount received for cigarettes or
10 tobacco products sold at retail, including both the federal and state taxes
11 of the cigarettes or tobacco products when purchased by a retailer;

12 (10) "Importer" means any person who imports into the United
13 States, either directly or indirectly, a finished cigarette for sale or
14 distribution;

15 ~~(6)~~(11)(A) "Licensed" means that the person has received a valid
16 and current license or permit from the Director of the Arkansas Tobacco
17 Control Board ~~and is otherwise qualified to do business in this state except~~
18 ~~that "licensed" does not mean that a person is registered as a manufacturer~~
19 under § 26-57-214 for each type of business engaged in.

20 (B) When the term "licensed" is used before a list of
21 entities, for example, "licensed manufacturer, importer, wholesaler, or
22 retailer", "licensed" shall apply to each entity in the list;

23 ~~(7)~~(12) "Manufacturer" means any person who ~~produces any tobacco~~
24 ~~product for sale and includes, but is not limited to, importers and~~
25 ~~distributors who deal in tobacco products as manufacturers and who are~~
26 ~~required under this subchapter to sell only to licensed wholesalers or~~
27 ~~licensed retailers located in Arkansas~~ is a cigarette manufacturer or a
28 tobacco product manufacturer;

29 ~~(9)~~(13) "Person" means any individual, retailer, wholesaler,
30 manufacturer, firm, association, company, partnership, limited liability
31 company, corporation, joint-stock company, club, agency, syndicate, the State
32 of Arkansas, county, municipal corporation, or other political subdivision of
33 this state, receiver, trustee, fiduciary, or trade association;

34 ~~(10)~~(14) "Place of business" means the place where orders are
35 taken or received or where cigarettes or tobacco products are sold;

36 ~~(8)~~(15) "Restricted ~~tobacco products~~ vendor" means a vendor who

1 is licensed to operate vending machines owned by him or her on his or her own
 2 premises, and ~~be~~ is otherwise subject to all other restrictions imposed on a
 3 general ~~tobacco products~~ vendor;

4 ~~(11)~~(16) "Retailer" means any person who ~~purchases tobacco~~
 5 ~~products from licensed wholesalers for the purpose of selling them over the~~
 6 ~~counter at retail to consumers~~ is a cigarette retailer or tobacco product
 7 retailer;

8 ~~(12)~~(17) "~~Salesman~~" "Salesperson" means the agent or employee of
 9 a wholesaler who sells or offers for sale to licensed wholesalers or licensed
 10 retailers or who solicits for sale, takes orders for, or in any manner
 11 promotes the sale or use of tobacco products;

12 ~~(14)~~(18) "Stamps" means the Arkansas cigarette stamps denoting
 13 the ~~tax~~ taxes on cigarettes imposed by this chapter. When affixed to a
 14 container of cigarettes, the stamps shall indicate that the tax has been
 15 paid;

16 ~~(13)~~(19) The pronouns "he", "his", "him", "she", "hers", "her",
 17 "they", or any other pronoun shall apply to any person covered by this
 18 subchapter;

19 (20) "Tobacco product manufacturer" means any person who
 20 produces any tobacco product;

21 (21) "Tobacco product retailer" means any person who purchases
 22 tobacco products from licensed wholesalers for the purpose of selling the
 23 tobacco products over the counter at retail to consumers in the state;

24 ~~(15)~~(22) "Tobacco products" means all products, other than
 25 cigarettes, containing tobacco for consumption and includes, but is not
 26 limited to, ~~cigarettes~~, cigars, little cigars, cigarillos, chewing tobacco,
 27 smokeless tobacco, snuff, smoking tobacco, including pipe tobacco, and
 28 smoking tobacco substitutes;

29 ~~(19)~~(23)(A) "~~Wholesaler~~ Tobacco product wholesaler" means any
 30 individual or person, not a manufacturer or owned or operated by a
 31 manufacturer, who does business within this state at or from an established
 32 place of business who purchases ~~unstamped or untaxed cigarettes or other~~
 33 tobacco products directly from manufacturers that distribute tobacco products
 34 in ~~Arkansas~~ the state, and who sells to properly licensed ~~cigarette~~ vendors
 35 or retailers.

36 (B) However, where an Arkansas city is separated from a

1 city in another state only by a state line, a resident of the Arkansas city
 2 who maintains a warehouse in the adjoining city in the adjoining state may
 3 qualify as a tobacco product wholesaler under this subchapter if that person
 4 is regularly engaged in the sale of tobacco products to licensed retailers
 5 within Arkansas as a first sale and is eligible to purchase ~~unstamped~~
 6 cigarettes untaxed tobacco products direct from manufacturers;

7 ~~(16)~~(24) "~~Tobacco products vending~~ Vending machine" means any
 8 coin-operated vending machine from which cigarettes or tobacco products are
 9 sold;

10 ~~(18)~~(25) "Warehouse" means a place where cigarettes or tobacco
 11 products are stored for another person and to or from which place the
 12 cigarettes or tobacco products are shipped or delivered upon order by the
 13 owner of the cigarettes or tobacco products to the warehouse; and

14 (26) "Wholesaler" means any individual or person who is a
 15 cigarette wholesaler or a tobacco product wholesaler.

16
 17 SECTION 3. Arkansas Code § 26-57-204 is amended to read as follows:

18 26-57-204. ~~Violations~~ Violation of subchapter.

19 Any person who violates any of the sections of this subchapter for
 20 which a specific penalty is not provided is guilty of a violation.

21
 22 SECTION 4. Arkansas Code § 26-57-206 is amended to read as follows:

23 26-57-206. Rules and regulations.

24 The Director of the Department of Finance and Administration and the
 25 Director of the Arkansas Tobacco Control Board are empowered to promulgate
 26 rules and regulations for the proper enforcement of their powers and duties
 27 as specifically prescribed by this subchapter, ~~except the Director of the~~
 28 ~~Tobacco Control Board shall have no authority to promulgate rules and~~
 29 ~~regulations regarding manufacturers.~~

30
 31 SECTION 5. Arkansas Code § 26-57-207 is amended to read as follows:

32 26-57-207. ~~Business of handling, receiving, etc., a privilege~~ Certain
 33 actions declared privilege.

34 The business of handling, receiving, possessing, storing, distributing,
 35 taking orders for, for soliciting orders of, selling, offering for sale, and
 36 dealing in, through sale, barter, or exchange, any cigarettes or ~~other~~

1 tobacco products is declared to be a privilege under the constitution and
2 laws of ~~State of Arkansas~~ this state.

3
4 SECTION 6. Arkansas Code § 26-57-208 is amended to read as follows:

5 26-57-208. Levy of tax - Rates of tax.

6 An excise or privilege tax is levied as follows:

7 (1)(A) The excise or privilege tax on cigarettes sold in or into
8 this state that shall be paid by cigarette wholesalers is ten dollars and
9 fifty cents (\$10.50) per one thousand (1,000) cigarettes sold.

10 ~~(A)(B)~~ Whenever there are two (2) adjoining cities each
11 with a population of five thousand (5,000) or more separated by a state line,
12 the tax on cigarettes sold in such adjoining Arkansas city shall be at the
13 rate imposed by law on cigarettes sold in the adjoining city outside of
14 Arkansas. The tax shall not exceed the tax upon cigarettes imposed by this
15 subchapter.

16 ~~(B)(C)~~ The tax on cigarettes sold in Arkansas within three
17 hundred feet (300') of a state line or in any Arkansas city which adjoins a
18 state line shall be at the rate imposed by law on cigarettes sold in the
19 adjoining state. The tax shall not exceed the tax upon cigarettes imposed by
20 this subchapter.

21 ~~(D)(C)(i)~~ The reduced border zone tax rates set forth in
22 subdivisions (1)(A) and (1)(B) of this section apply only to sales made at
23 retail by Arkansas border zone retailers to actual consumers of the
24 cigarettes;

25 ~~(ii) The sale of cigarettes by an Arkansas border~~
26 ~~zone retailer to any other retailer or wholesaler does not qualify for the~~
27 ~~reduced border zone tax rate. The full amount of Arkansas cigarette excise~~
28 ~~tax will be due on any cigarettes sold in such a manner.~~

29 (2)(A) The excise or privilege tax on tobacco products ~~other~~
30 ~~than cigarettes~~ on the sale by wholesalers to retailers, or by licensed
31 retailers to the Director of the Department of Finance and Administration
32 within the state is sixteen percent (16%) of the manufacturer's selling
33 price.

34 (B) The tax shall be computed on the actual manufacturer's
35 invoice price before discounts; and

36 (3)(A)(i) The taxes levied by this section shall be reported and

1 paid by wholesalers licensed pursuant to § 26-57-214 of the Arkansas Tobacco
2 Products Tax Act of 1977.

3 (ii) Provided, retailers shall be liable for
4 reporting and paying these taxes ~~when a retailer purchases on~~ tobacco
5 products purchased directly from a manufacturer or from a wholesaler or
6 distributor not licensed pursuant to § 26-57-214 of the Arkansas Tobacco
7 Products Tax Act of 1977.

8 (iii)(a) However, any consumer who brings into or
9 possesses within the state more than ten (10) packages of unstamped
10 cigarettes shall file with the Department of Finance and Administration a
11 report on or before the tenth day of the month following the receipt or
12 possession of the cigarettes on a form as the Director of the Department of
13 Finance and Administration shall prescribe.

14 (b) The report shall be accompanied by a
15 remittance for the full amount of the tax applicable to the cigarettes.

16 (c) By filing and paying the tax, the consumer
17 shall not be relieved of any criminal or civil penalties that may be
18 applicable to the consumer under this subchapter.

19 (B)(i) Any taxpayer who ~~fails~~ is required under this
20 section to report and remit the tobacco tax due on tobacco products ~~purchased~~
21 ~~from manufacturers, distributors, or wholesalers who are not licensed under §~~
22 ~~26-57-214 or cigarettes and fails to do so~~ shall be subject to the following
23 penalties:

24 (a) Five percent (5%) of the total tobacco tax
25 due for the first offense;

26 (b) Twenty percent (20%) of the total tobacco
27 tax due for the second offense; and

28 (c) Twenty-five percent (25%) of the total
29 tobacco tax due for the third and any subsequent offenses.

30 (ii) In addition, if the taxpayer is a retailer, the
31 taxpayer's retail cigarette ~~or~~ or tobacco permit shall be revoked for a period
32 of ninety (90) days for the third and any subsequent offenses.

33 (C) The provisions of this subsection shall not affect the
34 provisions of § 26-57-228.

35
36 SECTION 7. Arkansas Code § 26-57-209 is amended to read as follows:

1 26-57-209. Exemption from tax.

2 ~~Tobacco products sold to military departments of the United States or~~
 3 ~~the State of Arkansas for resale on military bases within this state, and~~
 4 ~~tobacco products sold and delivered to authorized purchasers outside this~~
 5 ~~state for resale, and to other wholesalers licensed under this subchapter,~~
 6 ~~are not subject to the taxes imposed by § 26-57-208.~~

7 The following products are not subject to the taxes imposed by §§ 26-
 8 57-208, 26-57-801 – 26-57-803, and 26-57-1102:

9 (1) Tobacco products and cigarettes sold to military departments
 10 of the United States or the State of Arkansas for resale on military bases
 11 within the state;

12 (2) Tobacco products and cigarettes sold and delivered to
 13 authorized purchasers outside the state for resale;

14 (3) Tobacco products sold and delivered to other wholesalers
 15 licensed under this subchapter; and

16 (4) Cigarettes exempt from tax under 26 U.S.C. § 5701, as in
 17 effect on January 1, 2005, and that are distributed in accordance with
 18 federal regulations as in effect on January 1, 2005.

19
 20 SECTION 8. Arkansas Code § 26-57-210 is amended to read as follows:

21 26-57-210. Waiver of tax authorized.

22 The Director of the Department of Finance and Administration has the
 23 authority to waive the tax on any tobacco products or cigarettes donated or
 24 given to inmates of correctional institutions or patients of hospitals by any
 25 patriotic or charitable organization or by the United States Government in
 26 the manner prescribed by the director.

27
 28 SECTION 9. Arkansas Code § 26-57-211 is amended to read as follows:

29 26-57-211. Wholesaler to pay taxes - Reports and remittance of tax.
 30 ~~{As amended by Acts 1997, No. 434.}~~

31 (a)(1) Every wholesaler, or tobacco product retailer who purchases
 32 tobacco products directly from the manufacturer, shall pay the taxes levied
 33 by this subchapter.

34 (2) Except as provided in §§ 26-57-235 -- 26-57-238 and 26-57-
 35 275, wholesalers shall report and remit taxes according to this section.

36 (b)(1) On or before the fifteenth day of each month, every wholesaler

1 shall file a report for the previous month's tax collections with the
2 director.

3 (2) The report shall provide the information prescribed by the
4 director.

5 (c) When the report is filed, the wholesaler shall remit therewith to
6 the director ninety-eight percent (98%) of the tax due under §§ 26-57-1101
7 and 26-57-1102, as amended by § 26-57-803. Failure of the stamps deputy to
8 remit such tax on or before the ~~twentieth~~ fifteenth day of each applicable
9 month shall cause the wholesaler to forfeit his claim to the discount, and he
10 must remit to the director one hundred percent (100%) of the amount of tax
11 due, plus any penalty or interest due.

12 (d)(1) The director may add a penalty of ten percent (10%) of the tax
13 due to the tax due for the failure to file a report or for the failure to
14 remit the taxes at the time required, or for both.

15 (2) In the event the director determines there has been an
16 attempt to evade the tax, a penalty of not more than fifty percent (50%) of
17 the tax due shall be added to the tax due.

18 (e)(1)(A) In computing the amount of tax due under the Arkansas
19 Tobacco Products Tax Act of 1977, § 26-57-201 et seq., and any act
20 supplemental thereto, a wholesaler may deduct the cost of cigarette tax
21 stamps and tobacco taxes lost through bad debts.

22 (B) Any deduction taken or refund paid attributable to bad
23 debts shall not include interest.

24 (C) Bad debts incurred for sales made prior to August 13,
25 1993 shall not be deducted.

26 (D) Bad debts must be deducted within three (3) years of
27 the date of the sale for which the debt was incurred.

28 (E) If a deduction is taken for a bad debt and the
29 taxpayer subsequently collects the debt in whole or in part, the tax on the
30 amount so collected shall be paid and reported on the next return due after
31 the collection.

32 (2)(A) For purposes of this section, "bad debt" means any
33 cigarette or tobacco tax which the wholesaler legally claims as a bad debt
34 deduction for federal income tax purposes.

35 (B) Bad debts include, but are not limited to, worthless
36 checks, worthless credit card payments, and uncollectible credit accounts.

1 (C) Bad debts do not include financing charges or
 2 interest, uncollectible amounts on property that remains in the possession of
 3 the taxpayer or vendor until the full purchase price is paid, expenses
 4 incurred in attempting to collect any debt, debts sold or assigned to third
 5 parties for collection, and repossessed property.

6
 7 SECTION 10. Arkansas Code § 26-57-211, as amended by Acts 1997, No.
 8 1337, is repealed.

9 ~~26-57-211. Wholesaler to pay taxes—Reports and remittance of tax.~~
 10 ~~{As amended by Acts 1997, No. 1337.}~~

11 ~~(a)(1)(A) The taxes levied by this subchapter shall be reported and~~
 12 ~~paid by wholesalers licensed pursuant to § 26-57-214 of the Arkansas Tobacco~~
 13 ~~Products Tax Act of 1977.~~

14 ~~(B) Provided, retailers shall be liable for reporting and~~
 15 ~~paying these taxes when a retailer purchases tobacco products directly from a~~
 16 ~~manufacturer or from a wholesaler or distributor not licensed pursuant to §~~
 17 ~~26-57-214 of the Arkansas Tobacco Products Tax Act of 1977.~~

18 ~~(2)(A) Any taxpayer who fails to report and remit the tobacco~~
 19 ~~tax due on tobacco products purchased from manufacturers, distributors, or~~
 20 ~~wholesalers who are not licensed under § 26-57-214 of the Arkansas Tobacco~~
 21 ~~Products Tax Act of 1977 shall be subject to the following penalties:~~

22 ~~(i) Five percent (5%) of the total tobacco tax due~~
 23 ~~for the first offense;~~

24 ~~(ii) Twenty percent (20%) of the total tobacco tax~~
 25 ~~due for the second offense; and~~

26 ~~(iii) Twenty five percent (25%) of the total tobacco~~
 27 ~~tax due for the third and any subsequent offenses.~~

28 ~~(B) In addition, the taxpayer's retail cigarette/tobacco~~
 29 ~~permit shall be revoked for a period of ninety (90) days for the third and~~
 30 ~~any subsequent offenses.~~

31 ~~(3) The provisions of this subsection shall not affect the~~
 32 ~~provisions of § 26-57-228.~~

33 ~~(b)(1) On or before the fifteenth day of each month, every wholesaler~~
 34 ~~shall file a report for the previous month's tax collections with the~~
 35 ~~Director of the Department of Finance and Administration.~~

36 ~~(2) The report shall provide the information prescribed by the~~

1 ~~Director of the Department of Finance and Administration.~~

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

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

7 ~~(d)(1) The Director of the Department of Finance and Administration~~
 8 ~~may add a penalty of ten percent (10%) of the tax due to the tax due for the~~
 9 ~~failure to file a report or for the failure to remit the taxes at the time~~
 10 ~~required, or for both.~~

11 ~~(2) In the event the Director of the Department of Finance and~~
 12 ~~Administration determines there has been an attempt to evade the tax, a~~
 13 ~~penalty of not more than fifty percent (50%) of the tax due shall be added to~~
 14 ~~the tax due.~~

15 ~~(e)(1)(A) In computing the amount of tax due under the Arkansas~~
 16 ~~Tobacco Products Tax Act of 1977, § 26-57-201 et seq., and any act~~
 17 ~~supplemental thereto, a wholesaler may deduct the cost of cigarette tax~~
 18 ~~stamps and tobacco taxes lost through bad debts.~~

19 ~~(B) Any deduction taken or refund paid attributable to bad~~
 20 ~~debts shall not include interest.~~

21 ~~(C) Bad debts incurred for sales made prior to August 13,~~
 22 ~~1993 shall not be deducted.~~

23 ~~(D) Bad debts must be deducted within three (3) years of~~
 24 ~~the date of the sale for which the debt was incurred.~~

25 ~~(E) If a deduction is taken for a bad debt and the~~
 26 ~~taxpayer subsequently collects the debt in whole or in part, the tax on the~~
 27 ~~amount so collected shall be paid and reported on the next return due after~~
 28 ~~the collection.~~

29 ~~(2)(A) For purposes of this section, "bad debt" means any~~
 30 ~~cigarette or tobacco tax which the wholesaler legally claims as a bad debt~~
 31 ~~deduction for federal income tax purposes.~~

32 ~~(B) Bad debts include, but are not limited to, worthless~~
 33 ~~checks, worthless credit card payments, and uncollectible credit accounts.~~

34 ~~(C) Bad debts do not include financing charges or~~
 35 ~~interest, uncollectible amounts on property that remains in the possession of~~
 36 ~~the taxpayer or vendor until the full purchase price is paid, expenses~~

1 ~~incurred in attempting to collect any debt, debts sold or assigned to third~~
 2 ~~parties for collection, and repossessed property.~~

3
 4 SECTION 11. Arkansas Code § 26-57-212 is amended to read as follows:

5 26-57-212. Wholesalers, retailers, warehousemen - Reports, payment of
 6 tax, and records.

7 (a)(1) Every licensed wholesaler, retailer, and warehouseman who
 8 handles, receives, stores, sells, and disposes of tobacco products or
 9 cigarettes in any manner in this state shall file a report with the Director
 10 of the Department of Finance and Administration on or before the fifteenth
 11 day of each month.

12 (2) ~~Retailers~~ Tobacco product retailers shall be liable for
 13 reporting and paying these taxes when a tobacco product retailer purchases
 14 tobacco products directly from a manufacturer or from a wholesaler or
 15 distributor not licensed pursuant to § 26-57-214 of the Arkansas Tobacco
 16 Products Tax Act of 1977.

17 (3)(A) Any taxpayer who fails to report and remit the tobacco
 18 tax due on tobacco products purchased from manufacturers, distributors, or
 19 wholesalers who are not licensed under § 26-57-214 of the Arkansas Tobacco
 20 Products Tax Act of 1977 shall be subject to the following penalties:

21 (i) Five percent (5%) of the total tobacco tax due
 22 for the first offense;

23 (ii) Twenty percent (20%) of the total tobacco tax
 24 due for the second offense; and

25 (iii) Twenty-five percent (25%) of the total tobacco
 26 tax due for the third and any subsequent offenses.

27 (B) In addition, the taxpayer's retail cigarette ~~or~~ or
 28 tobacco permit shall be revoked for a period of ninety (90) days for the
 29 third and any subsequent offenses.

30 (4) The provisions of this subsection shall not affect the
 31 provisions of § 26-57-228.

32 (b) The report by the tobacco product wholesaler, tobacco product
 33 retailer, and warehouseman shall include a statement of the tobacco products
 34 on hand at the beginning of the preceding month, the receipts and
 35 disbursements of tobacco products handled during the preceding month, and any
 36 other information about the purchases and sales of tobacco products as may be

1 prescribed by the Director of the Department of Finance and Administration.

2 (c) The report by the cigarette wholesaler and cigarette retailer
3 shall include the following information, itemized and submitted separately
4 for each place of business:

5 (1) The quantities of cigarettes by brand style on hand both at
6 the beginning and end of the reporting period;

7 (2) The quantities of cigarettes by brand style and transaction
8 that were received during the reporting period and the name and address of
9 each person from whom these products were received;

10 (3) The quantities of cigarettes by brand style and transaction
11 that were distributed and shipped into the state or between locations in the
12 state during the reporting period, other than sales directly to consumers,
13 and the name and address of each person to whom those products were
14 distributed or shipped;

15 (4) The quantities of cigarettes by brand style and transaction
16 that were distributed or shipped to any destination wherever located,
17 including the quantities reported under subdivision (c)(3) of this section
18 during the reporting period, other than sales directly to consumers, and the
19 name and address of each person to whom the products were distributed or
20 shipped;

21 (5) The quantities of cigarettes by brand style sold to
22 consumers and itemized to show sales to consumers in the state and sales to
23 consumer outside the state; and

24 (6) Any other information about the purchases and sales of
25 cigarettes as may be prescribed by the Director of the Department of Finance
26 and Administration.

27 (d) Importers and cigarette manufacturers shipping cigarettes into or
28 within the state shall file a monthly report with the Director of the
29 Department of Finance and Administration containing the information
30 concerning the cigarettes required by subdivision (c)(3) of this section.

31 (e)(1) Cigarette wholesaler reports submitted pursuant to subsection
32 (c) of this section shall be further itemized to disclose the quantity of
33 reported cigarettes bearing tax stamps of the state, stamps of another state,
34 and unstamped cigarettes.

35 (2) The reports shall also include, if applicable, the quantity
36 of state tax stamps that were not affixed to cigarettes and that were on hand

1 at the beginning and end of the reporting period, the quantity of state
2 stamps received during the reporting period, and the quantity of state tax
3 stamps received during the reporting period.

4 ~~(e)~~(f) All taxes on tobacco products due for the preceding month shall
5 be remitted to the Director of the Department of Finance and Administration
6 at the time the report is filed.

7 (g)(1) Public access to reports submitted by licensees or permit
8 holders shall be provided under the procedures established by the Freedom of
9 Information Act of 1967, § 25-19-101 et seq.

10 (2) However, in no case shall information about quantities of
11 cigarettes by brand be released to anyone other than those permitted access
12 to records and reports under this section.

13 ~~(d)~~(h)(1)(A) Every manufacturer, importer, wholesaler, retailer, and
14 warehouseman shall permit personnel of the Department of Finance and
15 Administration, the United States Secretary of the Treasury or his or her
16 designee, and auditors of the Arkansas Tobacco Control Board to enter into
17 and to inspect, without a warrant during normal business hours and with a
18 warrant during nonbusiness hours, his or her stock of tobacco products and
19 cigarettes, including any facility in which the tobacco products or
20 cigarettes may be found, and all books, invoices, reports, and any documents
21 and records relating to receipts and disbursements of tobacco products and
22 cigarettes.

23 (B) Auditors shall not release to the Tobacco Control
24 Board or to the public any information identifying customers of the
25 manufacturer, importer, wholesaler, retailer, or warehouseman except when
26 necessary to notify the board of alleged violations of this subchapter.

27 (C) The Department of Finance and Administration may share
28 the records and reports required under this section with other law
29 enforcement officials of the federal government and other states.

30 (D) Provided, however, that the Arkansas Tobacco Control
31 Board shall have no authority under this or any other act, to require any
32 manufacturer or other person to disclose any confidential, competitive
33 commercial information furnished by a manufacturer, without that
34 manufacturer's written permission.

35 (2) In any case when the Department of Finance and
36 Administration, the Arkansas Tobacco Control Board, or any law enforcement

1 officer of the state has knowledge or reasonable grounds to believe that any
 2 motor vehicle is transporting cigarettes in violation of this subchapter, the
 3 department, board, or law enforcement officer may stop the vehicle and
 4 inspect the vehicle for contraband cigarettes.

5 ~~(e)~~(i)(1)(A) Every ~~tobacco product~~ wholesaler, importer, cigarette
 6 manufacturer, and cigarette retailer doing business in this state, ~~and whose~~
 7 ~~main warehouse or headquarters is in another state,~~ shall keep a record of
 8 all purchases ~~and,~~ sales, transfers, consignments, receipts, and other
 9 transactions, other than retail transactions with a consumer, involving, when
 10 applicable, cigarettes, cigars, cigarette papers, snuff, and other tobacco
 11 products.

12 (B) For transactions involving cigarettes, the records
 13 shall further show the name and address of the other party to the transaction
 14 and the quantity by brand style of the cigarettes involved in the
 15 transaction.

16 (C) The record shall be maintained at a the facility
 17 ~~located in Arkansas~~ described in the relevant license in a manner that
 18 ensures permanency and accessibility for inspection at reasonable hours by
 19 authorized personnel of the Department of Finance and Administration or the
 20 Arkansas Tobacco Control Board.

21 (D) With the department's authorization, persons with
 22 multiple places of business may retain centralized records but shall transmit
 23 duplicates of the records to each place of business within twenty-four (24)
 24 hours upon the request of the Director of the Department of Finance and
 25 Administration or his or her designee.

26 (E) The record shall be accumulated on or before the
 27 twentieth day of each month covering the previous calendar month and shall be
 28 retained for a period of five (5) years from the date of the transaction.

29 (2) Any person who fails to maintain records required by this
 30 section shall be subject to a one-hundred-dollar fine for the first offense,
 31 a two-hundred-fifty-dollar fine for the second offense, a five-hundred-dollar
 32 fine and ninety (90) day suspension of license for the third offense, and a
 33 one-thousand-dollar fine and permanent revocation of license for the fourth
 34 and subsequent offenses.

35 ~~(f)~~(j)(1)(A) All purchases of cigars, cigarettes, cigarette papers,
 36 smoking tobacco, and other tobacco products for distribution within the State

1 of Arkansas by any nonresident ~~tobacco products~~ wholesaler shall be evidenced
 2 by a separate invoice from the seller correctly showing the date of purchase
 3 and the quantity of each of the articles purchased by the wholesaler for
 4 distribution within Arkansas.

5 (B) ~~Such stock~~ Stock purchased for distribution within
 6 Arkansas shall be kept in an entirely separate part of the building, separate
 7 and apart from stock purchased for sale or distribution in another state.

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

15 (3) Nonresident ~~tobacco~~ wholesalers shall also keep a record of
 16 all cigarettes, cigarette papers, cigars, smoking tobaccos, and other tobacco
 17 products purchased by them for distribution within the State of Arkansas, and
 18 all books, records, and memoranda pertaining to the purchase and sale of such
 19 products shall be subject to inspection by the Department of Finance and
 20 Administration and the Arkansas Tobacco Control Board.

21
 22 SECTION 12. Arkansas Code § 26-57-213 is amended to read as follows:

23 26-57-213. ~~Invoices~~ Tax indicated on invoice.

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

27 (b) Copies of all invoices for the purchase or sale of any cigarettes
 28 or tobacco products shall be retained by each manufacturer, importer,
 29 wholesaler, vendor, and retailer for a period of ~~three (3)~~ five (5) years,
 30 subject to examination by the Director of the Department of Finance and
 31 Administration and the Director of the Arkansas Tobacco Control Board or
 32 their authorized agents upon demand at any time during regular business
 33 hours~~+~~, except that only the Director of the Department of Finance and
 34 Administration may examine the invoices of manufacturers.

35
 36 SECTION 13. Arkansas Code § 26-57-214 is amended to read as follows:

1 26-57-214. Registration and licensing required prior to doing
2 business.

3 (a) No person shall deal with or otherwise do business in cigarettes
4 or tobacco products in this state as a manufacturer, wholesaler, salesperson,
5 retailer, vendor, or importer without having first registered with the
6 Director of the Arkansas Tobacco Control Board and obtained a permit or
7 license ~~for that purpose, except that a manufacturer need only to register in~~
8 ~~accordance with § 26-57-215(1)~~ for each activity engaged in by the person.

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

10 (c)(1) A manufacturer, wholesaler, retailer, importer, or general or
11 restricted vendor who intends to sell tobacco products or cigarettes at or
12 from one (1) or more places of business owned, rented, or leased by him or
13 her shall be required to obtain a separate license for each ~~such~~ place of
14 business.

15 (2)(A) If the applicant does not have a place of business in the
16 state, the license shall be issued for the applicant's principal place of
17 business wherever located.

18 (B) A licensee shall notify the Arkansas Tobacco Control
19 Board within thirty (30) days if the licensee changes the principal place of
20 business.

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

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

25 (e) Any person who pleads guilty or nolo contendere to or is found
26 guilty of buying, selling, or otherwise doing business in cigarettes or
27 tobacco products in this state without first obtaining the appropriate
28 license or permit is guilty of a Class C misdemeanor.

29
30 SECTION 14. Arkansas Code § 26-57-215 is amended to read as follows:

31 26-57-215. ~~Permits and licenses—Types~~ Permit and license categories.

32 Every person, ~~{except tobacco product manufacturers},~~ listed in this
33 section, before commencing business, or if already in business, before
34 continuing, shall pay an annual privilege fee and secure a permit or license
35 from the Director of the Arkansas Tobacco Control Board, in the following
36 manner:

1 (1) Every tobacco product manufacturer whose products are sold
2 in this state shall register with the Director of Finance and Administration.
3 A manufacturer so registered is not licensed for purposes of this chapter;

4 (2) Every cigarette manufacturer whose products are sold in or
5 into the state shall secure a cigarette manufacturer's permit;

6 ~~(2)(3)(A)~~ Every cigarette wholesaler ~~of cigarettes~~ who operates
7 a place of business shall secure a wholesale cigarette permit and every
8 wholesaler of ~~any other~~ tobacco products ~~except cigarettes~~ who operates a
9 place of business shall secure a wholesale tobacco permit.

10 (B) Any wholesaler doing business in both cigarettes and
11 ~~other~~ tobacco products shall secure both a wholesale cigarette permit and a
12 wholesale tobacco permit;

13 ~~(3)(4)(A)~~ Every salesman of any tobacco product in this state
14 shall secure a salesman's license.

15 (B) Application shall be made by the wholesaler, or
16 general vendor who is the salesman's employer.

17 (C) A salesman's license is not transferable to another
18 employer and must be surrendered to the Director of the Arkansas Tobacco
19 Control Board by the employer upon termination of the salesman's employment;

20 ~~(4)(5)(A)~~ Every cigarette retailer ~~of cigarettes~~ who operates a
21 place of business shall secure a retail cigarette permit and every retailer
22 of ~~any other~~ tobacco products, ~~except cigarettes~~, who operates a place of
23 business shall secure a retail tobacco permit.

24 (B) 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)(C)~~ Retailers may secure temporary permits to operate
28 at picnics, fairs, carnivals, circuses, or any other temporary public
29 gathering for periods not to exceed ten (10) days for a fee of five dollars
30 (\$5.00);

31 ~~(5)(6)~~ Every person engaged in the business of selling, leasing,
32 renting, or otherwise disposing of or dealing with any ~~tobacco product~~
33 vending machine in this state shall secure a dealer's license; and

34 ~~(6)(7)(A)(i)~~ Every general ~~tobacco products~~ vendor and every
35 restricted ~~tobacco products~~ vendor must obtain a proper license from the
36 Director of the Arkansas Tobacco Control Board.

1 (ii) However, municipal corporations may license and
2 tax the privilege of doing business as a general or restricted vendor in
3 cities where ~~such~~ the vendors maintain an established place of business,
4 provided that the machine license tax imposed may not exceed fifty percent
5 (50%) of the amounts levied on ~~such~~ the vendors' licenses under this
6 subchapter.

7 (iii) If a municipality, by ordinance, licenses or
8 taxes the privilege of doing business as a general or restricted vendor in
9 tobacco products, proof that ~~such a~~ the license is in good standing shall be
10 a mandatory condition for the issuance of a state license required under this
11 section.

12 (B)(i) In addition, every general or restricted ~~tobacco~~
13 ~~products~~ vendor must obtain a permit stamp for each machine of any type
14 placed in operation in this state for the purpose of vending any cigarettes
15 or tobacco products.

16 (ii) This stamp shall be affixed to the machine in a
17 conspicuous location together with a decal or card reciting the name,
18 address, and license number of the vendor operating the machine.

19 (iii) No stamp will be issued for any machine upon
20 which the state gross receipts or state compensating tax has not been paid,
21 and the Director of the Department of Finance and Administration shall
22 require proof of payment before the initial issue of a stamp for any
23 cigarette or tobacco products vending machine.

24
25 SECTION 15. Arkansas Code § 26-57-216 is amended to read as follows:

26 26-57-216. ~~Permits and licenses — Number and location~~ Granting of
27 licenses.

28 The Arkansas Tobacco Control Board is empowered to determine in its
29 reasonable discretion, and in accordance with the provisions of this
30 subchapter, the number of licenses to be granted in the state, the locations
31 thereof, and the persons to whom they are to be granted.

32
33 SECTION 16. Arkansas Code § 26-57-219 is amended to read as follows:

34 26-57-219. Permits and licenses - Annual privilege tax.

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

- 1 (1) Wholesale Cigarette Permit\$ 500.00
- 2 (2) Wholesale Tobacco Permit 500.00
- 3 (3) General ~~Tobacco Products~~ Vending Permit (vendor).. 100.00
- 4 (4) ~~Tobacco Products~~ Vending Machine License, per
- 5 machine 10.00
- 6 (5)(A) Retail Cigarette/Tobacco Permit for retailers whose
- 7 weekly gross sales are less than \$5,000 20.00
- 8 (B) Retail Cigarette/Tobacco Permit for retailers whose
- 9 weekly gross sales are between \$5,000 and \$15,000 30.00
- 10 (C) Retail Cigarette/Tobacco Permit for retailers whose
- 11 weekly gross sales are in excess of \$15,000 50.00
- 12 (6) Salesman’s License 25.00
- 13 (7) Dealer’s License 25.00
- 14 (8) Manufacturer’s Representative Fee 25.00
- 15 (9) Cigarette Manufacturer’s License..... 500.00

16 (b)(1) All permits and licenses issued ~~hereunder~~ under this section

17 shall expire on June 30 of the year following the effective date of issuance.

18 (2) Upon the failure to timely pay the annual privilege fee, a

19 late fee of twice the amount of any license or permit fee in question will be

20 owed in addition to the annual privilege fee.

21 (3) No permit or license shall be issued to the applicant until

22 the late fee and the license or permit fee has been paid.

23 (c) Beginning June 1, 2002, no permits or licenses issued under this

24 section shall be renewed for a permit or license holder who is delinquent

25 more than ninety (90) days on any privilege fee, tax relating to the sale or

26 dispensation of cigarettes or tobacco products, or any other state and local

27 tax due the Director of the Department of Finance and Administration.

28 (d) A person who is delinquent more than ninety (90) days on any state

29 or local tax may not renew or obtain a permit or license issued under this

30 section except upon certification that the permit or license holder has

31 entered into a repayment agreement with the Department of Finance and

32 Administration and that the person is current on the payments.

33

34 SECTION 17. Arkansas Code § 26-57-220 is amended to read as follows:

35 26-57-220. ~~Permits and licenses — Duration~~ Permit and license

36 expiration.

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

3
4 SECTION 18. Arkansas Code § 26-57-221 is amended to read as follows:

5 26-57-221. ~~Permits and licenses — Not transferable~~ Permit and license
6 transferability.

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
9 permission of the Director of the Arkansas Tobacco Control Board.

10
11 SECTION 19. Arkansas Code § 26-57-222 is amended to read as follows:

12 26-57-222. ~~Permits and licenses — Duplicates~~ Lost permit and license.

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

17
18 SECTION 20. Arkansas Code § 26-57-223 is amended to read as follows:

19 26-57-223. Permits and licenses - Suspension or revocation.

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

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

26 In addition to any civil or criminal penalty provided by law, the
27 Director of the Arkansas Tobacco Control Board:

28 (1) May suspend or revoke all permits and licenses issued under
29 this subchapter for any violation of this subchapter or the regulations
30 promulgated pursuant to this subchapter;

31 (2) May revoke for one (1) year all permits and licenses to deal
32 in tobacco products of any person who is convicted of violating this
33 subchapter or the regulations promulgated pursuant to this subchapter a
34 second time;

35 (3) Shall revoke all permits and licenses to deal in cigarettes
36 of any person who would be ineligible to obtain a new license or renew a

1 license by reason of any of the conditions for licensure provided in this
2 subchapter; and

3 (4) Shall suspend or revoke all licenses pursuant to
4 subdivisions (1) through (3) of this section in accordance with the
5 procedures provided in §§ 25-15-201 -- 25-15-217.

6
7 SECTION 21. Arkansas Code § 26-57-224 is amended to read as follows:
8 26-57-224. ~~Vendor's bond~~ Vendor to give bond.

9 (a) Every vendor before beginning operation or commencing business in
10 this state shall give bond to the State of Arkansas.

11 (b) The bond shall be conditioned upon the faithful performance of the
12 duties and obligations imposed by this subchapter and the regulations
13 promulgated by the Director of the Department of Finance and Administration.

14 (c) The bond required shall be established by the following table:

15	(1) Up to 30 machines	\$2,000.00
16	(2) 31 to 60 machines	3,000.00
17	(3) 61 to 90 machines	4,000.00
18	(4) 91 to 120 machines	5,000.00
19	(5) Over 120 machines	6,000.00

20 (d) This bond shall be executed by a solvent surety company authorized
21 to do business in this state or such other responsible surety approved by the
22 Director of the Department of Finance and Administration.

23
24 SECTION 22. Arkansas Code § 26-57-225 is amended to read as follows:
25 26-57-225. ~~Failure to secure permit unlawful~~ Violating permit

26 requirements.

27 Any person required to pay taxes under the provisions of this
28 subchapter who fails to secure a permit is guilty of a violation for the
29 first and second offense and is guilty of a Class C misdemeanor for each
30 additional offense.

31
32 SECTION 23. Arkansas Code § 26-57-226 is amended to read as follows:
33 26-57-226. ~~Sale, delivery~~ Unlicensed sale, etc., ~~without license~~

34 ~~Penalty.~~

35 Any person within the jurisdiction of this state who is not licensed to
36 sell, deliver, or cause to be delivered cigarettes or tobacco products to

1 consumers, or any person who sells, takes orders from, delivers, or causes to
 2 be delivered immediately or in the future any cigarettes or tobacco products
 3 to consumers, is guilty of a Class C misdemeanor for the first offense and a
 4 Class B misdemeanor for each additional offense.

5
 6 SECTION 24. Arkansas Code § 26-57-227 is amended to read as follows:

7 26-57-227. Operation of vending ~~machine~~ machines without a license a
 8 ~~public nuisance—Seizure and sale—Redemption.~~

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

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

16 (c) These machines may be redeemed prior to sale by the owner upon the
 17 payment of all taxes due on the machine and all costs and expenses incurred
 18 in enforcing this section if the offender pays all taxes and costs within ten
 19 (10) days after seizure of the machines by the Director of the Arkansas
 20 Tobacco Control Board.

21
 22 SECTION 25. Arkansas Code § 26-57-228 is amended to read as follows:

23 26-57-228. ~~Purchases from unregistered, unlicensed dealers unlawful~~
 24 Unlawful purchasing.

25 (a) It is unlawful for any retailer of cigarettes or tobacco products
 26 to purchase these products from any person other than a registered
 27 manufacturer, licensed wholesaler, or other licensed retailer.

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

31
 32 SECTION 26. Arkansas Code § 26-57-229 is amended to read as follows:

33 26-57-229. Licensee as wholesaler and retailer.

34 (a)(1) A person who is licensed as a wholesaler and as a retailer
 35 shall maintain wholesale and retail stocks in separate buildings.

36 (2) However, this subsection shall not apply if stamps denoting

1 payment of the tax on the wholesale stocks and the retail stocks of
2 cigarettes are properly affixed.

3 (b)(1) Every cigarette wholesaler who maintains a business as a
4 cigarette retailer shall keep a record of his or her wholesale operations
5 showing the amount of stamps purchased, if any, and all purchases from
6 whatever source, and all sales whether to himself or herself as retailer or
7 to another.

8 (2) This record shall be subject to inspection by the Department
9 of Finance and Administration and the Arkansas Tobacco Control Board.

10 (c) Records shall be kept on forms prescribed by the Director of the
11 Department of Finance and Administration.

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

16
17 SECTION 27. Arkansas Code § 26-57-230 is amended to read as follows:

18 26-57-230. ~~Common~~ Statements and records of common carriers.

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

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

28 (c) Any person who fails or refuses to give to the Department of
29 Finance and Administration or the Arkansas Tobacco Control Board the
30 statement, reports, or invoices required by this section or who refuses to
31 permit the Department of Finance and Administration or the Arkansas Tobacco
32 Control Board to examine his or her records is guilty of a Class C
33 misdemeanor.

34
35 SECTION 28. Arkansas Code § 26-57-231 is amended to read as follows:

36 26-57-231. Failure to allow inspection unlawful.

1 Any person required to pay taxes under the provisions of this
 2 subchapter who fails or refuses to permit the Department of Finance and
 3 Administration, the United States Secretary of the Treasury or his or her
 4 designee, or the Arkansas Tobacco Control Board to examine or inspect his or
 5 her taxable stock of cigarettes or tobacco products, invoice books, papers,
 6 and memoranda considered necessary to secure information directly relating to
 7 the enforcement of this subchapter is guilty of a violation for the first and
 8 second offense and is guilty of a Class C misdemeanor for each additional
 9 offense.

10
 11 SECTION 29. Arkansas Code § 26-57-232 is amended to read as follows:

12 ~~26-57-232. Wholesalers—Restrictions—Criminal violations~~
 13 Wholesalers' restrictions.

14 (a) Wholesalers shall conduct their business subject to the following
 15 restrictions:

16 (1) The wholesaler shall secure a permit from the Director of
 17 the Arkansas Tobacco Control Board;

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

21 (3) The cigarette wholesaler may buy cigarettes only from
 22 licensed importers, cigarette manufacturers, and cigarette wholesalers, and
 23 may sell cigarettes only to licensed cigarette retailers and cigarette
 24 wholesalers;

25 ~~(3)(4)(A) They Cigarette wholesalers~~ shall, before selling,
 26 delivering, or otherwise disposing of cigarettes to retailers in this state,
 27 affix stamps of the proper denominations to show that the tax has been paid.

28 (B) The stamp shall be affixed in the manner prescribed by
 29 the Director of the Department of Finance and Administration; and

30 ~~(4)(5)(A) They Cigarette wholesalers~~ shall, with each sale of
 31 cigarettes, supply the retailer with an invoice showing the quantity, kind,
 32 and price of cigarettes sold, and shall supply the stamps required to show
 33 that the tax has been paid.

34 (B) They Cigarette wholesalers shall retain a copy of this
 35 information in their files for ~~three (3) years~~ five (5) years subject to the
 36 inspection by the Department of Finance and Administration, the United States

1 Secretary of the Treasury or his or her designee, and the Arkansas Tobacco
2 Control Board.

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

11
12 SECTION 30. Arkansas Code § 26-57-233 is amended to read as follows:

13 26-57-233. ~~Salesmen—Restrictions—Violations~~ Salespersons'
14 restrictions.

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

19 (1) The ~~salesman~~ salesperson shall secure a permit from the
20 Director of the Arkansas Tobacco Control Board;

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

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

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

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

1
2 SECTION 31. Arkansas Code § 26-57-234 is amended to read as follows:

3 26-57-234. ~~Retailers and vendors—Restrictions—Violations~~ Retailer
4 and vendor restrictions.

5 (a) ~~Retailers~~ Cigarette and tobacco product retailers and vendors
6 shall conduct their businesses subject to the following restrictions:

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

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

14 (3) They shall require from the wholesaler at the time of each
15 purchase or receipt of cigarettes an invoice showing the quantity, kind, and
16 price of the cigarettes and the stamps required to show that the tax has been
17 paid, and date of sale or delivery;

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

22 (B) These records shall be subject to inspection by the
23 Department of Finance and Administration and the Arkansas Tobacco Control
24 Board;

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

28 (6) The retailer shall permit the Department of Finance and
29 Administration and the Arkansas Tobacco Control Board or any peace officer
30 acting under their direction to inspect his or her stock of merchandise and
31 premises, including any room or building used in connection with his or her
32 business.

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

36 (c) Any retailer or vendor who fails or refuses to retain in his or

1 her files invoices of cigarette and tobacco products and stamps, or who fails
 2 or refuses to furnish the statements and information or make the reports
 3 concerning receipts and sales of cigarettes and tobacco products as required
 4 by this subchapter or prescribed by the Director of the Department of Finance
 5 and Administration, or who violates any of the requirements of this section,
 6 is guilty of a violation.

7
 8 SECTION 32. Arkansas Code § 26-57-235 is amended to read as follows:
 9 26-57-235. Cigarette stamps generally.

10 (a) The purpose of the stamps is to provide a method for collecting
 11 the tax imposed on cigarettes sold in or into this state.

12 (b) The Director of the Department of Finance and Administration shall
 13 prescribe the kind of stamps to be used in the administration of this
 14 subchapter.

15 (c)(1) The Director of the Department of Finance and Administration
 16 shall prepare and maintain an adequate supply of cigarette stamps.

17 (2) ~~He~~ The director shall require a printer's certificate with
 18 each set of stamps delivered.

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

22 (4)(A) All stamps prescribed by the director for affixation to
 23 cigarette packages shall be designed and furnished in such a fashion as to
 24 permit identification of the person that affixed the stamp to the particular
 25 package of cigarettes ~~by means of a number or other mark on the stamp.~~

26 (B) Each roll of stamps, or group of sheets, shall have a
 27 separate serial number, which shall be legible at the point of sale.

28 (C) The Department of Finance and Administration shall
 29 keep records of which cigarette wholesaler purchases each roll or group of
 30 sheets identified by serial number.

31 (D) If the department permits cigarette wholesalers to
 32 purchase partial rolls or sheets, in no case may stamps bearing the same
 33 serial number be sold to more than one (1) cigarette wholesaler.

34 (E) The remainder of the roll or sheet, if any, shall
 35 either be retained for later purchases by the same cigarette wholesaler or
 36 destroyed.

1 (F) The department shall maintain for not less than three
2 (3) years information identifying the person that affixed the tax stamp to
3 each package of cigarettes, which information shall not be confidential or
4 exempt from disclosure to the public.

5 (5) Only licensed cigarette wholesalers may purchase or obtain
6 cigarette stamps. Cigarette wholesalers shall not sell or provide the stamps
7 to any other cigarette wholesaler or person.

8
9 SECTION 33. Arkansas Code § 26-57-236, as amended by Acts 1997, No.
10 434, is repealed.

11 ~~26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]~~

12 ~~(a) The director shall furnish stamps to licensed wholesalers directly~~
13 ~~or through stamp deputies.~~

14 ~~(b) The director may appoint and commission stamp deputies, who shall~~
15 ~~be the owners or officers of wholesalers, to handle the stamps and collect~~
16 ~~the tax on cigarettes before sales of cigarettes are made to the retailers.~~

17 ~~(c) Stamp deputies are, within the scope of their authority, agents of~~
18 ~~the director and shall be accountable as such for any wrongful acts.~~

19 ~~(d) Each stamp deputy shall furnish a bond in an amount and in the~~
20 ~~form as prescribed by the director.~~

21 ~~(e) A stamp deputy's open account shall not exceed seventy five~~
22 ~~percent (75%) of the total amount of the bond provided by the stamp deputy.~~

23 ~~(f) Stamp deputies shall keep records of all stamp sales and tax~~
24 ~~collections and shall make the reports prescribed by the director.~~

25 ~~(g) A commission shall be paid by the director to stamp deputies for~~
26 ~~the sales and collection of cigarette tax stamps and for affixing the tax~~
27 ~~stamps to each package of cigarettes. The commission shall not be less than~~
28 ~~three and eight tenths percent (3.8%) of the total aggregate cigarette tax~~
29 ~~collected.~~

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

34
35 SECTION 34. Arkansas Code § 26-57-236 is amended to read as follows:

36 26-57-236. Stamp deputies. [As amended by Acts 1997, No. 1337.]

1 (a) The Director of the Department of Finance and Administration shall
 2 furnish stamps to licensed cigarette wholesalers directly or through stamp
 3 deputies.

4 ~~The Director of the Department of Finance and Administration~~
 5 director may appoint and commission stamp deputies, who shall be the owners
 6 or officers of cigarette wholesalers, to handle the stamps and collect the
 7 tax on ~~tobacco products~~ cigarettes before sales of ~~tobacco products~~
 8 cigarettes are made to the retailers.

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

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

15 (e) A stamp deputy's open account shall not exceed seventy-five
 16 percent (75%) of the total amount of the bond provided by the stamp deputy.

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

20 ~~(f)-(g)(1)~~ A commission shall be paid by the ~~Director of the Department~~
 21 ~~of Finance and Administration~~ director to stamp deputies for the sale of
 22 stamps for cigarettes and the collection of cigarette taxes.

23 (2) The commission paid shall not be less than three and eight-
 24 tenths percent (3.8%) of the total aggregate cigarette tax collected.

25 ~~(g)-(h)(1)~~ All deposits held by any bank for a stamp deputy which
 26 represent the sales of stamps are trust funds and shall be held as a special
 27 deposit.

28 (2) In the event of the failure or insolvency of the bank, the
 29 deposits shall be classed and considered as preferred claims due the State of
 30 Arkansas.

31
 32 SECTION 35. Arkansas Code § 26-57-237 is amended to read as follows:

33 26-57-237. ~~Cigarette stamps — Sale or delivery~~ Sale of cigarette
 34 stamps.

35 (a) The Director of the Department of Finance and Administration or
 36 his or her stamp deputy may sell or deliver cigarette stamps only to licensed

1 cigarette wholesalers.

2 (b) No person shall have in his or her possession any cigarette stamps
3 except ~~such~~ as have been issued in the regular way in the manner provided for
4 in this subchapter.

5 (c)(1) Any cigarette ~~or tobacco products~~ wholesaler ~~or any other~~
6 ~~person required by law to affix cigarette tax stamps to cigarettes sold or~~
7 ~~offered for sale in this state~~ shall have the option to receive the stamps
8 directly from the Director of the Department of Finance and Administration or
9 to request that the stamps be shipped to the person in a manner to be
10 selected by the director.

11 (2) When the stamps are shipped to the cigarette wholesaler ~~or~~
12 ~~other person~~, the shipping and insurance cost shall be borne by the cigarette
13 wholesaler. The cigarette wholesaler ~~or other person to whom the stamps are~~
14 ~~shipped~~ shall be liable for payment of the stamps only upon actual receipt
15 thereof.

16 (3) The receipt of tax stamps by a cigarette or tobacco products
17 wholesaler ~~or other person to whom the stamps are shipped~~ shall be evidenced
18 by a written receipt signed by the person to whom the stamps are shipped or a
19 person designated by him or her.

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

24 (5)(A) An importer or cigarette manufacturer may sell or
25 distribute cigarettes to a person located or doing business within the state
26 only if the person is a licensed importer or cigarette wholesaler.

27 (B) An importer may obtain cigarettes only from a licensed
28 cigarette manufacturer.

29 (C) A cigarette wholesaler may sell or distribute
30 cigarettes to a person located or doing business within the state only if the
31 person is a licensed cigarette wholesaler or cigarette retailer.

32 (D) A cigarette wholesaler may obtain cigarettes only from
33 a licensed importer, cigarette manufacturer, or cigarette wholesaler.

34 (E) A cigarette retailer may obtain cigarettes only from a
35 licensed cigarette wholesaler.

36 (6) Any person who is doing business as both a cigarette

1 wholesaler and a cigarette retailer shall maintain separate areas for stamped
 2 and unstamped product.

3 (7)(A) A cigarette retailer shall report to the Director of the
 4 Department of Finance and Administration each sale or distribution of more
 5 than one thousand (1,000) cigarettes to any person in any single transaction.

6 (B) The report shall include:

7 (i) The name, address, destination with street
 8 address, vehicle license number, driver's license number, signature of the
 9 person receiving the cigarettes, and the name of the purchaser;

10 (ii) A declaration of the specific purpose of the
 11 receipt, whether personal use, resale, or delivery to another; and

12 (iii) A declaration of the name and address of the
 13 recipient's principal in all cases when the recipient is acting as agent.

14 (8) A cigarette retailer shall not knowingly sell more than one
 15 thousand (1,000) cigarettes to any person in any series of transactions in
 16 any two-day period without filing a report as required by subdivision (c)(7)
 17 of this section.

18
 19 SECTION 36. Arkansas Code § 26-57-238 is amended to read as follows:

20 26-57-238. Cigarette stamps—Refund on unsold, returned cigarettes
 21 Unsold and returned cigarettes.

22 Where cigarettes to which stamps have been affixed are unsold and are
 23 returned, by the ~~retailer or the~~ cigarette wholesaler who paid tax on them,
 24 to the importer, cigarette wholesaler, or cigarette manufacturer from whom
 25 they were originally purchased, refund of the tax paid on ~~such~~ the cigarettes
 26 may be made in the manner prescribed by the Director of the Department of
 27 Finance and Administration.

28
 29 SECTION 37. Arkansas Code § 26-57-239 is amended to read as follows:

30 26-57-239. Consumer to require stamps affixed in proper manner Stamps
 31 required by consumer.

32 Every consumer shall require, when he or she purchases, receives, takes
 33 into his or her possession, or has delivered upon his or her premises
 34 cigarettes in packages, cartons, or other containers, that the proper stamps
 35 be affixed in the manner required by this subchapter to show that the tax has
 36 been paid ~~thereon~~.

1
2 SECTION 38. Arkansas Code § 26-57-240 is amended to read as follows:

3 26-57-240. ~~Counterfeiting of stamps unlawful — Penalty~~ Forged or
4 counterfeit stamps.

5 Any person who falsely and fraudulently makes, forges, or counterfeits
6 any stamps prescribed for use in the administration of this subchapter or who
7 knowingly and willfully has in his or her possession or who knowingly or
8 willfully utters, publishes, passes, or tenders as true any false, altered,
9 forged, previously used, or counterfeit stamps prescribed for such use is
10 guilty of a felony and upon conviction shall be punished as is provided by §
11 5-1-106(c).

12
13 SECTION 39. Arkansas Code § 26-57-241 is amended to read as follows:

14 26-57-241. ~~Reuse of containers unlawful — Penalty~~ Refilling containers
15 prohibited.

16 Any person who reuses or refills with cigarettes any box, package, or
17 container from which tax paid tobacco products have been removed is guilty of
18 a Class D felony ~~and upon conviction shall be punished as is provided by § 5-~~
19 ~~1-106(e).~~

20
21 SECTION 40. Arkansas Code § 26-57-242 is amended to read as follows:

22 26-57-242. Wholesaler - Transporting cigarettes with stamps affixed
23 outside state for reentry.

24 (a) Every cigarette wholesaler ~~of tobacco products~~ doing business at
25 or from an established place of business located within this state and
26 authorized to purchase untaxed ~~tobacco products~~ cigarettes on an open account
27 directly from manufacturers who have general distribution of ~~tobacco products~~
28 cigarettes in Arkansas, and who sell to licensed retailers, ~~are~~ is prohibited
29 from transporting cigarettes to which stamps have been affixed outside the
30 boundaries of the State of Arkansas for warehousing or reentry into this
31 state, or both, for either sale or resale.

32 ~~(b) The prohibition contained in this section does not apply to any~~
33 ~~wholesaler of tobacco products who was actually engaged in and had~~
34 ~~established distribution practice of transporting cigarettes upon which the~~
35 ~~Arkansas stamp had been affixed outside the boundaries of the State of~~
36 ~~Arkansas for warehousing or reentry into the State of Arkansas, or both, for~~

1 ~~sale or resale on or before January 1, 1972.~~

2 ~~(e)(b)~~ Upon violation of this section by a cigarette wholesaler, the
3 Director of the Arkansas Tobacco Control Board shall revoke the wholesaler's
4 permit.

5
6 SECTION 41. Arkansas Code § 26-57-243 is amended to read as follows:

7 26-57-243. Unstamped and untaxed products - ~~Personal possession~~
8 Possession limits.

9 (a) The possession limit of cigarettes and tobacco products by any
10 person, upon his or her person or in his or her personal luggage for his or
11 her personal use, not taxed or stamped in accordance with the provisions of
12 this subchapter, is as follows:

13 (1)(A) One (1) carton of ten (10) packages plus one (1) package
14 of twenty (20) cigarettes.

15 (B) A person purchasing cigarettes from a United States
16 military base or installation may have in his or her possession three (3)
17 cartons of ten (10) packages;

18 (2) One (1) box of fifty (50) cigars, small cigars, or
19 cigarillos; or

20 (3) Three pounds (3 lbs.) of smoking tobacco.

21 (b)(1) Any person who brings into or possesses within the state more
22 than one (1) carton of ten (10) packages plus one (1) package of twenty (20)
23 unstamped cigarettes shall file with the Department of Finance and
24 Administration a report on or before the tenth day of the month following the
25 receipt or possession of the cigarettes in a form as the department shall
26 prescribe.

27 (2) The report shall be accompanied by a remittance for the full
28 amount of the tax applicable to the cigarettes, including §§ 26-57-208, 26-
29 57-801 - 803, and 26-57-1102.

30 (3) By filing and paying the tax, the person shall not be
31 relieved of any criminal or civil penalties that may be applicable to the
32 consumer under this subchapter.

33 (c) Except as provided in subsections (a) and (b) of this section, and
34 in § 26-57-277, no person, other than a licensed importer or cigarette
35 manufacturer, or a licensed cigarette wholesaler that receives unstamped
36 cigarette packages directly from a licensed importer or cigarette

1 manufacturer and holds the cigarettes in accordance with § 26-57-276 shall
 2 hold an unstamped cigarette package.

3
 4 SECTION 42. Arkansas Code § 26-57-244 is amended to read as follows:

5 26-57-244. Possession of untaxed, unstamped products —~~Notice and~~
 6 ~~prima facie evidence.~~

7 (a) It is unlawful for any person to receive or have in his or her
 8 possession for sale, consumption, or any other purpose, any untaxed ~~or~~
 9 ~~unstamped~~ cigarettes or tobacco products upon which the tax prescribed by
 10 this subchapter has not been paid.

11 ~~(b) The absence of the stamps from any container of cigarettes is~~
 12 ~~notice to all persons that the tax has not been paid and is prima facie~~
 13 ~~evidence of the nonpayment of the tax.~~

14 ~~(e)(b)~~ The provisions of this section shall not apply to wholesalers
 15 and common carriers.

16
 17 SECTION 43. Arkansas Code § 26-57-245 is amended to read as follows:

18 26-57-245. Unstamped products or products with unpaid taxes -
 19 Purchase, sale, receipt, etc., a criminal offense.

20 Except as otherwise authorized by this subchapter, any person who
 21 purchases, sells, offers for sale, receives, possesses, or transports upon
 22 his or her person, on his or her premises, or in his or her vehicle any
 23 cigarettes which do not have affixed thereon the stamps required by this
 24 subchapter, or any other tobacco products upon which the taxes imposed by
 25 this subchapter have not been paid, is guilty of a criminal offense which is:

26 (1) A Class C felony if the tax value of the total amount of
 27 cigarettes or tobacco products is equal to or exceeds one hundred dollars
 28 (\$100); or

29 (2) A Class A misdemeanor if the tax value of the total amount
 30 of cigarettes or tobacco products is less than one hundred dollars (\$100).

31
 32 SECTION 44. Arkansas Code § 26-57-246 is amended to read as follows:

33 26-57-246. ~~Possession of improperly handled products as prima~~ Prima
 34 facie evasion evidence.

35 The possession of cigarettes or tobacco products which have not been
 36 handled according to this subchapter by any person shall be prima facie

1 evidence that that person intended to evade the tax thereon in order to cheat
2 and defraud the State of Arkansas.

3
4 SECTION 45. Arkansas Code § 26-57-247 is amended to read as follows:

5 26-57-247. Seizure ~~and disposition of improperly handled products of~~
6 unstamped cigarettes.

7 (a) Any cigarettes to which stamps have not been affixed as provided
8 in this subchapter are subject to seizure and shall be held as evidence for
9 prosecution, after which the cigarettes shall be destroyed.

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

14
15 SECTION 46. Arkansas Code § 26-57-248 is amended to read as follows:

16 26-57-248. Possession or sale of products with unpaid taxes -
17 ~~Supplemental fines — Liquidated damages~~.

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

23 (1) a A fine of twenty-five dollars (\$25.00) for each package of
24 cigarettes, little cigars, and cigarillos up to twenty (20) packages, ~~and;~~

25 (2) a A fine of fifty dollars (\$50.00) for each package in
26 excess of twenty (20) packages, so held, sold, or offered for sale ~~and;~~

27 (3) a A fine of fifty dollars (\$50.00) for each box of cigars;
28 and

29 (4) ~~twenty-five~~ Twenty-five dollars (\$25.00) for each unit of
30 other tobacco products so held, sold, or offered for sale.

31 (b) The penalty shall be held to be in the nature of liquidated
32 damages and may be collected by civil action.

33
34 SECTION 47. Arkansas Code § 26-57-249 is amended to read as follows:

35 26-57-249. ~~Sale~~ Destruction of products upon conviction — ~~Procedure~~.

36 (a) Upon conviction of any defendant charged with the violation of

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

6 (b) Every court of record in this state shall notify the director of
 7 the disposition made of each case in the court as to whether the defendant
 8 was convicted or acquitted.

9
 10 SECTION 48. Arkansas Code § 26-57-250 is amended to read as follows:

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

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

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

19
 20 SECTION 49. Arkansas Code § 26-57-251 is amended to read as follows:

21 26-57-251. Civil and criminal actions brought in name of director —
 22 ~~Prosecution.~~

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

27 (b) All criminal actions shall be brought and prosecuted by the proper
 28 prosecuting attorney.

29
 30 SECTION 50. Arkansas Code § 26-57-253 is repealed.

31 ~~26-57-253. Criminal actions — Appeals. [Effective until January 1,~~
 32 ~~2005.]~~

33 ~~(a) In all prosecutions in the municipal, police, and justice courts~~
 34 ~~or other courts of this state, the State of Arkansas shall have the same~~
 35 ~~right of appeal to the circuit courts of this state and upon the same terms~~
 36 ~~as the defendant now has under the law in misdemeanor cases.~~

1 ~~(b) When appealed, the cases shall be tried de novo by the circuit~~
 2 ~~court.~~

3
 4 SECTION 51. Arkansas Code § 26-57-254 is amended to read as follows:

5 26-57-254. ~~Health inspections~~ Inspection by Department of Health.

6 In order to assure that the citizens of this state receive only
 7 cigarettes and tobacco products which are fresh and not contaminated, the
 8 Director of the Department of Health is authorized under this subchapter to
 9 make reasonable inspection of any cigarettes and tobacco products in places
 10 of storage or distribution authorized under this subchapter and may require
 11 any ~~such~~ cigarettes or tobacco products found to be contaminated or not fresh
 12 be removed from stock and be returned to the proper wholesaler or
 13 manufacturer for disposal according to law.

14
 15 SECTION 52. Arkansas Code § 26-57-255 is amended to read as follows:

16 26-57-255. Arkansas Tobacco Control Board.

17 (a)(1) There is hereby created the Arkansas Tobacco Control Board to
 18 consist of eight (8) members appointed by the Governor.

19 (2) The board shall be constituted as follows:

20 (A) Two (2) members of the board shall be ~~tobacco products~~
 21 wholesalers;

22 (B) ~~two~~ Two (2) members of the board shall be ~~tobacco~~
 23 ~~products~~ retailers; and

24 (C) ~~four~~ Four (4) members of the board shall be members of
 25 the public at large who are not public employees or officials, at least one
 26 (1) of which shall be an African American, and two (2) of whom shall be
 27 selected from a list of at least eight (8) candidates supplied to the
 28 Governor by the Arkansas Medical Society.

29 (b) The Governor shall designate which member of the Tobacco Control
 30 Board shall act as ~~chairman~~ chair, and that person shall serve as ~~chairman~~
 31 chair for two (2) years unless his or her membership on the board ceases
 32 prior to the end of the two-year period.

33 (c)(1) All members of the Arkansas Tobacco Control Board must be
 34 residents of the State of Arkansas and confirmed by the Senate.

35 (2) The term of office shall be five (5) years, except that the
 36 initial board shall be appointed to staggered terms in that the term of one

1 (1) member expires each year.

2 (d)(1) The Arkansas Tobacco Control Board shall have responsibility
3 for the issuance, suspension, and revocation of the licenses and permits
4 enumerated in § 26-57-219.

5 (2) All action by the Arkansas Tobacco Control Board shall be by
6 a majority vote of the full membership of the board, and the board may take
7 no official action in connection with any matter except at a regular or
8 special meeting.

9 (3) In the event of a tie vote of the members of the board, the
10 Director of the Arkansas Tobacco Control Board may cast the deciding vote.

11 (4) The Arkansas Tobacco Control Board shall have no
12 jurisdiction over manufacturers of tobacco products.

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

17 (f) Each member of the Arkansas Tobacco Control Board and the Director
18 of the Arkansas Tobacco Control Board shall take and subscribe to an oath
19 that he or she will support and enforce the provisions of this subchapter,
20 the tobacco control laws of this state, the Constitution of the State of
21 Arkansas, and the Constitution of the United States of America.

22

23 SECTION 53. Arkansas Code § 26-57-256 is amended to read as follows:
24 26-57-256. Powers of the Arkansas Tobacco Control Board.

25 (a) The Arkansas Tobacco Control Board shall:

26 (1) Promulgate regulations for the proper enforcement and
27 implementation of the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201
28 et seq., and the Unfair Cigarette Sales Act, § 4-75-701 et seq., subject to
29 the restrictions in § 26-57-212~~(d)~~(g);

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

32 (3) Prescribe forms of applications for permits and licenses
33 under this subchapter;

34 (4)(A) Cooperate with the Revenue Division of the Department of
35 Finance and Administration in the enforcement of the tax laws affecting the
36 sale of cigarettes and tobacco products in this state and in the enforcement

1 of all other state and local tax laws.

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

6 (i) Federal tax identification numbers issued by the
7 Internal Revenue Service;

8 (ii) Social Security numbers; and

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

11 (C)(i) Beginning January 1, 2002, and each year
12 thereafter, the board shall provide a list of all applicants for the issuance
13 or renewal of all ~~tobacco~~ permits and licenses to the Director of the
14 Department of Finance and Administration.

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

18 (5)(A) Conduct public hearings, where appropriate, regarding any
19 permit and license authorized by this subchapter or in violation of this
20 subchapter, the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et
21 seq., the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227, or any
22 other federal, state, or local statute, ordinance, rule, or regulation
23 concerning the sale of cigarettes and tobacco products to minors or the rules
24 and regulations promulgated by the board.

25 (B) After a notice and hearing held in accordance with the
26 Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board
27 finds a violation of this subchapter, the Arkansas Tobacco Products Tax Act
28 of 1977, § 26-57-201 et seq., the Unfair Cigarette Sales Act, § 4-75-701 et
29 seq., or the rules and regulations promulgated by the board, the board may
30 suspend, revoke, or not renew any or all permits and licenses issued by the
31 board to any person or entity and, in addition, the board may levy a civil
32 penalty in an amount not to exceed one thousand dollars (\$1,000) for each
33 violation against any person or entity found to be in violation.

34 (C) Each day of the violation shall be deemed a separate
35 violation.

36 (D) ~~In that regard, the~~ The board is authorized to examine

1 or cause to be examined under oath any witness and the books and records of
2 any licensee, person, or entity; and

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

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

12 (c)(1) The board shall have no authority in criminal prosecutions or
13 the assessment or collection of any taxes or penalties related to the taxing
14 of cigarettes and tobacco products.

15 (2) However, the board shall refuse to issue, suspend, revoke,
16 or refuse renewal of any permit or license issued by the board for the
17 failure to pay taxes or fees imposed on cigarettes and tobacco products or
18 any permit or license fees imposed by this subchapter or any other state and
19 local taxes.

20
21 SECTION 54. Arkansas Code § 26-57-257 is amended to read as follows:
22 26-57-257. Director of Arkansas Tobacco Control Board.

23 (a)(1) The Governor shall employ a person to serve as Director of the
24 Arkansas Tobacco Control Board.

25 (2) The director shall serve at the pleasure of the Governor.

26 (b) The director shall present all evidence tending to prove
27 violations of law or regulations at hearings held by the board.

28 (c) The director may employ such other personnel as he or she deems
29 necessary, subject to the approval of the board and as authorized by the
30 General Assembly.

31 (d) Any personnel employed by the director shall serve at his or her
32 pleasure.

33 (e)(1) The director and the board each may adopt, keep, and use a
34 common seal.

35 (2) This seal shall be used for authentication of the records,
36 process, and proceedings of the director and the board, respectively.

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

3 (f) Any process, notice, or other paper which the director may be
4 authorized by law to issue shall be deemed sufficient if signed by the
5 director and authenticated by the seal of the director.

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

9 (h) All acts, orders, proceedings, rules, regulations, entries,
10 minutes, and other records of the director and all reports and documents
11 filed with the director may be proved in any court of this state by a copy
12 thereof certified to by the director with the seal of the director attached.

13 (i) All acts, orders, proceedings, rules, regulations, entries,
14 minutes, and other records of the board and all reports and documents filed
15 with the board's director may be proved in any court of this state by a copy
16 thereof certified to by the ~~chairman~~ chair of the board with the seal of the
17 board attached.

18 (j)(1) The director shall maintain records of all permits and licenses
19 issued, suspended, denied, or revoked by the board.

20 (2) The records shall be in ~~such~~ a form as to provide ready
21 information as to the identity of the licensees, including the names of major
22 stockholders and directors of corporations holding licenses or permits and
23 the location of the licensed or permitted premises.

24 (k) The director shall recognize the Department of Health, Bureau of
25 Alcohol and Drug Abuse Prevention as the agency responsible for ensuring full
26 compliance with Section 1926(b) of the Public Health Service Act as it
27 existed on January 1, 2005, and shall call upon administrative departments of
28 the state, county, and city governments, sheriffs, city police departments,
29 or other law enforcement officers for ~~such~~ information and assistance as the
30 director ~~may deem~~ finds necessary in the performance of the duties imposed
31 upon him or her by this subchapter.

32 (l) The director may inspect or cause to be inspected any premises
33 where cigarettes or tobacco products are distributed, stored, or sold.

34 (m) In the conduct of any hearings, the director may:

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

1 (2) Hear testimony and take proof material to his or her
2 information and the discharge of his or her duties hereunder;

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

4 (4) Issue subpoenas to require the attendance of witnesses and
5 the production of books and records. Any circuit court, by written order,
6 may require the attendance of witnesses or the production of relevant books
7 or other records subpoenaed by the director, and the court may compel
8 obedience to its order by proceedings for contempt.

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

12 (o) The director shall exercise other powers, functions, and duties as
13 are or may be imposed or conferred upon him or her by law or the board.

14 (p) The director shall have other powers, functions, and duties
15 pertaining to the issuance, suspension, and revocation of the permits and
16 licenses enumerated in § 26-57-219 which previously were granted to the
17 Director of the Department of Finance and Administration, except the
18 authority to regulate tobacco product manufacturers, and which are
19 specifically delegated to the department by this subchapter.

20 (q)(1)(A) The power and duty to collect taxes imposed on cigarettes
21 ~~tobacco~~ and tobacco products is specifically exempted from the powers and
22 duties granted or assigned to the board or the department.

23 (B) However, a permit or license holder's failure to pay
24 taxes or fees imposed on cigarettes or tobacco products or any permit or
25 license fees imposed by this subchapter in a timely manner is grounds for the
26 nonissuance, suspension, revocation, or nonrenewal of any permits or licenses
27 issued by the board.

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

32 (2)(A) Beginning April 1, 2002, and each year thereafter, the
33 Director of the Department of Finance and Administration shall report to the
34 board any and all permit and license holders who are more than ninety (90)
35 days delinquent on any state and local taxes.

36 (B) The board shall not issue or renew any permit or

1 license issued under this section for any permit or license holder more than
2 ninety (90) days delinquent on any privilege fee or tax addressed in this
3 section unless the permittee or licensee demonstrates that he or she is
4 current under a valid repayment agreement for the delinquent tax.

5 (3)(A) Beginning May 15, 2002, and each year thereafter, the
6 board shall send notices to all permit and license holders more than ninety
7 (90) days delinquent on any state and local taxes.

8 (B) This notice shall inform the permit or license holder
9 that he or she is delinquent on payment of state and local taxes due the
10 Director of the Department of Finance and Administration and that the permit
11 or license holder will be unable to obtain or renew the permit or license
12 that he or she holds until such time as the person becomes current in the
13 payment of the tax due the Director of the Department of Finance and
14 Administration or until such time as the person enters into a valid repayment
15 agreement with the Department of Finance and Administration for the payment
16 of the delinquent tax.

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

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

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

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

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

36 (5) For a fifth violation within a forty-eight-month period, the

1 license or permit enumerated in § 26-57-219 may be revoked.

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

5 (2) The notice must contain the date and time of the alleged
6 violation.

7 (3) It shall also include either the name of the person making
8 such alleged sale or information reasonably necessary to determine the
9 location in the store that allegedly made such sale.

10 (4) ~~Such~~ The information should include, where appropriate, but
11 not be limited to, the cash register number, physical location of the sale in
12 the store, and, if possible, the lane or aisle number.

13 (t) Notwithstanding the provisions of subsection (r) of this section,
14 the board shall consider the following factors when reviewing a possible
15 violation:

16 (1) The business has adopted and enforced a written policy
17 against selling cigarettes or tobacco products to persons under the age of
18 eighteen (18) years;

19 (2) The business has informed its employees of the applicable
20 laws regarding the sale of cigarettes and tobacco products to persons under
21 the age of eighteen (18) years;

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

24 (4) The business has established and imposed disciplinary
25 sanctions for noncompliance; and

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

29 (u) Notwithstanding the provisions of subsection (r) of this section,
30 no penalty for a violation of § 5-27-227 shall be imposed upon a retailer or
31 agent or employee of such retailer who can establish an affirmative defense
32 that, prior to the date of the violation, the retailer or agent or employee
33 of the retailer furnishing the tobacco in any form or cigarette papers
34 reasonably relied upon proof of age which identified the person receiving the
35 tobacco in any form or cigarette papers as being eighteen (18) years of age
36 or older.

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

5 (w) Any cigarettes or tobacco products found in the possession of a
6 person under eighteen (18) years of age may be confiscated.

7 (x) An employee of a permit holder who violates § 5-27-227 shall be
8 subject to a civil penalty not to exceed one hundred dollars (\$100) per
9 violation.

10 (y)(1) In the case of a corporation or business with more than one (1)
11 retail location, to determine the number of accumulated violations for
12 purposes of the penalty schedule set forth in subsection (i) of this section,
13 violations of § 5-27-227(a) by one (1) retail location shall not be
14 accumulated against other retail locations of that same corporation or
15 business.

16 (2) In the case of a retail location, for purposes of the
17 penalty schedule set forth in subsection (i) of this section, violations
18 accumulated and assessed against a prior owner of the retail location shall
19 not be accumulated against a new owner of the same retail location.

20 (z) If a penalty has been assessed pursuant to this section against
21 any person, business, or corporation for a single specific violation of § 5-
22 27-227(a) or (b), the person, business, or corporation shall not be
23 prosecuted under § 5-27-227(a) or (b) for a violation based on the same facts
24 or specific incident for which the penalty was assessed under this section.

25 (aa) If any person, business, or corporation has been prosecuted for a
26 single specific violation of § 5-27-227(a) or (b), the person, business, or
27 corporation shall not be assessed a civil penalty under this section based on
28 the same facts or specific incident upon which the prosecution under § 5-27-
29 227(a) or (b) was based.

30 (bb) The enforcement of state laws relating to the prohibition of the
31 barter or sale of tobacco in any form or cigarette papers to minors by
32 multiple state agencies shall be coordinated to avoid duplicative inspections
33 of the same retailer by multiple state agencies.

34 (cc) All penalties collected pursuant to the authority of this section
35 shall be deposited in the State Treasury.

36

1 SECTION 55. Arkansas Code § 26-57-258 is amended to read as follows:
 2 26-57-258. ~~Continuation of permits, licenses, regulations, etc., of~~
 3 ~~Department of Finance and Administration~~ Prior actions to continue in effect.

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

8
 9 SECTION 56. Arkansas Code § 26-57-259 is amended to read as follows:
 10 26-57-259. Nonpreemption.

11 (a) This ~~act~~ subchapter and the rules, regulations, and other actions
 12 of the Arkansas Tobacco Control Board shall not be construed or interpreted
 13 so as to preempt or in any other manner qualify or limit the enactment and
 14 enforcement of any federal, state, county, municipal, or other local
 15 regulation of the manufacture, sale, storage, or distribution of cigarettes
 16 and tobacco products that is more restrictive than this ~~act~~ subchapter or the
 17 rules and regulations promulgated by the Arkansas Tobacco Control Board.

18 (b) This ~~act~~ subchapter and the rules, regulations, and other actions
 19 of the Arkansas Tobacco Control Board shall not be construed or interpreted
 20 so as to preempt or otherwise limit any legal or equitable claims or causes
 21 of action brought under the common law or any federal or state statutes.

22 (c) Nothing in this ~~act~~ subchapter, nor any rule or regulation of the
 23 Arkansas Tobacco Control Board, shall be construed or interpreted so as to
 24 require any state, county, municipal, or other local authority to exhaust any
 25 administrative remedies through the Arkansas Tobacco Control Board including,
 26 but not limited to, the right to seize and forward to the Arkansas Tobacco
 27 Control Board the state license of any vendor or retailer found to have
 28 illegally sold cigarettes or tobacco products to a person under eighteen (18)
 29 years of age, provided the vendor or retailer shall be given a hearing
 30 before the Arkansas Tobacco Control Board within five (5) business days of
 31 the seizure.

32
 33 SECTION 57. Arkansas Code § 26-57-260 is amended to read as follows:
 34 26-57-260. Definitions.

35 (a) As used in this section and in § 26-57-261; ~~unless the context~~
 36 ~~otherwise requires;~~

1 (1) "Adjusted for inflation" means increased in accordance with
2 the formula for inflation adjustment set forth in Exhibit C to the Master
3 Settlement Agreement;

4 (2)(A) "Affiliate" means a person who directly or indirectly
5 owns or controls, is owned or controlled by, or is under common ownership or
6 control with another person.

7 (B) Solely for the purposes of this definition, the terms
8 "owns", "is owned", and "ownership" mean ownership of an equity interest, or
9 the equivalent thereof, of ten percent (10%) or more and the term "person"
10 means an individual, partnership, committee, association, corporation, or any
11 other organization or group of persons;

12 (3) "Allocable share" means the allocable share as that term is
13 defined in the Master Settlement Agreement;

14 (4)(A) "Cigarette" means any product that contains nicotine, is
15 intended to be burned or heated under ordinary conditions of use, and
16 consists of or contains:

17 (i) Any roll of tobacco wrapped in paper or in any
18 substance not containing tobacco;

19 (ii) Tobacco in any form that is functional in the
20 product which, because of its appearance, the type of tobacco used in the
21 filler, or its packaging and labeling, is likely to be offered to or
22 purchased by consumers as a cigarette; or

23 (iii) Any roll of tobacco wrapped in any substance
24 containing tobacco which, because of its appearance, the type of tobacco used
25 in the filler, or its packaging and labeling, is likely to be offered to or
26 purchased by consumers as a cigarette described in subdivision (4)(A)(i) of
27 this section.

28 (B) The term "cigarette" includes "roll-your-own", that
29 is, any tobacco which, because of its appearance, type, packaging, or
30 labeling is suitable for use and likely to be offered to or purchased by
31 consumers as tobacco for making cigarettes.

32 (C) For purposes of this definition of "cigarette", nine
33 hundredths (0.09) of an ounce of roll-your-own tobacco shall constitute one
34 (1) individual cigarette;

35 (5) "Master Settlement Agreement" means the settlement agreement
36 and related documents entered into on November 23, 1998, by the State and

1 leading United States tobacco product manufacturers;

2 (6) "Qualified escrow fund" means an escrow arrangement with a
3 federally or state-chartered financial institution having no affiliation with
4 any tobacco product manufacturer and having assets of at least one billion
5 dollars (\$1,000,000,000) where ~~such~~ the arrangement requires that ~~such~~ the
6 financial institution hold the escrowed funds' principal for the benefit of
7 releasing parties and prohibits the tobacco product manufacturer placing the
8 funds into escrow from using, accessing, or directing the use of the funds'
9 principal except as consistent with § 26-57-261(a)(2)(B);

10 (7) "Released claims" means released claims as ~~that term is~~
11 defined in the Master Settlement Agreement;

12 (8) "Releasing parties" means releasing parties as ~~that term is~~
13 defined in the Master Settlement Agreement;

14 (9) "Tobacco product manufacturer" means an entity that, after
15 the date of enactment of this section, directly and not exclusively through
16 any affiliate:

17 (A)(i) Manufactures cigarettes anywhere that such
18 manufacturer intends to be sold in the United States, including cigarettes
19 intended to be sold in the United States through an importer, except where
20 the importer is an original participating manufacturer, as that term is
21 defined in the Master Settlement Agreement, who will be responsible for the
22 payments under the Master Settlement Agreement with respect to such
23 cigarettes as a result of the provisions of subsections II(mm) of the Master
24 Settlement Agreement and who pays the taxes specified in subsection II(z) of
25 the Master Settlement Agreement, and provided that the manufacturer of such
26 cigarettes does not market or advertise such cigarettes in the United
27 States~~;~~.

28 (ii) Is the first purchaser anywhere for resale in
29 the United States of cigarettes manufactured anywhere that the manufacturer
30 does not intend to be sold in the United States~~;~~ or.

31 (iii) Becomes a successor of an entity described in
32 subdivision (9)(A)(i) or (9)(A)(ii) of this section~~;~~; and

33 (B) The term "Tobacco product manufacturer" shall not
34 include an affiliate of a tobacco product manufacturer, unless such affiliate
35 itself falls within any of subdivisions (9)(A)(i) - (9)(A)(iii) of this
36 section; and

1 (10)(A) "Units sold" means the number of individual cigarettes
2 sold in the state by the applicable tobacco product manufacturer, whether
3 directly or through a distributor, retailer, or similar intermediary or
4 intermediaries, during the year in question, as measured by excise taxes
5 collected by the state on packs or roll-your-own tobacco containers bearing
6 the excise tax stamp of the State.

7 (B) The Department of Finance and Administration shall
8 promulgate ~~such~~ regulations as are necessary to ascertain the amount of State
9 excise tax paid on the cigarettes of ~~such~~ the tobacco product manufacturer
10 for each year.

11
12 SECTION 58. Arkansas Code § 26-57-262 is amended to read as follows:
13 26-57-262. Sale of export cigarettes.

14 (a) Findings and Purpose.

15 (1)(A) Cigarette smoking presents serious public health concerns
16 to the state and to the citizens of the state.

17 (B) The Surgeon General has determined that smoking causes
18 lung cancer, heart disease, and other serious diseases and that there are
19 hundreds of thousands of tobacco-related deaths in the United States each
20 year.

21 (C) These diseases most often do not appear until many
22 years after the person in question begins smoking.

23 (2) It is the policy of the state that consumers be adequately
24 informed about the adverse health effects of cigarette smoking by including
25 warning notices on each package of cigarettes.

26 (3) It is the intent of the legislature to align state law with
27 federal laws, regulations and policies relating to the manufacture,
28 importation, and marketing of cigarettes, and in particular, the Federal
29 Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1331 et seq. and 26
30 U.S.C. Sec. 5754.

31 (4) The legislature finds that consumers and retailers
32 purchasing cigarettes are entitled to be fully informed about any adverse
33 health effects of cigarette smoking by the inclusion of warning notices on
34 each package of cigarettes and to be assured through appropriate enforcement
35 measures that cigarettes they purchase were manufactured for consumption
36 within the United States.

1 (b) Definitions. For purposes of this section:

2 (1)(A) "Cigarette" means any product that contains nicotine, is
3 intended to be burned or heated under ordinary conditions of use, and
4 consists of or contains:

5 (i) Any roll of tobacco wrapped in paper or in any
6 substance not containing tobacco;

7 (ii) Tobacco, in any form, that is functional in the
8 product which, because of its appearance, the type of tobacco used in the
9 filler, or its packaging and labeling is likely to be offered to or purchased
10 by consumers as a cigarette; or

11 (iii) Any roll of tobacco wrapped in any substance
12 containing tobacco which, because of its appearance, the type of tobacco used
13 in the filler, or its packaging and labeling is likely to be offered to or
14 purchased by consumers as a cigarette described in subdivision (b)(1)(A)(i)
15 of this section.

16 (B) "Cigarette" includes "roll your own", which is any
17 tobacco which, because of its appearance, type, packaging, or labeling is
18 suitable for use and likely to be offered to or purchased by consumers as
19 tobacco for making cigarettes.

20 (C) For purposes of this definition of "cigarette", nine
21 one-hundredths (0.09) of an ounce of "roll your own" tobacco shall constitute
22 one (1) individual "cigarette"; and

23 (2) The term "package" means a pack, carton, or container of any
24 kind in which cigarettes are offered for sale, sold, or otherwise distributed
25 or intended for distribution to consumers.

26 (c) Tax Stamps. (1) No tax stamp may be affixed to or made upon any
27 package of cigarettes if:

28 (A) The package differs in any respect with the
29 requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.
30 § 1331 et seq., for the placement of labels, warnings, or any other
31 information upon a package of cigarettes that is manufactured, packaged, or
32 imported for sale, distribution, or use within the United States;

33 (B) The package is labeled "For Export Only", "U.S. Tax
34 Exempt", "For Use Outside U.S.", or similar wording indicating that the
35 manufacturer did not intend that the product be sold in or into the United
36 States;

1 (C) The cigarettes in the package do not comply with any
2 other applicable requirements imposed pursuant to federal law and federal
3 implementing regulations;

4 (D) The package in any way violates federal trademark or
5 copyright laws;

6 (E) The package or a package containing individually
7 stamped packages has been altered by adding or deleting the wording, labels,
8 or warnings described in subdivisions (c)(1)(A)-(F) of this section; or

9 (F) With respect to the cigarettes, any person is not in
10 compliance with 15 U.S.C. § 1335a relating to submission of ingredient
11 information to federal authorities, 19 U.S.C. §§ 1681-1681b relating to
12 imports of certain cigarettes, 26 U.S.C. § 5754, relating to previously
13 exported tobacco products, or any other federal law or implementing federal
14 regulations.

15 (2) Any person who sells or holds for sale cigarette packages to
16 which is affixed a tax stamp in violation of this section shall be subject to
17 the penalties prescribed in subdivision (c)(5) of this section.

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

21 (4) The Department of Finance and Administration or the Arkansas
22 Tobacco Control Board ~~may~~ shall seize and destroy or sell to the manufacturer
23 only for export packages that do not comply with this section.

24 (5) A violation of this section is a deceptive act or practice
25 and shall constitute a Class A misdemeanor.

26 (6) On or before the fifteenth business day of each month, each
27 person licensed to affix the state tax stamp to cigarettes shall file with
28 the Director of the Department of Finance and Administration for all
29 cigarettes imported into the United States to which the person has affixed
30 the tax stamp in the preceding month copies of the customs certificates with
31 respect to the cigarettes required to be submitted by 19 U.S.C. § 1681a(c).

32 (7) Any person who sells, distributes, or manufactures
33 cigarettes and sustains direct economic or commercial injury as a result of a
34 violation of this section may bring an action in good faith for appropriate
35 injunctive relief.

36

1 SECTION 59. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
2 amended to add additional sections to read as follows:

3 26-57-263. Delivery sales of cigarettes – Definitions.

4 As used in §§ 26-57-264 -- 26-57-271:

5 (1) "Adult" means a person who is at least the legal minimum
6 purchase age;

7 (2) "Consumer" means:

8 (A) An individual who is not licensed as a cigarette
9 wholesaler or cigarette retailer pursuant to § 26-57-214; and

10 (B) Any individual licensed as a cigarette wholesaler or
11 cigarette retailer pursuant to § 26-57-214 if the individual purchases
12 cigarettes for personal consumption;

13 (3) "Delivery sale" means any sale of cigarettes to a consumer in
14 this state when either:

15 (A) The purchaser submits the order for sale by means of a
16 telephonic or other method of voice transmission, by mail or any other delivery
17 service, or the Internet or other online service; or

18 (B)(i) The cigarettes are delivered by use of the mails or
19 by a delivery service.

20 (ii) A sale of cigarettes shall be a delivery sale
21 regardless of whether the seller is located within or outside the state;

22 (4) "Delivery service" means any person who is engaged in the
23 commercial delivery of letters, packages, or other containers;

24 (5) "Department" means the Department of Finance and
25 Administration;

26 (6) "Legal minimum purchase age" means eighteen (18) years of age;

27 (7) "Mails" or "mailing" means the shipment of cigarettes through
28 the United States Postal Service;

29 (8) "Person" means any individual, retailer, wholesaler,
30 manufacturer, firm, association, company, partnership, limited liability
31 company, corporation, joint-stock company, club, agency, syndicate, the State
32 of Arkansas, county, municipal corporation, or other political subdivision of
33 this state, receiver, trustee, fiduciary, or trade association;

34 (9) Pronouns "he", "his", "him", "she", "hers", "her", "they",
35 or any other pronoun shall apply to any person covered by this subchapter;

36 (10) "Shipping container" means a container in which cigarettes are

1 shipped in connection with a delivery sale; and

2 (11) "Shipping documents" means bills of lading, airbills, or any
 3 other documents used to evidence the undertaking by a delivery service to deliver
 4 letters, packages, or other containers.

5
 6 26-57-264. Delivery sales of cigarettes – General requirements.

7 (a) No person shall make a delivery sale of cigarettes to any individual
 8 who is under the age of eighteen (18).

9 (b) Each person accepting a purchase order for a delivery sale shall comply
 10 with:

11 (1) The age verification requirements set forth in § 26-57-265;

12 (2) The disclosure requirements set forth in § 26-57-266;

13 (3) The shipping requirements set forth in § 26-57-267;

14 (4) The registration and reporting requirements set forth in § 26-
 15 57-268;

16 (5) The tax collection requirements set forth in § 26-57-269;

17 and

18 (6) All other laws of the state generally applicable to sales of
 19 cigarettes that occur entirely within the state, including, but not limited
 20 to, laws imposing:

21 (A) Excise taxes;

22 (B) Sales taxes;

23 (C) Licensing and revenue-stamping requirements; and

24 (D) Escrow payment obligations as set forth in § 26-57-
 25 261.

26
 27 26-57-265. Delivery sales of cigarettes – Age verification requirements.

28 (a) No person shall mail, ship, or otherwise deliver cigarettes in
 29 connection with a delivery sale unless the person prior to the first delivery
 30 sale to the consumer:

31 (1) Obtains from the prospective consumer a certification that
 32 includes:

33 (A) A reliable confirmation that the prospective consumer
 34 is at least eighteen (18) years of age; and

35 (B)(i) A statement signed by the prospective consumer in
 36 writing that certifies the prospective consumer's address.

1 (ii) The statement shall also confirm:

2 (a) That the prospective consumer understands
3 that signing another person's name to the certification is illegal;

4 (b) That the sale of cigarettes to individuals
5 under eighteen (18) years of age is illegal;

6 (c) That the purchase of cigarettes by
7 individuals under eighteen (18) years of age is illegal; and

8 (d) That the prospective consumer wants to
9 receive mailings from a tobacco company;

10 (2) Makes a good faith effort to verify the information
11 contained in the certification provided by the prospective consumer pursuant
12 to subdivision (a)(1) of this section against a commercially available
13 database, or obtains a photocopy or other image of the valid, government-
14 issued identification stating the date of birth or age of the individual
15 placing the order;

16 (3) Provides to the prospective consumer, via e-mail or other means,
17 a notice that meets the requirements of § 26-57-266; and

18 (4) In the case of an order for cigarettes pursuant to an
19 advertisement on the Internet, receives payment for the delivery sale from the
20 prospective consumer by a credit or debit card that has been issued in the
21 consumer's name, or by check.

22 (b) Persons accepting purchase orders for delivery sales may request
23 that prospective consumers provide their e-mail addresses.

24
25 26-57-266. Delivery sales of cigarettes – Disclosure requirements.

26 The notice required under § 26-57-265(a)(3) shall include:

27 (1) A prominent and clearly legible statement that cigarette
28 sales to consumers below eighteen (18) years of age are illegal;

29 (2) A prominent and clearly legible statement that sales of
30 cigarettes are restricted to those consumers who provide verifiable proof of
31 age in accordance with § 26-57-265; and

32 (3) A prominent and clearly legible statement that cigarette sales
33 are subject to tax under § 26-57-208, and an explanation of how the tax has been,
34 or is to be, paid with respect to the delivery sale.

35
36 26-57-267. Delivery sales of cigarettes – Shipping requirements.

1 (a) Each person who mails, ships, or otherwise delivers cigarettes in
2 connection with a delivery sale:

3 (1) Shall include as part of the bill of lading or other shipping
4 documents a clear and conspicuous statement providing as follows: "Cigarettes:
5 Arkansas Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of
6 all Applicable Taxes";

7 (2) Shall use a method of mailing, shipping, or delivery that
8 obligates the delivery service to require:

9 (A) The consumer placing the purchase order for the delivery
10 sale, or another adult at least eighteen (18) years of age residing at the
11 consumer's address, to sign to accept delivery of the shipping container; and

12 (B)(i) Proof, in the form of a valid, government-issued
13 identification bearing a photograph of the individual who signs to accept delivery
14 of the shipping container, demonstrating that he or she is either the addressee or
15 another adult of age residing at the consumer's address.

16 (ii) However, proof of the age shall be required only if
17 the individual appears to be under twenty-seven (27) years of age; and

18 (3) Shall provide to the delivery service retained for the delivery
19 sale evidence of full compliance with § 26-57-269.

20 (b) If the person accepting a purchase order for a delivery sale delivers
21 the cigarettes without using a delivery service, the person shall comply with all
22 requirements of §§ 26-57-263 – 26-57-269 applicable to a delivery service.

23
24 26-57-268. Delivery sales of cigarettes – Registration and reporting
25 requirements.

26 (a) Prior to making delivery sales or mailing, shipping, or otherwise
27 delivering cigarettes in connection with any sales, every person shall file with
28 the Department of Finance and Administration a statement setting forth the
29 person's name, trade name, and the address of the person's principal place of
30 business, and any other place of business.

31 (b) No later than the tenth day of each calendar month, each person that
32 has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes
33 in connection with any sale during the previous calendar month shall file with
34 the department a memorandum or a copy of the invoice that provides for each and
35 every delivery sale:

36 (1) The name and address of the consumer to whom the delivery sale

1 was made;

2 (2) The brand or brands of the cigarettes that were sold in the
3 delivery sale; and

4 (3) The quantity of cigarettes that were sold in the delivery sale.

5 (c) Any person that satisfies the requirements of 15 U.S.C., § 376, as in
6 effect on January 1, 2005, has also satisfied the requirements of this section.

7
8 SECTION 60. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
9 amended to add an additional section to read as follows:

10 26-57-269. Delivery sales of cigarettes – Collection of taxes.

11 (a) Each person accepting a purchase order for a delivery sale shall
12 collect and remit to the Department of Finance and Administration all cigarette
13 taxes imposed by the state with respect to the delivery sale as required by § 26-
14 57-243.

15 (b) However, the collection and remission of tax shall not be required to
16 the extent the person has obtained proof, in the form of the presence of applicable
17 tax stamps or otherwise, that the taxes already have been paid to the department.

18
19 SECTION 61. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
20 amended to add an additional section to read as follows:

21 26-57-270. Delivery sales of cigarettes – Penalties.

22 (a)(1) Except as otherwise provided in this section, a first violation of
23 any provision of §§ 26-57-263 – 26-57-269 shall be punishable by a fine of one
24 thousand dollars (\$1,000) or five (5) times the retail value of the cigarettes
25 involved, whichever is greater.

26 (2) A second or subsequent violation of any provision of §§ 26-57-
27 263 – 26-57-269 shall be punishable by a fine of five thousand dollars (\$5,000)
28 or five (5) times the retail value of the cigarettes involved, whichever is
29 greater.

30 (b) Any person who knowingly violates any provision of §§ 26-57-263 – 26-
31 57-269, or who knowingly and falsely submits a certification under § 26-57-
32 265(a)(1) in another person's name, shall be fined ten thousand dollars
33 (\$10,000) or five (5) times the retail value of the cigarettes involved for each
34 offense, whichever is greater, or imprisoned not more than five (5) years, or
35 both.

36 (c) Any person failing to collect or remit to the Department of Finance

1 and Administration any tax required in connection with a delivery sale shall be
2 assessed, in addition to any other penalty, a penalty of five (5) times the
3 retail value of the cigarettes involved.

4 (d)(1) Any cigarettes sold or attempted to be sold in a delivery sale
5 that do not meet the requirements of §§ 26-57-263 – 26-57-269 shall be forfeited
6 to the state and destroyed.

7 (2) All fixtures, equipment, and all other materials and personal
8 property on the premises of any person who, with the intent to defraud the
9 state, violates any of the requirements of §§ 26-57-263 – 26-57-269, shall be
10 forfeited to the state.

11
12 SECTION 62. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
13 amended to add an additional section to read as follows:

14 26-57-271. Delivery sales of cigarettes – Enforcement.

15 The Attorney General or his or her designee, or any person who holds a
16 valid permit under 26 U.S.C. § 5712, as it existed on January 1, 2005, may bring
17 an action in the appropriate court in the state to prevent or restrain
18 violations of §§ 26-57-263 – 26-57-269 by any person, or any person controlling
19 the person.

20
21 SECTION 63. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
22 amended to add an additional section to read as follows:

23 26-57-278. Permits and licenses – Application form.

24 (a) Every application for a license or permit under this subchapter shall
25 be submitted on a form established by the Arkansas Tobacco Control Board.

26 (b) Each application shall state:

27 (1) The name and address of the applicant;

28 (2) The address of the applicant's principal place of business;

29 (3) Each place of business where the applicant's business will be
30 conducted within the state; and

31 (4) Any other information the board may require.

32 (c) If the applicant is a firm, partnership, limited liability company,
33 limited liability partnership, or association, the application shall state the
34 name and address of each of its members.

35 (d) If the applicant is a corporation, the application shall state the
36 name and address of each of its officers and the name and address of any person

1 who owns, directly or indirectly, in the aggregate, more than ten percent (10%)
 2 of the ownership interests in the corporation.

3
 4 SECTION 64. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
 5 amended to add an additional section to read as follows:

6 26-57-279. Permits and licenses for cigarettes – Availability.

7 No license or permit to deal in cigarettes may be granted, maintained, or
 8 renewed if the applicant, or any combination of persons owning directly or
 9 indirectly, in the aggregate, more than ten percent (10%) of the ownership
 10 interests of the applicant:

11 (1) Owes five hundred dollars (\$500) or more in delinquent cigarette
 12 taxes;

13 (2) Had a license under this subchapter revoked by the Arkansas
 14 Tobacco Control Board within the past two (2) years;

15 (3) Has been convicted of a crime relating to stolen or
 16 counterfeit cigarettes;

17 (4) Is a cigarette manufacturer or importer that is neither a
 18 participating manufacturer as defined in subsection II(jj) of the Master
 19 Settlement Agreement as defined in § 26-57-260 nor in full compliance with
 20 §§ 26-57-261 and 26-57-1301 – 26-57-1307;

21 (5) Has imported or caused to be imported into the United States
 22 for sale or distribution any cigarette in violation of 19 U.S.C. § 1681a, as
 23 in effect on January 1, 2005; or

24 (6) Has imported or caused to be imported into the United States
 25 for sale or distribution or manufactured for sale or distribution in the
 26 United States any cigarette that does not fully comply with the Federal
 27 Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq. as in effect
 28 on January 1, 2005.

29
 30 SECTION 65. Arkansas Code Title 26, Chapter 57, Subchapter 272 is
 31 amended to add an additional section to read as follows:

32 26-57-272. Permits and licenses for cigarettes – Maintenance and
 33 publication of list by Arkansas Tobacco Control Board.

34 The Arkansas Tobacco Control Board shall create and maintain a website
 35 setting forth the identity of all licensed persons under this subchapter who
 36 deal in cigarettes, itemized by type of license possessed, and shall update

1 the site at least one (1) time per month.

2
3 SECTION 66. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
4 amended to add an additional section to read as follows:

5 26-57-273. Civil penalties – Cigarettes.

6 (a) In addition to any other penalty provided in this subchapter, a
7 person who omits, neglects, or refuses to comply with any duty pertaining to
8 cigarettes imposed upon him or her by this subchapter, or to do, or cause to
9 be done, any of the things pertaining to cigarettes required by this
10 subchapter, or does anything pertaining to cigarettes that is prohibited by
11 this subchapter, shall be liable for a penalty equal to one thousand dollars
12 (\$1,000) or five (5) times the retail value of the cigarettes involved,
13 whichever is greater. The penalty shall be recovered with costs of suit in a
14 civil action.

15 (b) In addition to any other penalty provided in this subchapter, a
16 person who fails to pay any cigarette tax imposed by this subchapter and §§
17 26-57-801 – 26-57-803 and 26-57-1102, at the time prescribed by law or
18 regulations shall be liable for a penalty of five (5) times the tax due but
19 unpaid.

20 (c)(1) All cigarettes which are held for sale or distribution within
21 the borders of this state in violation of the requirements of this subchapter
22 shall be forfeited to the state.

23 (2) All cigarettes forfeited to the state under this subchapter
24 shall be destroyed.

25 (3) All fixtures, equipment, and all other materials and
26 personal property on the premises of any cigarette wholesaler or cigarette
27 retailer who, with intent to defraud the state, fails to keep or make any
28 record, return, report, or inventory pertaining to cigarettes, keeps or makes
29 any false or fraudulent record, return, report, or inventory pertaining to
30 cigarettes that is required by this subchapter, refuses to pay any cigarette
31 tax imposed by this subchapter, or attempts in any manner to evade or defeat
32 the requirements of this subchapter that pertain to cigarettes, shall be
33 forfeited to the state.

34
35 SECTION 67. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
36 amended to add an additional section to read as follows:

1 26-57-274. Criminal penalties – Cigarettes.

2 (a) In addition to any other penalty provided in this subchapter, a
3 person who, with intent to defraud the state, fails to comply with any
4 requirement of this subchapter pertaining to cigarettes or rules prescribed
5 under this subchapter, shall be fined ten thousand dollars (\$10,000) or be
6 imprisoned for not more than five (5) years, or both, for each offense.

7 (b) In addition to any other penalty provided in this subchapter, a
8 person who knowingly violates any provision of this subchapter pertaining to
9 cigarettes or rules prescribed under this subchapter, shall be fined not more
10 than five thousand dollars (\$5,000) or imprisoned for not more than one (1)
11 year, or both, for each offense.

12 (c) Notwithstanding any other law, the sale or possession for sale of
13 counterfeit cigarettes by an importer, cigarette manufacturer, cigarette
14 distributor, or cigarette retailer shall result in the seizure of the product
15 and related machinery by the Department of Finance and Administration or any law
16 enforcement agency and shall be punishable as follows:

17 (1) A first violation involving a total quantity of less than two
18 (2) cartons of cigarettes shall be punishable by a fine of one thousand dollars
19 (\$1,000) or five (5) times the retail value of the cigarettes involved,
20 whichever is greater, or imprisonment not to exceed five (5) years, or both;

21 (2) A subsequent violation involving a total quantity of less than
22 two (2) cartons of cigarettes shall:

23 (A) Be punishable by a fine of five thousand dollars
24 (\$5,000) or five (5) times the retail value of the cigarettes involved,
25 whichever is greater, or imprisonment not to exceed five years, or both; and

26 (B) Result in the revocation by the Arkansas Tobacco Control
27 Board of the importer, cigarette manufacturer, cigarette distributor, or
28 cigarette retailer license;

29 (3) A first violation involving a total quantity of two (2)
30 cartons of cigarettes or more shall be punishable by a fine of two thousand
31 dollars (\$2,000) or five (5) times the retail value of the cigarettes involved,
32 whichever is greater, or imprisonment not to exceed five (5) years, or both; and

33 (4) A subsequent violation involving a quantity of two (2) cartons
34 of cigarettes or more shall:

35 (A) Be punishable by a fine of fifty thousand dollars
36 (\$50,000) or five (5) times the retail value of the cigarettes involved,

1 whichever is greater, or imprisonment not to exceed five (5) years, or both; and

2 (B) Result in the revocation by the Arkansas Tobacco Control
3 Board of the importer, cigarette manufacturer, cigarette distributor, or
4 cigarette retailer license.

5 (d)(1) For purposes of this section, counterfeit cigarettes includes
6 cigarettes that have false manufacturing labels or packages of cigarettes
7 bearing counterfeit tax stamps.

8 (2) Any counterfeit cigarettes seized by the board shall be
9 destroyed.

10
11 SECTION 68. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
12 amended to add an additional section to read as follows:

13 26-57-275. Cigarette stamps – Application.

14 (a) Stamps shall be applied by a licensed cigarette wholesaler to each
15 package of cigarettes sold or distributed into or within this state.

16 (b) A tax stamp shall be applied by a licensed cigarette wholesaler to all
17 cigarette packages containing cigarettes subject to tax under § 26-57-208, 26-57-
18 801 – 26-57-803, and 26-57-1102.

19 (c) A tax-exempt stamp shall be applied by a licensed cigarette
20 wholesaler to all cigarette packages containing cigarettes not subject to
21 state tax under § 26-57-209(1).

22 (d) No stamp shall be applied to any cigarette package containing
23 cigarettes that are exempt from state tax under § 26-57-209(2) or § 26-57-
24 209(4).

25 (e) Cigarette wholesalers may apply stamps only to cigarette packages
26 received directly from a licensed importer or cigarette manufacturer.

27 (f)(1) Cigarette wholesalers located within this state shall apply
28 stamps to all applicable cigarette packages within ten (10) calendar days of
29 receipt of the cigarettes.

30 (2) Cigarette wholesalers located outside of this state shall
31 apply stamps to all applicable cigarette packages before sending the packages
32 into this state.

33
34 SECTION 69. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
35 amended to add an additional section to read as follows:

36 26-57-276. Maintenance of unstamped products – Cigarette wholesalers.

1 (a) Cigarette wholesalers shall be permitted to set aside, without
 2 application of stamps, only the part of the wholesaler's stock that is
 3 identified for sale or distribution outside of this state, provided that any
 4 unstamped cigarettes shall be stored separate from stamped cigarette packages.

5 (b) No unstamped cigarette packages shall be transferred by a cigarette
 6 wholesaler to another facility of the wholesaler within this state or to
 7 another person within this state.

8
 9 SECTION 70. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
 10 amended to add an additional section to read as follows:

11 26-57-277. Transportation of unstamped cigarettes.

12 (a)(1) Any person who ships unstamped cigarette packages within or into
 13 this state other than to a licensed importer, cigarette manufacturer, or cigarette
 14 wholesaler shall first file with the Department of Finance and Administration
 15 notice of the shipment.

16 (2) Subdivision (a)(1) of this section shall not apply to any common
 17 or contract carrier that is transporting cigarettes through this state to another
 18 location under a proper bill of lading or freight bill, which states the quantity,
 19 source, and destination of the cigarettes.

20 (b)(1) Any person transporting unstamped cigarette packages into or within
 21 this state shall carry invoices or equivalent documentation of the shipment for all
 22 cigarettes in the shipment in the vehicle used to convey the shipment.

23 (2) The invoices or documentation shall show the true name and
 24 address of the consignor or seller, the true name and address of the consignee or
 25 purchaser, and the quantity by brand of the cigarettes transported.

26
 27 SECTION 71. Arkansas Code Title 26, Chapter 57, Subchapter 8 is
 28 amended to read as follows:

29 26-57-801. ~~Excise~~ Cigarette paper excise tax.

30 (a) Every person required by the Arkansas Tobacco Products Tax Act of
 31 1977, § 26-57-201 et seq., to pay the excise tax on cigarettes and tobacco
 32 products and every other person selling cigarette paper at wholesale within
 33 this state shall also pay an excise tax on the sale of cigarette paper.

34 (b) The tax shall be in the amount of twenty-five cents (25¢) per
 35 package of approximately thirty-two (32) sheets.

36 (c) The tax shall be remitted to the Director of the Department of

1 Finance and Administration at the same time and in the same manner as
 2 prescribed by the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et
 3 seq.

4 (d) The Director of the Department of Finance and Administration shall
 5 promulgate such regulations as he deems necessary for the implementation of
 6 this section.

7
 8 26-57-802. Additional cigarette tax ~~—Applicability—Reporting and~~
 9 ~~remitting.~~

10 (a) In addition to any other taxes levied on cigarettes, there is
 11 hereby levied a tax of fifty cents (50¢) per one thousand (1000) cigarettes
 12 sold in or into the state.

13 (b)(1) The additional tax levied herein shall also be applicable to
 14 cigarettes sold in Arkansas within three hundred feet (300') of a state line
 15 or in any city that adjoins a state line. It is the intent of this section
 16 that the rate of tax on cigarettes hereafter sold in Arkansas within three
 17 hundred feet (300') of a state line or in any Arkansas city that adjoins a
 18 state line shall be:

19 (A) The rate imposed by law on cigarettes sold in the
 20 adjoining state plus the fifty cents (50¢) per one thousand (1,000)
 21 cigarettes levied herein and cited in § 26-57-803(a)(2); or

22 (B) The rate imposed by law on cigarettes sold in the
 23 adjoining state plus the twenty-five cents (25¢) per one thousand (1,000)
 24 cigarettes levied herein and cited in § 26-57-803(a)(3).

25 (2) The rate shall not exceed the total tax levied on cigarettes
 26 in this state.

27 (c) The additional tax levied herein shall be reported and remitted in
 28 the same manner and at the same time as other taxes levied on cigarettes in
 29 the Arkansas Tobacco Products Tax Act, §§ 26-57-201 - 26-57-254.

30 (d)(1) The first three million dollars (\$3,000,000) of the net
 31 revenues derived from the additional tax levied herein shall be deposited in
 32 the State Treasury to the credit of the Aging and Adult Services Fund
 33 Account, to be used exclusively for transportation services ~~benefiting~~
 34 benefiting the elderly, including the Meals on Wheels Program and the
 35 remainder shall be deposited into the State Treasury as general revenues.

36 (2) The term "the first three million dollars (\$3,000,000) of

1 the net revenues derived from the additional tax" as used in this subsection
2 pertaining to taxes levied on cigarettes ~~is hereby deemed to mean~~ means the
3 first three million dollars (\$3,000,000) each year of the net revenues
4 derived from the additional tax.

5
6 26-57-803. Additional ~~tax~~ Applicability taxes.

7 (a)(1) In addition to the excise or privilege taxes levied under §§
8 26-57-208 and 26-57-802, for the months of February, March, April, May, and
9 June of 1993, there is hereby levied a tax of six dollars and twenty-five
10 cents (\$6.25) per one thousand (1,000) cigarettes sold in or into the state,
11 and for all months beginning on or after July 1, 1993, there is hereby levied
12 a tax of four dollars and seventy-five cents (\$4.75) per one thousand (1,000)
13 cigarettes sold in or into the state.

14 (2) Whenever there are two (2) adjoining cities, each with a
15 population of five thousand (5,000) or more separated by a state line, the
16 tax on cigarettes sold in ~~such the~~ adjoining Arkansas city shall be at the
17 rate imposed by law on cigarettes sold in the adjoining city outside of
18 Arkansas plus the fifty cents (50¢) per one thousand (1,000) cigarettes
19 presently imposed by § 26-57-802. The tax shall not exceed the tax upon
20 cigarettes imposed by this subchapter.

21 (3) The tax on cigarettes sold in Arkansas within three hundred
22 feet (300') of a state line, in any Arkansas city which adjoins a state line,
23 or in any city which is separated only by a navigable river from a city which
24 adjoins a state line shall be at the rate imposed by law on cigarettes sold
25 in the adjoining state plus the twenty-five cents (25¢) per one thousand
26 (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not
27 exceed the tax upon cigarettes imposed by this subchapter.

28 (b) In addition to the tax imposed by § 26-57-208(2), for the months
29 of February, March, April, May, and June 1993, there is hereby imposed an
30 additional excise or privilege tax on the sale of tobacco products other than
31 cigarettes by wholesalers to retailers or by licensed retailers to the
32 Director of the Department of Finance and Administration at nine percent (9%)
33 of the manufacturer's selling price, and for all months beginning on or after
34 July 1, 1993, there is hereby levied an additional excise or privilege tax on
35 tobacco products at seven percent (7%) of the manufacturer's selling price.
36 The tax shall be computed before discounts.

1 (c) The taxes levied by this section shall not apply to the sale of
 2 cigarettes and tobacco products which are in a wholesaler's warehouse
 3 inventory on January 1, 1993.

4 (d)(1) The taxes on tobacco products levied by this section shall be
 5 reported and paid by tobacco product wholesalers licensed pursuant to § 26-
 6 57-214 of the Arkansas Tobacco Products Tax Act of 1977, provided that
 7 tobacco product retailers shall be liable for reporting and paying these
 8 taxes when a retailer purchases tobacco products directly from a manufacturer
 9 or from a wholesaler or distributor not licensed pursuant to § 26-57-214 of
 10 the Arkansas Tobacco Products Tax Act of 1977.

11 (2) The tax on cigarettes levied under this section shall be
 12 imposed, reported, remitted, and administered in the same manner and at the
 13 same time as other taxes levied on cigarettes in the Arkansas Tobacco
 14 Products Tax Act of 1977, § 26-57-201 et seq.

15 ~~(2)(3)(A) Any taxpayer who is required under this section fails~~
 16 ~~to report and remit the ~~tobacco~~ tax due on tobacco products or cigarettes and~~
 17 ~~fails to do so purchased from manufacturers, distributors, or wholesalers who~~
 18 ~~are not licensed under § 26-57-214 of the Arkansas Tobacco Products Tax Act~~
 19 ~~of 1977 shall be subject to the following penalties:~~

20 (i) Five percent (5%) of the total tobacco tax due
 21 for the first offense;

22 (ii) Twenty percent (20%) of the total tobacco tax
 23 due for the second offense; and

24 (iii) Twenty-five percent (25%) of the total tobacco
 25 tax due for the third and any subsequent offenses.

26 (B) In addition, the taxpayer's retail cigarette/tobacco
 27 permit shall be revoked for a period of ninety (90) days for the third and
 28 any subsequent offenses.

29 (3) The provisions of this subsection shall not affect the
 30 provisions of § 26-57-228.

31
 32 26-57-804. Additional tax on cigarettes.

33 (a) In addition to the excise or privilege taxes levied under §§ 26-
 34 57-208, 26-57-802, 26-57-803, and 26-57-1101, there is levied an additional
 35 tax of twelve dollars and fifty cents (\$12.50) per one thousand (1,000)
 36 cigarettes sold in the state.

1 (b)(1)(A) Whenever there are two (2) adjoining cities each with a
2 population of five thousand (5,000) or more separated by a state line, the
3 tax on cigarettes sold in the adjoining Arkansas city shall be at the rate
4 imposed by law on cigarettes sold in the adjoining city outside Arkansas.

5 (B) The tax shall not exceed the tax upon cigarettes
6 imposed by Arkansas law.

7 (2)(A) The tax on cigarettes sold in Arkansas within three
8 hundred feet (300') of a state line in any Arkansas city that adjoins a state
9 line or in any city that is separated only by a navigable river from a city
10 that adjoins a state line shall be at the rate imposed by law on cigarettes
11 sold in the adjoining state.

12 (B) The tax shall not exceed the tax upon cigarettes
13 imposed by Arkansas law.

14 (3)(A) A wholesaler ~~or retailer~~ shall not sell cigarettes to a
15 retailer located outside a border zone described in subdivisions (b)(1) and
16 (b)(2) of this section unless the full amount of tax levied by this section
17 and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any
18 reduced border zone rate has been paid as evidenced by cigarette stamps
19 affixed to each container of cigarettes.

20 (B) A retailer located outside a border zone described in
21 subdivisions (b)(1) and (b)(2) of this section shall not possess or offer for
22 sale cigarettes unless the full amount of tax levied by this section and §§
23 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced
24 border zone rate has been paid as evidenced by cigarette stamps affixed to
25 each container of cigarettes.

26 (C) A violation of subdivision (b)(3) of this section
27 shall be grounds for the suspension or revocation of a permit or license
28 issued by the Director of the Arkansas Tobacco Control Board.

29 (c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-
30 210 shall apply to this section.

31 (d) Purchases of stamps pursuant to § 26-57-236 by cigarette
32 wholesalers and stamp deputies during May 2003 shall be limited to one
33 hundred ten percent (110%) of the amount of each purchaser's average stamp
34 purchase for the period January 2003 through April 2003.

35 (e) The additional tax levied under this section shall be imposed,
36 reported, remitted, and administered in the same manner and at the same time

1 as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act
2 of 1977, § 26-57-201 et seq.

3 (f) The director shall not pay the commission authorized by § 26-57-
4 236(g) with respect to the tax levied by this section.

5 (g) The revenue derived from the additional tax imposed by this
6 section shall be credited to the General Revenue Fund Account of the State
7 Apportionment Fund, there to be distributed with the other gross general
8 revenue collections.

9
10 26-57-805. Additional tax on tobacco products ~~other than cigarettes~~.

11 (a)(1) In addition to the excise or privilege taxes levied under §§
12 26-57-208, 26-57-803, and 26-57-1102, there is levied an additional tax on
13 tobacco products ~~other than cigarettes~~ on the first sale to wholesalers or
14 retailers within the state at seven percent (7%) of the manufacturer's
15 selling price.

16 (2) The tax shall be computed on the manufacturer's actual
17 invoice price before discounts and deals.

18 (b)(1) The tax levied by this section shall be reported and paid by
19 tobacco product wholesalers licensed pursuant to § 26-57-214.

20 (2) However, retailers shall be liable for reporting and paying
21 this tax when a retailer purchases tobacco products directly from a
22 manufacturer or from a wholesaler or distributor not licensed pursuant to §
23 26-57-214.

24 (c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-
25 210 shall apply to this section.

26 (d) The revenue derived from the additional tax imposed by this
27 section shall be credited to the General Revenue Fund Account of the State
28 Apportionment Fund, there to be distributed with the other gross general
29 revenue collections for that month.

30
31 SECTION 72. Arkansas Code Title 26, Chapter 57, Subchapter 8 is
32 amended to add an additional section to read as follows:

33 26-57-806. Applicability of definitions.

34 The definitions in § 26-57-203 shall apply to this subchapter.

35
36 SECTION 73. Arkansas Code Title 26, Chapter 57, Subchapter 11 is

1 amended to read as follows:

2 26-57-1101. Additional tax - Cigarettes.

3 In addition to the excise or privilege taxes levied under §§ 26-57-208
4 and 26-57-802 there is hereby levied a tax of one dollar twenty-five cents
5 (\$1.25) per one thousand (1000) cigarettes sold in or into the state.

6

7 26-57-1102. Additional tax - Tobacco products ~~other than cigarettes~~.

8 (a) In addition to the tax imposed by § 26-57-208(2), there is hereby
9 imposed an additional excise or privilege tax on tobacco products ~~other than~~
10 ~~cigarettes~~ on the first sale to wholesalers or retailers within the state at
11 two percent (2%) of the manufacturer's selling price. The tax shall be
12 computed on the actual manufacturer's invoice price before discounts and
13 deals.

14 (b)(1)(A) The taxes levied by this section and § 26-57-1101 shall be
15 reported and paid by wholesalers licensed pursuant to § 26-57-214 of the
16 Arkansas Tobacco Products Tax Act of 1977.

17 (B) Provided, tobacco product retailers shall be liable
18 for reporting and paying ~~these~~ the taxes imposed by this section when a
19 retailer purchases tobacco products directly from a manufacturer or from a
20 wholesaler or distributor not licensed pursuant to § 26-57-214 of the
21 Arkansas Tobacco Products Tax Act of 1977.

22 (2)(A) Any taxpayer who fails to report and remit the tobacco
23 tax imposed by this section ~~due~~ on tobacco products purchased from
24 manufacturers, distributors, or wholesalers who are not licensed under § 26-
25 57-214 of the Arkansas Tobacco Products Tax Act of 1977 shall be subject to
26 the following penalties:

27 (i) Five percent (5%) of the total tobacco tax due
28 for the first offense;

29 (ii) Twenty percent (20%) of the total tobacco tax
30 due for the second offense; and

31 (iii) Twenty-five percent (25%) of the total tobacco
32 tax due for the third and any subsequent offenses.

33 (B) In addition, the taxpayer's retail ~~cigarette~~/tobacco
34 permit shall be revoked for a period of ninety (90) days for the third and
35 any subsequent offenses.

36 (3) The provisions of this subsection shall not affect the

1 provisions of § 26-57-228.

2
3 26-57-1103. Deposit of general revenues.

4 Twenty-nine percent (29%) of all moneys collected from the additional
5 tax levied in §§ 26-57-1101 and 26-57-1102 shall be deposited in the State
6 Treasury as special revenue, fifty ~~per cent~~ percent (50%) of which shall be
7 credited to the Aging and Adult Services Fund Account of the Department of
8 Human Services Fund to be used to assist the Meals-on-Wheels program, and
9 fifty ~~per cent~~ percent (50%) of which shall be credited to the Department of
10 Human Services Grants Fund Account to be used to implement a Prescription
11 Drug for the Elderly Waiver Program. In the event, however, that the federal
12 government implements a prescription drug assistance program that provides
13 essentially the same benefits or greater to the same eligible clients as the
14 Prescription Drug for the Elderly Waiver Program, the funds set aside herein
15 for the Prescription Drug for the Elderly Waiver Program shall be credited,
16 in lieu thereof, to the Breast Cancer Control Fund and to the Breast Cancer
17 Research Fund in the same proportions as set out in § 26-57-1106(a).

18
19 26-57-1104. Reporting and remittance of tax.

20 The additional taxes levied in §§ 26-57-1101 and 26-57-1102 shall be
21 reported and remitted in the same manner and at the same time as other taxes
22 levied on cigarettes and tobacco products in the Arkansas Tobacco Products
23 Tax Act of 1977, §§ 26-57-201 - 26-57-254.

24
25 26-57-1105. ~~Applicability~~ Effective date of tax.

26 The tax levied in §§ 26-57-1101 and 26-57-1102 shall be in effect on
27 and after July 1, 1997 and shall apply to any inventory or stocks of
28 cigarettes or tobacco products held by a wholesaler or retailer on that date.

29
30 26-57-1106. Distribution of funds for breast cancer research and
31 control —~~Allocation of moneys~~.

32 (a) All remaining moneys collected from the additional tax levied in
33 §§ 26-57-1101 and 26-57-1102 shall be deposited in the State Treasury as
34 special revenues to be distributed as follows:

35 (1) Twenty percent (20%) shall be credited to the Breast Cancer
36 Research Fund, which is hereby created on the books of the Treasurer of

1 State, Auditor of State, and the Chief Fiscal Officer of the State to be used
 2 exclusively for the purposes set forth in § 20-15-1303; and

3 (2) Eighty percent (80%) shall be credited to the Breast Cancer
 4 Control Fund, which is hereby created on the books of the Treasurer of State,
 5 Auditor of State, and the Chief Fiscal Officer of the State to be used
 6 exclusively for the purposes set forth in § 20-15-1304 and at the option of
 7 the Department of Health in an amount not to exceed the amount appropriated
 8 by the General Assembly for the purpose of cervical cancer control. The
 9 Director of the Department of Health shall be the disbursing officer for the
 10 Breast Cancer Control Fund, and the Chancellor of the University of Arkansas
 11 for Medical Sciences shall be the disbursing officer for the Breast Cancer
 12 Research Fund.

13 (b) The moneys in the Breast Cancer Research Fund are to be allocated
 14 to the Breast Cancer Research Program for the awarding of grants, chairs, and
 15 contracts to researchers for research with respect to the cause, cure,
 16 treatment, prevention, and earlier detection of breast cancer and for
 17 developing leadership in research in Arkansas.

18 (c)(1) The moneys in the Breast Cancer Control Fund for the control of
 19 breast cancer are to be allocated according to the recommendations of the
 20 Breast Cancer Control Advisory Board, which shall establish the scope of
 21 services of the program and programmatic priorities based on the analysis of
 22 available information.

23 (2) The board shall also be responsible for developing
 24 eligibility criteria to be applied in evaluating requests for breast cancer
 25 control financial assistance from screened women who are found to be in need
 26 of diagnostic and treatment services.

27 (3) The board shall also review contractual agreements for
 28 breast cancer control with providers who will be rendering services through
 29 the program.

30
 31 26-57-1107. ~~Regulations~~ Promulgation of regulations.

32 The Department of Finance and Administration is hereby authorized to
 33 promulgate regulations as necessary to implement the tax provisions of this
 34 subchapter.

35
 36 26-57-1108. ~~Appropriation from general revenue fund~~ ~~Additional tax~~

1 ~~not collected~~ Tax contingent on appropriations.

2 (a) The taxes levied by this subchapter shall not be collected during
3 any fiscal year for which the General Assembly has appropriated at least
4 eight hundred thousand dollars (\$800,000) from general revenues to the Breast
5 Cancer Research Fund and at least three million two hundred thousand dollars
6 (\$3,200,000) of general revenues to the Breast Cancer Control Fund and funded
7 those appropriations in Category A of the Revenue Stabilization Law for that
8 fiscal year.

9 (b) The commission authorized by § 26-57-236(g) shall be at the rate
10 of three and eight-tenths percent (3.8%) during any fiscal year for which the
11 General Assembly has appropriated at least eight hundred thousand dollars
12 (\$800,000) from general revenues to the Breast Cancer Research Fund and at
13 least three million two hundred thousand dollars (\$3,200,000) of general
14 revenues to the Breast Cancer Control Fund and funded those appropriations in
15 Category A of the Revenue Stabilization Law for that fiscal year, otherwise
16 the commission shall be as prescribed in § 26-57-236(g).

17
18 SECTION 74. Arkansas Code Title 26, Chapter 57, Subchapter 11 is
19 amended to add an additional section to read as follows:

20 26-57-1109. Applicability of definitions.

21 The definitions in § 26-57-203 shall apply to this subchapter.

22
23 SECTION 75. Arkansas Code § 26-57-1302 is amended to read as follows:
24 26-57-1302. Definitions.

25 ~~(a)~~(1) "Brand family" means all styles of cigarettes sold under
26 the same trademark and differentiated from one another by means of additional
27 modifiers or descriptors, including, but not limited to, "menthol", "lights",
28 "kings", and "100s", and includes any brand name alone or in conjunction with
29 any other word, trademark, logo, symbol, motto, selling message, recognizable
30 pattern of colors, or any other indicia of product identification identical
31 or similar to or identifiable with a previously known brand of cigarettes;
32

33 ~~(b)~~(2) "Cigarette" has the same meaning as in § 26-57-
260(a)(4);

34 ~~(c)~~(3) "Director" means the Director of the Arkansas Tobacco
35 Control Board;

36 ~~(d)~~(4) "Licensee" means any person or entity who has been

1 granted and holds a permit or license under § 26-57-215, including a
 2 cigarette manufacturer's permit, wholesale cigarette license or permit, a
 3 wholesale tobacco license or permit, a salesman's license or permit, a retail
 4 cigarette license or permit, a retail tobacco license or permit, or a
 5 dealer's license or permit-;;

6 ~~(e)~~(5) "Master Settlement Agreement" has the same meaning as in
 7 § 26-57-260(a)(5)-;;

8 ~~(f)~~(6) "Nonparticipating manufacturer" means any tobacco product
 9 manufacturer that is not a participating manufacturer-;;

10 ~~(g)~~(7) "Participating manufacturer" has the meaning given that
 11 term in Section II(jj) of the Master Settlement Agreement and all amendments
 12 to the agreement-;;

13 ~~(h)~~(8) "Qualified escrow fund" has the same meaning as that term
 14 is defined in § 26-57-260(a)(6)-;;

15 ~~(i)~~(9) "Tobacco product manufacturer" has the same meaning as
 16 that term is defined in § 26-57-260(a)(9)-;;

17 ~~(j)~~(10) "Units sold" has the same meaning as that term is
 18 defined in § 26-57-260(a)(10)(A)-; and

19 ~~(k)~~(11) "Wholesaler" means:

20 ~~(1)~~(A) Any person or entity who has been granted and holds
 21 a wholesale cigarette license or permit or a wholesale tobacco license or
 22 permit pursuant to § 26-57-215; and

23 ~~(2)~~(B) Any person or entity who as a tobacco product
 24 retailer purchases tobacco products directly from a manufacturer or an
 25 unlicensed wholesaler or distributor and is therefore liable for reporting
 26 and paying taxes under § 26-57-211(a)(1)(B).

27
 28 SECTION 76. Arkansas Code § 4-75-703 is amended to read as follows:

29 4-75-703. ~~Sales excepted from subchapter~~ Exempt sales.

30 ~~The provisions of this~~ This subchapter shall not apply to a sale at
 31 wholesale or a sale at retail made:

32 (1) In an isolated transaction and not in the usual course of
 33 business;

34 (2) Where cigarettes are advertised, offered for sale, or sold
 35 in a bona fide clearance sale for the purpose of discontinuing trade in ~~such~~
 36 the cigarettes, and the advertising, offer to sell, or sale shall state the

1 reason ~~therefor~~ for the sale and the quantity of ~~such~~ the cigarettes
2 advertised, offered for sale, or to be sold;

3 (3) Where cigarettes are advertised, offered for sale, or sold
4 as imperfect or damaged, and the advertising, offer to sell, or sale shall
5 state the reason ~~therefor~~ for the sale and the quantity of the cigarettes
6 advertised, offered for sale, or to be sold;

7 (4) Where cigarettes are sold upon the final liquidation of a
8 business; or

9 (5) Where cigarettes are advertised, offered for sale, or sold
10 by any fiduciary or other officer acting under the order or direction of any
11 court.

12
13 SECTION 77. Arkansas Code § 4-75-704 is amended to read as follows:

14 4-75-704. ~~Transactions permitted to meet lawful competition~~ Lawful
15 activities.

16 (a)(1) Any wholesaler may advertise, offer to sell, or sell cigarettes
17 at a price made in good faith to meet the price of a competitor who is
18 rendering the same type of service and is selling the same article at cost to
19 the competing wholesaler as defined by this subchapter.

20 (2) Any retailer may advertise, offer to sell, or sell
21 cigarettes at a price made in good faith to meet the price of a competitor
22 who is selling the same article at cost to the competing retailer as defined
23 in this subchapter.

24 (b) The price of cigarettes advertised, offered for sale, or sold
25 under the exceptions specified in § 4-75-703 shall not be considered the
26 price of a competitor and shall not be used as a basis for establishing
27 prices below cost, nor shall the price established at a bankrupt sale be
28 considered the price of a competitor within ~~the purview of~~ this section.

29 (c) In the absence of proof of the actual cost to the competing
30 wholesaler or to the competing retailer, as the case may be, the cost may be
31 presumed to be the lowest cost to wholesalers or the lowest cost to
32 retailers, as the case may be, within the same trading area as determined by
33 a cost survey made pursuant to § 4-75-711(b).

34
35 SECTION 78. Arkansas Code § 4-75-705 is amended to read as follows:

36 4-75-705. ~~Contracts in violation of subchapter void~~ Void contracts.

1 Any contract, express or implied, made by any person in violation of
 2 any of the provisions of this subchapter is illegal and void and no recovery
 3 shall be had thereon.

4
 5 SECTION 79. Arkansas Code § 4-75-710 is amended to read as follows:

6 ~~4-75-710. Sales by a wholesaler to a wholesaler~~ Wholesale sales.

7 When one wholesaler sells cigarettes to any other wholesaler, the
 8 former shall not be required to include in his or her selling price to the
 9 latter the cost to the wholesaler, as provided by § 4-75-702, but the latter
 10 wholesaler, upon resale to a retailer, shall be subject to ~~the provisions of~~
 11 that section.

12
 13 SECTION 80. Arkansas Code § 5-27-227 is amended to read as follows:

14 5-27-227. Providing minors with tobacco products and cigarette papers -
 15 Purchase, use, or possession of tobacco products and cigarette papers by
 16 minors prohibited - Placement of tobacco vending machines.

17 (a) It shall be unlawful for any person to give, barter, or sell to a
 18 minor under eighteen (18) years of age:

- 19 (1) Tobacco in any form; or
 20 (2) Cigarette papers.

21 (b) It shall be unlawful for any person under eighteen (18) years of
 22 age:

23 (1) To use or possess, unless acting as an agent of the minor's
 24 employer within the scope of employment:

- 25 (A) Tobacco in any form; or
 26 (B) Cigarette papers;

27 (2) To purchase or attempt to purchase:

- 28 (A) Tobacco in any form; or
 29 (B) Cigarette papers; or

30 (3) For the purpose of obtaining or attempting to obtain tobacco
 31 in any form or cigarette papers, to:

- 32 (A) Use any falsified identification; or
 33 (B) Use any identification other than his or her own.

34 (c)(1) It shall not be an offense under subdivisions (b)(1) or (2) of
 35 this section if the minor was acting at the direction of an employee or
 36 authorized agent of a governmental agency authorized to enforce or ensure

1 compliance with laws relating to the prohibition of the sale of tobacco in
2 any form or cigarette papers to such minors.

3 (2) All minors used in this manner by a governmental agency
4 shall display the appearance of a person under eighteen (18) years of age.

5 (3)(A) The person under eighteen (18) years of age, if
6 questioned by the retailer or the agent or employee of the retailer about his
7 or her age, shall state his or her actual age and shall present a true and
8 correct identification if verbally asked to present it.

9 (B) Any failure on the part of the person under eighteen
10 (18) years of age to provide true and correct identification, if verbally
11 asked for it, shall be a defense to any action pursuant to this section or a
12 civil action under § 26-57-257.

13 (4) No minor shall be subject to arrest or search by any law
14 enforcement officer merely on the grounds that the minor has or may have
15 possession of tobacco or cigarette papers.

16 (d) No person shall engage or direct a person under eighteen (18)
17 years of age to violate any provision of this section for purposes of
18 determining compliance with provisions of this section unless such person has
19 procured the written consent of a parent or guardian of the minor to so
20 engage or direct the minor and such person is:

21 (1) An officer having authority to enforce the provisions of
22 this section;

23 (2) An employee of the Arkansas Tobacco Control Board or a
24 prosecuting attorney;

25 (3) An authorized representative of a business acting pursuant
26 to a self-compliance program designed to increase compliance with this
27 section;

28 (4) An employee or authorized representative of the Department
29 of Health; and

30 (5) An employee or authorized agent of a governmental agency
31 authorized to enforce or ensure compliance with the provisions of this
32 section.

33 (e) Any person who sells tobacco in any form or cigarette papers shall
34 have the right to deny the sale of any such tobacco in any form or cigarette
35 papers to any person.

36 (f) It shall be unlawful for any person who has been issued a permit

1 or a license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201
2 et seq., to fail to display in a conspicuous place or on each vending machine
3 a sign indicating that the sale of tobacco products to or purchase or
4 possession of tobacco products by a person under the age of eighteen (18)
5 years of age is prohibited by law.

6 (g) It shall be unlawful for any manufacturer whose tobacco products
7 are distributed in this state and any person who has been issued a permit or
8 license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et
9 seq., to distribute free samples of any tobacco product or coupons that
10 entitle the holder of the coupon to any free sample of any tobacco product:

11 (1) In or on any public street or sidewalk within five hundred
12 feet (500') of any playground, public school, or other facility when such
13 facility is being used primarily by persons under eighteen (18) years of age
14 for recreational, educational, or other purposes; or

15 (2) To any person under eighteen (18) years of age.

16 (h)(1)(A) Except as provided in subdivision (h)(2) of this section, it
17 shall be unlawful for any person who owns or leases tobacco vending machines
18 to place a tobacco vending machine in a public place.

19 (B) For purposes of subdivision (h)(1)(A) of this section,
20 "public place" means a publicly or privately owned place to which the public
21 or substantial numbers of people have access.

22 (2) Tobacco vending machines may be placed in:

23 (A) Restricted areas within a factory, business, office,
24 or other structure to which members of the general public are not given
25 access;

26 (B) Permitted premises which have a permit for the sale or
27 dispensing of alcoholic beverages for on-premises consumption which restrict
28 entry to persons age twenty-one (21) or older; or

29 (C) Places where the vending machine is under the
30 supervision of the owner or an employee of the owner.

31 (i)(1) Any retail permit holder or license holder who violates any of
32 the provisions in this section shall be deemed guilty of a violation and
33 subject to the following penalties:

34 (A) If the alleged violator has received a notice of an
35 alleged violation from the Arkansas Tobacco Control Board or other agency or
36 official with the authority to assess penalties containing the information

1 specified in this subchapter, a fine not to exceed two hundred fifty dollars
2 (\$250) for a first violation within a forty-eight (48) month period;

3 (B)(i) A fine not to exceed five hundred dollars (\$500)
4 for a second violation within a forty-eight (48) month period; ~~and.~~

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

7 (C)(i) A fine not to exceed one thousand dollars (\$1,000)
8 for a third violation within a forty-eight (48) month period; ~~and.~~

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

11 (D)(i) A fine not to exceed two thousand dollars (\$2,000)
12 for a fourth or subsequent violation within a forty-eight (48) month period;
13 ~~and.~~

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

16 (E) For a fifth violation within a forty-eight (48) month
17 period, the license or permit enumerated in § 26-57-219 may be revoked.

18 (2) Upon any revocation or suspension of a permit or license
19 under the provisions of subdivision (i)(1) of this section, the person shall
20 not be issued any new permit or license to distribute or sell cigarettes or
21 tobacco products during the period of suspension or revocation.

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

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

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

30 (ii) Such information should include where
31 appropriate, but not be limited to the:

32 (a) Cash register number;

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

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

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

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

3 (1) The business has adopted and enforced a written policy
4 against selling cigarettes or tobacco products to persons under the age of
5 eighteen (18) years;

6 (2) The business has informed its employees of the applicable
7 laws regarding the sale of cigarettes and tobacco products to persons under
8 the age of eighteen (18) years;

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

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

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

16 (l) Any cigarettes or tobacco products found in the possession of a
17 person under eighteen (18) years of age may be confiscated.

18 (m) An employee of a permit holder who violates § 5-27-227 shall be
19 subject to a fine not to exceed one hundred dollars (\$100) per violation.

20 (n) The person convicted of violating any provision of this section
21 whose permit or license to distribute or sell cigarettes or tobacco products
22 is suspended or revoked shall, upon conviction, surrender to the court all
23 such permits or licenses and the court shall transmit those permits and
24 licenses to the Director of the Department of Finance and Administration and
25 instruct the Director of the Arkansas Tobacco Control Board:

26 (1) To suspend or revoke, and not renew, the person's permit or
27 license to distribute or sell cigarette or tobacco products; and

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

30

31 SECTION 81. Arkansas Code § 5-37-522 is amended to read as follows:

32 5-37-522. Tobacco — ~~Removal of serial number on container~~ crimes.

33 (a) It shall be unlawful for any person to remove, obliterate, or
34 otherwise render unreadable the manufacturer's serial or code number on any
35 case, carton, package, or other container of any cigarettes or tobacco
36 product.

1 (b) Any person violating the provisions of this section shall be
2 guilty of a misdemeanor and upon conviction shall be subject to a fine of two
3 hundred dollars (\$200) or imprisonment for a period of not to exceed one (1)
4 year, or both.

5
6 SECTION 82. Arkansas Code § 5-78-102 is amended to read as follows:

7 5-78-102. Confiscation of tobacco products ~~authorized~~.

8 (a) Any cigarettes or tobacco products found in the possession of a
9 person under eighteen (18) years of age may be confiscated by a certified law
10 enforcement officer or a school official ~~and immediately destroyed~~.

11 (b) Any confiscated cigarettes or tobacco products shall immediately
12 be destroyed.