

1 State of Arkansas
2 85th General Assembly
3 First Extraordinary Session, 2006
4

Call Item 27

A Bill

HOUSE BILL 1047

5 By: Representative Rankin
6
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE THE ARKANSAS CLEAN AIR ACT
10 OF 2006; TO PROHIBIT THE MANUFACTURE, SALE, OR
11 TRANSPORTATION OF TOBACCO AND ANY TOBACCO
12 PRODUCTS WITHIN, THE IMPORTATION INTO, OR THE
13 EXPORTATION FROM THE STATE OF ARKANSAS; TO REPEAL
14 LAWS IN CONFLICT WITH THIS PROHIBITION; AND FOR
15 OTHER PURPOSES.
16

Subtitle

17 THE ARKANSAS CLEAN AIR ACT OF 2006
18
19
20

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

23 SECTION 1. Arkansas Code Title 20 is amended add an additional chapter
24 to read as follows:

25 20-38-101. Findings and purpose.

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

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

30 (2) The General Assembly had already recognized this hazard many
31 years ago when it enacted § 5-27-227 regulating the sale of tobacco to
32 minors;

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

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



1 (b) It is therefore declared to be the intent of the General Assembly
2 to remove the threat of tobacco from the State of Arkansas.

3
4 20-38-102. Definition - Statewide prohibition of tobacco and tobacco
5 products.

6 (a) "Tobacco products" means all products containing tobacco and
7 includes, but is not limited to, cigarettes, cigars, little cigars,
8 cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking tobacco,
9 including pipe tobacco, and smoking tobacco substitutes.

10 (b) The manufacture, sale, or transportation of tobacco and any
11 tobacco products within, the importation into, or the exportation from the
12 State of Arkansas is prohibited.

13
14 20-38-103. Penalties.

15 A person who violates this chapter is guilty of a:

- 16 (1) Class B misdemeanor for a first offense;
- 17 (2) Class A misdemeanor for a second offense; and
- 18 (3) Class D felony for a third or subsequent offense.

19
20 SECTION 2. Arkansas Code Title 4, Chapter 75, Subchapter 7 is
21 repealed.

22 ~~4-75-701. Title.~~

23 ~~This subchapter shall be known and may be cited as the "Unfair~~
24 ~~Cigarette Sales Act".~~

25
26 ~~4-75-702. Definitions.~~

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

28 ~~(1) "Basic cost of cigarettes" means whichever of the two (2)~~
29 ~~following amounts is lower, namely, the gross invoice cost of cigarettes to~~
30 ~~the wholesaler or retailer, as the case may be, or the lowest gross~~
31 ~~replacement cost of cigarettes to the wholesaler or retailer, as the case may~~
32 ~~be, within thirty (30) days prior to the date of sale, in the quantity last~~
33 ~~purchased, whether within or before the thirty day period, plus the full face~~
34 ~~value of any stamps or any tax which may be required by any cigarette tax act~~
35 ~~of this state or political subdivision thereof, now in effect or hereafter~~
36 ~~enacted, if not already included in the gross invoice cost of cigarettes to~~

1 the wholesaler or retailer, as the case may be;

2 (2) ~~"Buying pool" means and includes any combination,~~
 3 ~~corporation, association, affiliation, or group of retail dealers operating~~
 4 ~~jointly in the purchase, sale, exchange, or barter of cigarettes, the profits~~
 5 ~~of which accrue directly or indirectly to the retail dealers;~~

6 (3) ~~"Cigarettes" means and includes any roll for smoking made~~
 7 ~~wholly or in part of tobacco, irrespective of size or shape and whether or~~
 8 ~~not the tobacco is flavored, adulterated, or mixed with any other ingredient,~~
 9 ~~the wrapper or cover of which is made of paper or any other substance or~~
 10 ~~material, except tobacco;~~

11 (4)(A) ~~"Cost to the retailer" means the basic cost of the~~
 12 ~~cigarettes involved to the retailer plus the cost of doing business by the~~
 13 ~~retailer as evidenced by the standards and methods of accounting regularly~~
 14 ~~employed by him or her and must include, without limitation, labor including~~
 15 ~~salaries of executives and officers, rent, depreciation, selling costs,~~
 16 ~~maintenance of equipment, delivery costs, all types of licenses, taxes,~~
 17 ~~insurance, and advertising.~~

18 (B) ~~In the absence of the filing with the Arkansas Tobacco~~
 19 ~~Control Board of proof satisfactory to the board of a lesser or higher cost~~
 20 ~~of doing business by the retailer making the sale, the cost of doing business~~
 21 ~~by the retailer shall be presumed to be seven and one half percent (7 1/2%) of~~
 22 ~~the basic cost of cigarettes to the retailer.~~

23 (C) ~~In the case of any retail dealer who in connection~~
 24 ~~with the retail dealer's purchase of any cigarettes shall receive not only~~
 25 ~~the discounts ordinarily allowed upon purchases by a retail dealer but also~~
 26 ~~in whole or in part the discounts ordinarily allowed upon purchases by a~~
 27 ~~wholesale dealer, the cost of doing business by the retail dealer with~~
 28 ~~respect to the said cigarettes shall be, in the absence of proof of a lesser~~
 29 ~~or higher cost of doing business by the retail dealer, the sum of the cost of~~
 30 ~~doing business by the retail dealer and, to the extent that he or she shall~~
 31 ~~have received the full discounts ordinarily allowed to a wholesale dealer,~~
 32 ~~the cost of doing business by a wholesale dealer as defined in subdivision~~
 33 ~~(5)(B) of this section.~~

34 (5)(A) ~~"Cost to wholesaler" means the basic cost of the~~
 35 ~~cigarettes involved to the wholesaler plus the cost of doing business by the~~
 36 ~~wholesaler as evidenced by the standards and methods of accounting regularly~~

1 employed by him or her and must include, without limitation, labor costs,
 2 including salaries of executives and officers, rent, depreciation, selling
 3 costs, maintenance of equipment, delivery costs, all types of licenses,
 4 taxes, insurance, and advertising.

5 (B) In the absence of the filing with the board of proof
 6 satisfactory to the board of a lesser or higher cost of doing business by the
 7 wholesale dealer making the sale, the cost of doing business by the wholesale
 8 dealer shall be presumed to be four percent (4%) of the basic cost of the
 9 cigarettes to the wholesale dealer;

10 (6) "Director" means the Director of the Arkansas Tobacco
 11 Control Board;

12 (7) "Person" means and includes any individual, firm,
 13 association, company, partnership, corporation, joint stock company, club,
 14 agency, syndicate, the State of Arkansas, county, municipal corporation, or
 15 other political subdivision of this state, receiver, trustee, fiduciary, or
 16 trade association;

17 (8) "Retailer" means and includes any person who is engaged in
 18 this state in the business of selling cigarettes at retail and includes any
 19 group of persons, cooperative organizations, buying pools, and any other
 20 person or group of retailers purchasing cigarettes on a cooperative basis
 21 from licensed distributors or wholesalers. Any person placing a cigarette
 22 vending machine at, on, or in any premises shall be deemed to be a retailer
 23 for each such vending machine;

24 (9) "Sale" or "sell" means any transfer for a consideration,
 25 exchange, barter, gift, offer for sale, advertising for sale, soliciting an
 26 order for cigarettes, and distribution in any manner or by any means
 27 whatsoever;

28 (10) "Sell at retail", "sale at retail", or "retail sales" means
 29 and includes any sale for consumption or use made in the ordinary course of
 30 trade or usual conduct of the seller's business;

31 (11) "Sell at wholesale", "sale at wholesale", and "wholesale
 32 sales" mean and include any sale made in the ordinary course of trade or
 33 usual conduct of the wholesaler's business to a retailer for the purpose of
 34 resale;

35 (12) "Wholesaler" means and includes:

36 (A) Any person other than a buying pool as defined in

1 ~~subdivision (2) of this section, wherever resident or located, who brings or~~
 2 ~~causes to be brought into this state unstamped cigarettes purchased directly~~
 3 ~~from the manufacturer thereof and who maintains an established place of~~
 4 ~~business where substantially all of the business is the sale of cigarettes~~
 5 ~~and related merchandise at wholesale to cigarette licensees and where at all~~
 6 ~~times a substantial stock of cigarettes and related merchandise is available~~
 7 ~~for resale, if seventy five percent (75%) thereof are sold to retailers or~~
 8 ~~other wholesalers not connected with the wholesaler by reason of any business~~
 9 ~~connection or otherwise; and~~

10 ~~(B) Any person retailing cigarettes to consumers, if at~~
 11 ~~least seventy five percent (75%) of his or her purchases are made directly~~
 12 ~~from the manufacturers thereof; and~~

13 ~~(C) Any person in this state other than a buying pool, as~~
 14 ~~defined in subdivision (2) of this section, who purchases cigarettes from any~~
 15 ~~other person who purchases from a manufacturer, at least seventy five percent~~
 16 ~~(75%) of which are for purposes of resale to retailers in this state not~~
 17 ~~connected with the wholesaler by reason of any business connection or~~
 18 ~~otherwise and who maintains an established place of business where cigarettes~~
 19 ~~and related merchandise are sold at wholesale to persons licensed under this~~
 20 ~~subchapter, and where at all times a substantial stock of cigarettes and~~
 21 ~~related merchandise is available to all retailers for resale; and~~

22 ~~(D) Any person in this state who acquires cigarettes~~
 23 ~~solely for the purpose of resale in cigarette vending machines, provided the~~
 24 ~~person operates thirty (30) or more machines;~~

25 ~~(13) "Gross invoice cost" means the manufacturer's or~~
 26 ~~wholesaler's price for the product sold as listed on the invoice to the~~
 27 ~~wholesaler or retailer, as the case may be, before any deduction for~~
 28 ~~allowances, whether manufacturer promotional allowances or otherwise, or for~~
 29 ~~discounts of any kind; and~~

30 ~~(14) "Manufacturer promotional allowance" means any payment or~~
 31 ~~compensation given by a manufacturer of cigarettes to wholesalers or to~~
 32 ~~retailers to promote the sale of cigarettes and which the manufacturer~~
 33 ~~requires the wholesaler to pass on to the retailer and the retailer to pass~~
 34 ~~on to the retailer's customer.~~

35
 36 ~~4-75-703. Sales excepted from subchapter.~~

1 ~~The provisions of this subchapter shall not apply to a sale at~~
 2 ~~wholesale or a sale at retail made;~~

3 ~~(1) In an isolated transaction and not in the usual course of~~
 4 ~~business;~~

5 ~~(2) Where cigarettes are advertised, offered for sale, or sold~~
 6 ~~in a bona fide clearance sale for the purpose of discontinuing trade in such~~
 7 ~~cigarettes, and the advertising, offer to sell, or sale shall state the~~
 8 ~~reason therefor and the quantity of such cigarettes advertised, offered for~~
 9 ~~sale, or to be sold;~~

10 ~~(3) Where cigarettes are advertised, offered for sale, or sold~~
 11 ~~as imperfect or damaged, and the advertising, offer to sell, or sale shall~~
 12 ~~state the reason therefor and the quantity of the cigarettes advertised,~~
 13 ~~offered for sale, or to be sold;~~

14 ~~(4) Where cigarettes are sold upon the final liquidation of a~~
 15 ~~business; or~~

16 ~~(5) Where cigarettes are advertised, offered for sale, or sold~~
 17 ~~by any fiduciary or other officer acting under the order or direction of any~~
 18 ~~court.~~

19
 20 ~~4-75-704. Transactions permitted to meet lawful competition.~~

21 ~~(a)(1) Any wholesaler may advertise, offer to sell, or sell cigarettes~~
 22 ~~at a price made in good faith to meet the price of a competitor who is~~
 23 ~~rendering the same type of service and is selling the same article at cost to~~
 24 ~~the competing wholesaler as defined by this subchapter.~~

25 ~~(2) Any retailer may advertise, offer to sell, or sell~~
 26 ~~cigarettes at a price made in good faith to meet the price of a competitor~~
 27 ~~who is selling the same article at cost to the competing retailer as defined~~
 28 ~~in this subchapter.~~

29 ~~(b) The price of cigarettes advertised, offered for sale, or sold~~
 30 ~~under the exceptions specified in § 4-75-703 shall not be considered the~~
 31 ~~price of a competitor and shall not be used as a basis for establishing~~
 32 ~~prices below cost, nor shall the price established at a bankrupt sale be~~
 33 ~~considered the price of a competitor within the purview of this section.~~

34 ~~(c) In the absence of proof of the actual cost to the competing~~
 35 ~~wholesaler or to the competing retailer, as the case may be, the cost may be~~
 36 ~~presumed to be the lowest cost to wholesalers or the lowest cost to~~

1 ~~retailers, as the case may be, within the same trading area as determined by~~
 2 ~~a cost survey made pursuant to § 4-75-711(b).~~

3
 4 ~~4-75-705. Contracts in violation of subchapter void.~~

5 ~~Any contract, express or implied, made by any person in violation of~~
 6 ~~any of the provisions of this subchapter is illegal and void and no recovery~~
 7 ~~shall be had thereon.~~

8
 9 ~~4-75-706. Director of the Arkansas Tobacco Control Board—Powers and~~
 10 ~~duties.~~

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

14 ~~(2)(A) The director is empowered to and may from time to time~~
 15 ~~undertake and make or cause to be made one (1) or more cost surveys for the~~
 16 ~~state or such trading area as he or she shall define, and when the cost~~
 17 ~~survey shall have been made by or approved by the director, it shall be~~
 18 ~~permissible to use the cost survey as provided in § 4-75-711(b).~~

19 ~~(B) The director is also empowered to investigate price~~
 20 ~~fixing.~~

21 ~~(3) The director may revoke or suspend the license issued under~~
 22 ~~the provisions of this subchapter of any person who refuses or neglects to~~
 23 ~~comply with any provisions of this subchapter or any rule or regulation of~~
 24 ~~the director prescribed under this subchapter.~~

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

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

34
 35 ~~4-75-707. License requirement.~~

36 ~~(a) No person shall engage in or conduct the business of purchasing~~

1 ~~for resale or selling cigarettes without having first obtained the~~
 2 ~~appropriate license for that purpose.~~

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

6 ~~(c) A wholesaler or retailer who sells or intends to sell cigarettes~~
 7 ~~at one (1) or more places of business shall be required to obtain a separate~~
 8 ~~license for each place of business.~~

9 ~~(d) Any person licensed only as a wholesaler shall not operate as a~~
 10 ~~retailer unless the appropriate license therefor is first secured, and any~~
 11 ~~person licensed only as a retailer shall not operate as a wholesaler unless~~
 12 ~~the appropriate license therefor is first secured.~~

13
 14 ~~4-75-708. Sales at less than cost, rebates, concessions, etc—~~
 15 ~~Penalty.~~

16 ~~(a) It shall be unlawful for any wholesaler, retailer, or salesperson~~
 17 ~~with intent to injure competitors or destroy or substantially lessen~~
 18 ~~competition to advertise, offer to sell, or sell, at retail or wholesale,~~
 19 ~~cigarettes at less than cost to the wholesaler or retailer, as the case may~~
 20 ~~be.~~

21 ~~(b) It shall be unlawful for any wholesaler, retailer, or salesperson~~
 22 ~~to offer a rebate in price, to give a rebate in price, to offer a concession~~
 23 ~~of any kind, or to give a concession of any kind or nature whatsoever in~~
 24 ~~connection with the sale of cigarettes with intent to injure competitors or~~
 25 ~~destroy or substantially lessen competition.~~

26 ~~(c) It shall be unlawful for any retail dealer to induce or attempt to~~
 27 ~~induce or to procure or attempt to procure.~~

28 ~~(1) The purchase of cigarettes at a price less than cost to the~~
 29 ~~wholesaler; or~~

30 ~~(2) Any rebate or concession of any kind or nature whatsoever in~~
 31 ~~connection with the purchase of cigarettes.~~

32 ~~(d) Any wholesaler, retailer, or salesperson who violates the~~
 33 ~~provisions of this section shall be guilty of a violation and upon conviction~~
 34 ~~shall be subject to a fine of not more than five hundred dollars (\$500).~~

35 ~~(e) The following shall be prima facie evidence of intent to injure~~
 36 ~~competitors and destroy or substantially limit competition.~~

1 ~~(1) The advertisement, offer for sale, or sale of cigarettes by~~
 2 ~~any wholesaler, retailer, or salesperson at less than cost to him or her;~~

3 ~~(2) Any offer of a rebate in price or the giving of a rebate in~~
 4 ~~price or an offer of a concession or the giving of a concession of any kind~~
 5 ~~or nature whatsoever in connection with the sale of cigarettes; or~~

6 ~~(3) Inducing or attempting to induce or procuring or attempting~~
 7 ~~to procure the purchase of cigarettes at a price less than cost to the~~
 8 ~~wholesaler or the retailer.~~

9
 10 ~~4-75-709. Combination sales.~~

11 ~~(a)(1) In all advertisements, offers for sale, or sales involving two~~
 12 ~~(2) or more items, at least one (1) of which items is cigarettes, at a~~
 13 ~~combined price, and in all advertisements, offers for sale, or sales~~
 14 ~~involving the giving of any gift or concession of any kind, whether coupons~~
 15 ~~or otherwise, the wholesaler's or retailer's combined selling price shall not~~
 16 ~~be below the cost to the wholesaler or the cost to the retailer,~~
 17 ~~respectively, of the total of all articles, products, commodities, gifts, and~~
 18 ~~concessions included in the transactions.~~

19 ~~(2) If any such articles, products, commodities, gifts, or~~
 20 ~~concessions shall not be cigarettes, the basic cost thereof shall be~~
 21 ~~determined in the manner provided in § 4-75-702(1).~~

22 ~~(b) The redemption by a retailer of coupons supplied to consumers by~~
 23 ~~manufacturers and redeemable from the retailer by the manufacturers is not a~~
 24 ~~violation of this subchapter if the sum of the coupon and other consideration~~
 25 ~~paid by the consumer is not below the cost to the retailer.~~

26 ~~(c) Any manufacturer's promotional allowance provided to a wholesaler~~
 27 ~~or retailer may be passed on to the purchaser by the wholesaler or retailer~~
 28 ~~without violating this subchapter if the sum of the manufacturer's~~
 29 ~~promotional allowance and other consideration paid by the purchaser is not~~
 30 ~~below the cost to the wholesaler or retailer, as the case may be.~~

31
 32 ~~4-75-710. Sales by a wholesaler to a wholesaler.~~

33 ~~When one wholesaler sells cigarettes to any other wholesaler, the~~
 34 ~~former shall not be required to include in his or her selling price to the~~
 35 ~~latter the cost to the wholesaler, as provided by § 4-75-702, but the latter~~
 36 ~~wholesaler, upon resale to a retailer, shall be subject to the provisions of~~

1 ~~that section.~~

2

3 ~~4-75-711. Determination of cost generally—Cost surveys.~~

4 ~~(a) In determining cost to the wholesaler and cost to the retailer,~~
 5 ~~the court shall receive, and consider as bearing on the bona fides of the~~
 6 ~~cost, evidence tending to show that any person complained against under any~~
 7 ~~of the provisions of this subchapter purchased the cigarettes involved in the~~
 8 ~~complaint before the court at a fictitious price or upon terms or in such~~
 9 ~~manner or under such invoices as to conceal the true cost, discounts, or~~
 10 ~~terms of purchase, and shall also receive and consider as bearing on the bona~~
 11 ~~fides of the costs, evidence of the normal, customary, and prevailing terms~~
 12 ~~and discounts in connection with other sales of a similar nature in the trade~~
 13 ~~area or state.~~

14 ~~(b) Where a cost survey pursuant to recognized statistical and cost~~
 15 ~~accounting practices has been made for the trading area in which a violation~~
 16 ~~of this subchapter is committed or charged to determine and establish on the~~
 17 ~~basis of actual existing conditions the lowest cost to wholesalers or the~~
 18 ~~lowest cost to retailers within the area, the cost survey shall be deemed~~
 19 ~~competent evidence in any action or proceeding under this subchapter as~~
 20 ~~tending to prove actual cost to the wholesaler or actual cost to the retailer~~
 21 ~~complained against, but any party against whom any such cost survey may be~~
 22 ~~introduced in evidence shall have the right to offer evidence tending to~~
 23 ~~prove any inaccuracy of the cost survey or any state of facts which would~~
 24 ~~impair its probative value.~~

25

26 ~~4-75-712. Determination of cost—Sales outside ordinary channels of~~
 27 ~~business.~~

28 ~~In establishing the basic cost of cigarettes to a wholesaler or a~~
 29 ~~retailer, it shall not be permissible to use the invoice cost or the actual~~
 30 ~~cost of any cigarettes purchased at a forced, bankrupt, or closeout sale, or~~
 31 ~~other sale outside of the ordinary channels of trade.~~

32

33 ~~4-75-713. Remedies.~~

34 ~~(a) The Director of the Arkansas Tobacco Control Board or any person~~
 35 ~~injured by any violation or who would suffer injury from any threatened~~
 36 ~~violation of this subchapter may maintain an action in any court of equitable~~

1 jurisdiction to prevent, restrain, or enjoin the violation or threatened
 2 violation.

3 ~~(b)(1) If, in such action, a violation or threatened violation of this~~
 4 ~~subchapter is established, the court shall enjoin and restrain, or otherwise~~
 5 ~~prohibit, the violation or threatened violation, and, in addition thereto,~~
 6 ~~the court shall assess in favor of the plaintiff and against the defendant~~
 7 ~~the costs of suit including reasonable attorney's fees.~~

8 ~~(2) In the action it is not necessary that actual damages to the~~
 9 ~~plaintiff be alleged or proved, but, where alleged or proved, the plaintiff~~
 10 ~~in the action, in addition to the injunctive relief and costs of suit,~~
 11 ~~including reasonable attorney's fees, shall be entitled to recover from the~~
 12 ~~defendant the actual damages sustained by him or her.~~

13 ~~(c) In the event that no injunctive relief is sought or required, any~~
 14 ~~person injured by a violation of this subchapter may maintain an action for~~
 15 ~~damages and costs of suit in any court of general jurisdiction.~~

16
 17 ~~4-75-714. Enforcement Agents—Selection—Qualifications—Authority.~~

18 ~~The Director of the Arkansas Tobacco Control Board shall designate the~~
 19 ~~personnel assigned as agents of the Arkansas Tobacco Control Board, who, upon~~
 20 ~~meeting the qualifications established by the Arkansas Commission on Law~~
 21 ~~Enforcement Standards and Training, shall have the powers of specialized law~~
 22 ~~enforcement officers for the purpose of conducting investigations pertaining~~
 23 ~~to violations of tobacco laws in this state.~~

24
 25 SECTION 3. Arkansas Code 19-6-201(6), enumerating general revenues for
 26 tobacco, is repealed.

27 ~~(6) Cigarette taxes and permits and other tobacco products taxes and~~
 28 ~~permits, as enacted by Acts 1977, No. 546, known as the "Arkansas Tobacco~~
 29 ~~Products Tax Act of 1977", and all laws amendatory thereto, § 26-57-201 et~~
 30 ~~seq.;~~

31
 32 SECTION 4. Arkansas Code § 19-6-301(201), enumerating special revenues
 33 for tobacco, is repealed.

34 ~~(201) Twenty nine percent (29%) of the additional cigarette and~~
 35 ~~tobacco products tax, § 26-57-1103;~~

1 SECTION 5. Arkansas Code 26-18-303(b)(2), concerning confidentiality
 2 of sales tax records, is amended to read as follows:

3 (12) Disclosure of the lists required by+

4 ~~(A) Section 3-2-205(e)(4), reporting to the Alcoholic~~
 5 Beverage Control Division of the Department of Finance and Administration and
 6 the Alcoholic Beverage Control Board those taxpayers who hold a permit to
 7 sell alcoholic beverages and who are delinquent in state taxes; ~~and~~

8 (B) Section 26-57-257(q)(2), reporting to the Arkansas
 9 Tobacco Control Board those taxpayers who hold a permit to sell tobacco
 10 products and cigarettes and who are delinquent in state taxes;

11
 12 SECTION 6. Arkansas Code § 26-19-105(a)(2), concerninig taxpayers'
 13 monthly liability, is amended to read as follows:

14 (2) If the director determines that a taxpayer's monthly
 15 liability for taxes on ~~tobacco products under the Arkansas Tobacco Products~~
 16 ~~Tax Act of 1977, § 26-57-201 et seq.,~~ severance taxes under §§ 26-58-101 -
 17 26-58-303, or taxes on spirituous liquors, wines, malt liquors, and beer
 18 under §§ 3-5-101 - 3-7-114 equals or exceeds twenty thousand dollars
 19 (\$20,000) for calendar year 1994 or any calendar year thereafter, the
 20 taxpayer shall pay the taxes due by electronic funds transfer beginning
 21 January 1, 1995.

22
 23 SECTION 7. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
 24 repealed.

25 ~~26-57-201. Title.~~

26 ~~This subchapter shall be known and may be cited as the "Arkansas~~
 27 ~~Tobacco Products Tax Act of 1977."~~

28
 29 ~~26-57-202. Legislative findings and purpose.~~

30 ~~(a) It is recognized, found, and determined by the General Assembly~~
 31 ~~that:~~

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

34 ~~(2) The Arkansas General Assembly had already recognized this~~
 35 ~~hazard many years ago when it enacted § 5-27-227 regulating the sale of~~
 36 ~~tobacco to minors, §§ 20-27-701 - 20-27-703 establishing a policy for public~~

1 ~~smoking, and this subchapter to provide for close supervision and control of~~
 2 ~~the sale of cigarettes and other tobacco products;~~

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

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

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

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

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

19
 20 ~~26-57-203. Definitions.~~

21 ~~As used in this subchapter:~~

22 ~~(1) "Annual" or "annually" means the fiscal year from July 1~~
 23 ~~through the next June 30;~~

24 ~~(2) "Cigar" means any roll of tobacco wrapped in leaf tobacco or~~
 25 ~~in any substance containing tobacco, other than any roll of tobacco that is a~~
 26 ~~cigarette under subdivision (3) of this section;~~

27 ~~(3) "Cigarette" means any roll of tobacco wrapped in:~~

28 ~~(A) Paper or in any substance not containing tobacco; or~~

29 ~~(B) Any substance containing tobacco that, because of its~~
 30 ~~appearance, the type of tobacco used in the filler, or its packaging and~~
 31 ~~labeling is likely to be offered to or purchased by consumers as a cigarette;~~

32 ~~(4) "Consumer" means a member of the public at large;~~

33 ~~(5) "First sale" means the sale of tobacco products made by a~~
 34 ~~manufacturer to licensed wholesalers and licensed vendors or a licensed~~
 35 ~~retailer only;~~

36 ~~(6)(A) "General tobacco products vendor" or "vendor" means any~~

1 ~~person that operates a vending machine or that uses any other mechanical~~
 2 ~~device, from which cigarettes or other tobacco products are delivered to the~~
 3 ~~consumer by inserting coins in the machine or device, and that purchases~~
 4 ~~tobacco products only from licensed wholesalers.~~

5 ~~(B) A general tobacco products vendor may operate licensed~~
 6 ~~vending machines on the general tobacco product vendor's own premises and on~~
 7 ~~the premises of others as a principal business;~~

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

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

15 ~~(9) "Manufacturer" means any person who produces any tobacco~~
 16 ~~product for sale and includes, but is not limited to, importers and~~
 17 ~~distributors that deal in tobacco products as manufacturers and that are~~
 18 ~~required under this subchapter to sell only to licensed wholesalers or~~
 19 ~~licensed retailers located in Arkansas;~~

20 ~~(10) "Restricted tobacco products vendor" means a vendor who is~~
 21 ~~licensed to operate vending machines owned by the vendor on the vendor's own~~
 22 ~~premises, and is otherwise subject to all other restrictions imposed on a~~
 23 ~~general tobacco products vendor;~~

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

29 ~~(12) "Place of business" means the place where orders are taken~~
 30 ~~or received or where tobacco products are sold;~~

31 ~~(13) "Retailer" means any person who purchases tobacco products~~
 32 ~~from licensed wholesalers for the purpose of selling them over the counter at~~
 33 ~~retail to consumers;~~

34 ~~(14) "Salesman" means the agent or employee of a wholesaler that~~
 35 ~~sells or offers for sale to licensed wholesalers or licensed retailers or~~
 36 ~~that solicits for sale, takes orders for, or in any manner promotes the sale~~

1 ~~or use of tobacco products;~~

2 ~~(15) The pronouns "he", "his", "him", "they", or any other~~
 3 ~~pronoun shall apply to any person covered by this subchapter;~~

4 ~~(16)(A) "Stamps" means the Arkansas cigarette stamps denoting~~
 5 ~~the tax on cigarettes.~~

6 ~~(B) When affixed to a container of cigarettes, the stamps~~
 7 ~~shall indicate that the tax has been paid;~~

8 ~~(17) "Tobacco products" means all products containing tobacco~~
 9 ~~for consumption and includes, but is not limited to, cigarettes, cigars,~~
 10 ~~little cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking~~
 11 ~~tobacco, including pipe tobacco, and smoking tobacco substitutes;~~

12 ~~(18) "Tobacco products vending machine" means any coin-operated~~
 13 ~~vending machine from which tobacco products are sold;~~

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

18 ~~(20)(A) "Wholesaler" means any person, not a manufacturer or~~
 19 ~~owned or operated by a manufacturer, that does business within this state at~~
 20 ~~or from an established place of business that purchases unstamped or untaxed~~
 21 ~~cigarettes or other tobacco products directly from manufacturers that~~
 22 ~~distribute tobacco products in Arkansas, and that sells to properly licensed~~
 23 ~~cigarette vendors or retailers.~~

24 ~~(B) However, where an Arkansas city is separated from a~~
 25 ~~city in another state only by a state line, a person that is a resident of~~
 26 ~~the Arkansas city that maintains a warehouse in the adjoining city in the~~
 27 ~~adjoining state may qualify as a wholesaler under this subchapter if that~~
 28 ~~person is regularly engaged in the sale of tobacco products to licensed~~
 29 ~~retailers within Arkansas as a first sale and is eligible to purchase~~
 30 ~~unstamped cigarettes direct from manufacturers.~~

31
 32 ~~26-57-204. Violations.~~

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

35
 36 ~~26-57-205. Enforcement of subchapter.~~

1 ~~It is the duty of all state, county, and city officers to enforce the~~
 2 ~~provisions of this subchapter.~~

3
 4 ~~26-57-206. Rules and regulations.~~

5 ~~The Director of the Department of Finance and Administration and the~~
 6 ~~Director of the Tobacco Control Board are empowered to promulgate rules and~~
 7 ~~regulations for the proper enforcement of their powers and duties as~~
 8 ~~specifically prescribed by this subchapter, except the Director of the~~
 9 ~~Tobacco Control Board shall have no authority to promulgate rules and~~
 10 ~~regulations regarding manufacturers.~~

11
 12 ~~26-57-207. Business of handling, receiving, etc., a privilege.~~

13 ~~The business of handling, receiving, possessing, storing, distributing,~~
 14 ~~taking orders for, for soliciting orders of, selling, offering for sale, and~~
 15 ~~dealing in, through sale, barter, or exchange, any cigarettes or other~~
 16 ~~tobacco products is declared to be a privilege under the constitution and~~
 17 ~~laws of the State of Arkansas.~~

18
 19 ~~26-57-208. Levy of tax—Rates of tax.~~

20 ~~An excise or privilege tax is levied as follows:~~

21 ~~(1)(A) The excise or privilege tax on cigarettes sold in this~~
 22 ~~state is ten dollars and fifty cents (\$10.50) per one thousand (1,000)~~
 23 ~~cigarettes sold.~~

24 ~~(B)(i) Whenever there are two (2) adjoining cities each~~
 25 ~~with a population of five thousand (5,000) or more separated by a state line,~~
 26 ~~the tax on cigarettes sold in such adjoining Arkansas city shall be at the~~
 27 ~~rate imposed by law on cigarettes sold in the adjoining city outside of~~
 28 ~~Arkansas.~~

29 ~~(ii) The tax shall not exceed the tax upon~~
 30 ~~cigarettes imposed by this subchapter.~~

31 ~~(C)(i) The tax on cigarettes sold in Arkansas within three~~
 32 ~~hundred feet (300') of a state line or in any Arkansas city which adjoins a~~
 33 ~~state line shall be at the rate imposed by law on cigarettes sold in the~~
 34 ~~adjoining state.~~

35 ~~(ii) The tax shall not exceed the tax upon~~
 36 ~~cigarettes imposed by this subchapter.~~

1 ~~(D)(i) The reduced border zone tax rates set forth in~~
 2 ~~subdivisions (1)(B) and (1)(C) of this section apply only to sales made at~~
 3 ~~retail by Arkansas border zone retailers to actual consumers of the~~
 4 ~~cigarettes.~~

5 ~~(ii)(a) The sale of cigarettes by an Arkansas border~~
 6 ~~zone retailer to any other retailer or wholesaler does not qualify for the~~
 7 ~~reduced border zone tax rate.~~

8 ~~(b) The full amount of Arkansas cigarette~~
 9 ~~excise tax will be due on any cigarettes sold in such a manner.~~

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

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

17 ~~(3)(A)(i) The taxes levied by this section shall be reported and~~
 18 ~~paid by wholesalers licensed pursuant to § 26-57-214.~~

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

23 ~~(B)(i) Any taxpayer who fails to report and remit the~~
 24 ~~tobacco tax due on tobacco products purchased from manufacturers,~~
 25 ~~distributors, or wholesalers who are not licensed under § 26-57-214 shall be~~
 26 ~~subject to the following penalties:~~

27 ~~(a) Five percent (5%) of the total tobacco tax~~
 28 ~~due for the first offense;~~

29 ~~(b) Twenty percent (20%) of the total tobacco~~
 30 ~~tax due for the second offense; and~~

31 ~~(c) Twenty five percent (25%) of the total~~
 32 ~~tobacco tax due for the third and any subsequent offenses.~~

33 ~~(ii) In addition, the taxpayer's retail~~
 34 ~~cigarette/tobacco permit shall be revoked for a period of ninety (90) days~~
 35 ~~for the third and any subsequent offenses.~~

36 ~~(C) The provisions of this subdivision (3) shall not~~

1 ~~affect the provisions of § 26-57-228.~~

2
3 ~~26-57-209. Exemption from tax.~~

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

9
10 ~~26-57-210. Waiver of tax.~~

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

16
17 ~~26-57-211. Wholesaler to pay taxes—Reports and remittance of tax.~~
18 ~~{As amended by Acts 1997, No. 434.}~~

19 ~~(a) Every wholesaler, or retailer who purchases tobacco products~~
20 ~~directly from the manufacturer, shall pay the taxes levied by this~~
21 ~~subchapter.~~

22 ~~(b)(1) On or before the fifteenth day of each month, every wholesaler~~
23 ~~shall file a report for the previous month's tax collections with the~~
24 ~~director.~~

25 ~~(2) The report shall provide the information prescribed by the~~
26 ~~director.~~

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

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

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

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

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

10 ~~(C) Bad debts incurred for sales made prior to August 13,~~
 11 ~~1993 shall not be deducted.~~

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

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

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

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

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

28
 29 ~~26-57-211. Wholesaler to pay taxes — Reports and remittance of tax.~~
 30 ~~{As amended by Acts 1997, No. 1337.}~~

31 ~~(a)(1)(A) The taxes levied by this subchapter shall be reported and~~
 32 ~~paid by wholesalers licensed pursuant to § 26-57-214.~~

33 ~~(B) However, retailers shall be liable for reporting and~~
 34 ~~paying these taxes when a retailer purchases tobacco products directly from a~~
 35 ~~manufacturer or from a wholesaler or distributor not licensed pursuant to §~~
 36 ~~26-57-214.~~

1 ~~(2)(A) Any taxpayer who fails to report and remit the tobacco~~
 2 ~~tax due on tobacco products purchased from manufacturers, distributors, or~~
 3 ~~wholesalers who are not licensed under § 26-57-214 shall be subject to the~~
 4 ~~following penalties:~~

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

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

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

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

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

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

19 ~~(2) The report shall provide the information prescribed by the~~
 20 ~~director.~~

21 ~~(c)(1) When the report is filed, the wholesaler shall remit the full~~
 22 ~~amount of the tax due for the previous month to the director.~~

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

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

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

31 ~~(e)(1)(A) In computing the amount of tax due under this subchapter and~~
 32 ~~any act supplemental to this subchapter, a wholesaler may deduct the cost of~~
 33 ~~cigarette tax stamps and tobacco taxes lost through bad debts.~~

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

36 ~~(C) A bad debt incurred for a sale made prior to August~~

1 ~~13, 1993 shall not be deducted.~~

2 ~~(D) A bad debt must be deducted within three (3) years of~~
 3 ~~the date of the sale for which the debt was incurred.~~

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

8 ~~(2)(A) As used in this section, "bad debt" means any cigarette~~
 9 ~~or tobacco tax which the wholesaler legally claims as a bad debt deduction~~
 10 ~~for federal income tax purposes.~~

11 ~~(B) A bad debts includes, but is not limited to, a~~
 12 ~~worthless check, a worthless credit card payment, and an uncollectible credit~~
 13 ~~account.~~

14 ~~(C) A bad debt does not include financing charges or~~
 15 ~~interest, an uncollectible amount on property that remains in the possession~~
 16 ~~of the taxpayer or vendor until the full purchase price is paid, expenses~~
 17 ~~incurred in attempting to collect any debt, a debt sold or assigned to a~~
 18 ~~third party for collection, and repossessed property.~~

19
 20 ~~26-57-212. Wholesalers, warehousemen—Reports, payment of tax, and~~
 21 ~~records.~~

22 ~~(a)(1) Every licensed wholesaler and warehouse that handles, receives,~~
 23 ~~stores, sells, and disposes of tobacco products in any manner in this state~~
 24 ~~shall file a report with the Director of the Department of Finance and~~
 25 ~~Administration on or before the fifteenth day of each month.~~

26 ~~(2) Retailers shall be liable for reporting and paying these~~
 27 ~~taxes when a retailer purchases tobacco products directly from a manufacturer~~
 28 ~~or from a wholesaler or distributor not licensed pursuant to § 26-57-214.~~

29 ~~(3)(A) Any taxpayer who fails to report and remit the tobacco~~
 30 ~~tax due on tobacco products purchased from manufacturers, distributors, or~~
 31 ~~wholesalers who are not licensed under § 26-57-214 shall be subject to the~~
 32 ~~following penalties:~~

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

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

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

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

6 ~~(4) The provisions of this subsection shall not affect the~~
 7 ~~provisions of § 26-57-228.~~

8 ~~(b) The report shall include:~~

9 ~~(1) A statement of the tobacco products on hand at the beginning~~
 10 ~~of the preceding month;~~

11 ~~(2) The receipts and disbursements of tobacco products handled~~
 12 ~~during the preceding month; and~~

13 ~~(3) Any other information about the purchases and sales as may~~
 14 ~~be prescribed by the director.~~

15 ~~(c) All taxes due for the preceding month shall be remitted to the~~
 16 ~~director at the time the report is filed.~~

17 ~~(d)(1)(A) Every wholesaler and warehouse shall permit personnel of the~~
 18 ~~Department of Finance and Administration and auditors of the Arkansas Tobacco~~
 19 ~~Control Board to enter into and to inspect their stock of tobacco products~~
 20 ~~and all books, invoices, and any documents and records relating to receipts~~
 21 ~~and disbursements of tobacco products.~~

22 ~~(B) Auditors shall not release to the board or to the~~
 23 ~~public any information identifying customers of the manufacturer, wholesaler,~~
 24 ~~or warehouse except when necessary to notify the board of alleged violations~~
 25 ~~of this subchapter.~~

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

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

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

36 ~~(C) The record shall be accumulated on or before the~~

1 ~~twentieth day of each month covering the previous calendar month.~~

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

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

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

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

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

11 ~~(f)(1)(A) All purchases of cigars, cigarettes, cigarette papers,~~
 12 ~~smoking tobacco, and other tobacco products for distribution within the State~~
 13 ~~of Arkansas by any nonresident tobacco products wholesaler shall be evidenced~~
 14 ~~by a separate invoice from the seller correctly showing the date of purchase~~
 15 ~~and the quantity of each of the articles purchased by the wholesaler for~~
 16 ~~distribution within Arkansas.~~

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

20 ~~(2) At the time of shipping or delivering any cigars,~~
 21 ~~cigarettes, cigarette papers, smoking tobaccos, or other tobacco into the~~
 22 ~~State of Arkansas, every nonresident tobacco product wholesaler shall make a~~
 23 ~~true duplicate invoice of the transaction which shall show full and complete~~
 24 ~~details of the sale or delivery of those articles and shall retain the~~
 25 ~~duplicate invoice, subject to use and inspection by the department and the~~
 26 ~~board for a period of three (3) years.~~

27 ~~(3) Nonresident tobacco wholesalers shall also keep a record of~~
 28 ~~all cigarettes, cigarette papers, cigars, smoking tobaccos, and other tobacco~~
 29 ~~products purchased by them for distribution within the State of Arkansas, and~~
 30 ~~all books, records, and memoranda pertaining to the purchase and sale of such~~
 31 ~~products shall be subject to inspection by the department and the board.~~

32
 33 ~~26-57-213. Invoices.~~

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

1 ~~(b) Copies of all invoices for the purchase or sale of any tobacco~~
 2 ~~products shall be retained by each manufacturer, wholesaler, vendor, and~~
 3 ~~retailer for a period of three (3) years, subject to examination by the~~
 4 ~~Director of the Department of Finance and Administration and the Director of~~
 5 ~~the Tobacco Control Board or their authorized agents upon demand at any time~~
 6 ~~during regular business hours; except that only the Director of the~~
 7 ~~Department of Finance and Administration may examine the invoices of~~
 8 ~~manufacturers.~~

9
 10 ~~26-57-214. Registration and licensing required prior to doing~~
 11 ~~business.~~

12 ~~(a) No person shall deal with or otherwise do business in tobacco~~
 13 ~~products in this state without having first registered with the Director of~~
 14 ~~the Arkansas Tobacco Control Board and obtained a permit or license for that~~
 15 ~~purpose, except that a manufacturer need only to register in accordance with~~
 16 ~~§ 26-57-215(1).~~

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

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

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

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

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

30
 31 ~~26-57-215. Permits and licenses—Types.~~

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

36 ~~(1) Every manufacturer whose products are sold in this state~~

1 shall register with the Director of Finance and Administration. A
 2 manufacturer so registered is not licensed for purposes of this chapter.

3 (2) ~~Every wholesaler of cigarettes who operates a place of
 4 business shall secure a wholesale cigarette permit and every wholesaler of
 5 any other tobacco products except cigarettes who operates a place of business
 6 shall secure a wholesale tobacco permit. Any wholesaler doing business in
 7 both cigarettes and other tobacco products shall secure both a wholesale
 8 cigarette permit and a wholesale tobacco permit.~~

9 (3) ~~Every salesman of any tobacco product in this state shall
 10 secure a salesman's license. Application shall be made by the wholesaler, or
 11 general vendor who is the salesman's employer. A salesman's license is not
 12 transferable to another employer and must be surrendered to the Director of
 13 the Tobacco Control Board by the employer upon termination of the salesman's
 14 employment.~~

15 (4)(A) ~~Every retailer of cigarettes who operates a place of
 16 business shall secure a retail cigarette permit and every retailer of any
 17 other tobacco products, except cigarettes, who operates a place of business
 18 shall secure a retail tobacco permit. Any retailer doing business in both
 19 cigarettes and other tobacco products shall secure both a retail cigarette
 20 permit and a retail tobacco permit.~~

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

24 (5) ~~Every person engaged in the business of selling, leasing,
 25 renting, or otherwise disposing of or dealing with any tobacco product
 26 vending machine in this state shall secure a dealer's license.~~

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

1 ~~for the issuance of a state license required under this section.~~

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

12
13 ~~26-57-216. Permits and licenses—Number and location.~~

14 ~~The Tobacco Control Board is empowered to determine in its reasonable~~
15 ~~discretion, and in accordance with the provisions of this subchapter, the~~
16 ~~number of licenses to be granted in the state, the locations thereof, and the~~
17 ~~persons to whom they are to be granted.~~

18
19 ~~26-57-219. Permits and licenses—Annual privilege tax.~~

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

- 22 ~~(1) Wholesale Cigarette Permit\$ 500.00~~
- 23 ~~(2) Wholesale Tobacco Permit 500.00~~
- 24 ~~(3) General Tobacco Products Vending Permit (vendor) 100.00~~
- 25 ~~(4) Tobacco Products Vending Machine License, per machine .10.00~~
- 26 ~~(5)(A) Retail Cigarette/Tobacco Permit for retailers whose~~
- 27 ~~weekly gross sales are less than \$5,000 20.00~~
- 28 ~~(B) Retail Cigarette/Tobacco Permit for retailers whose~~
- 29 ~~weekly gross sales are between \$5,000 and \$15,000 30.00~~
- 30 ~~(C) Retail Cigarette/Tobacco Permit for retailers whose~~
- 31 ~~weekly gross sales are in excess of \$15,000 50.00~~
- 32 ~~(6) Salesman's License 25.00~~
- 33 ~~(7) Dealer's License 25.00~~
- 34 ~~(8) Manufacturer's Representative Fee 25.00~~

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

1 ~~(2) Upon the failure to timely pay the annual privilege fee, a~~
 2 ~~late fee of twice the amount of any license or permit fee in question will be~~
 3 ~~owed in addition to the annual privilege fee.~~

4 ~~(3) No permit or license shall be issued to the applicant until~~
 5 ~~the late fee and the license or permit fee has been paid.~~

6 ~~(c) No permit or license issued under this section shall be renewed~~
 7 ~~for a permit or license holder who is delinquent more than ninety (90) days~~
 8 ~~on any privilege fee, tax relating to the sale or dispensation of cigarettes~~
 9 ~~or tobacco products, or any other state and local tax due the Director of the~~
 10 ~~Department of Finance and Administration.~~

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

16
 17 ~~26-57-220. Permits and licenses—Duration.~~

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

20
 21 ~~26-57-221. Permits and licenses—Not transferable.~~

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

25
 26 ~~26-57-222. Permits and licenses—Duplicates.~~

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

31
 32 ~~26-57-223. Permits and licenses—Suspension or revocation.~~

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

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

4
5 ~~26-57-224. Vendor's bond.~~

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

8 ~~(b) The bond shall be conditioned upon the faithful performance of the~~
9 ~~duties and obligations imposed by this subchapter and the regulations~~
10 ~~promulgated by the Director of the Department of Finance and Administration.~~

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

12 (1) Up to 30 machines	\$2,000.00
13 (2) 31 to 60 machines	3,000.00
14 (3) 61 to 90 machines	4,000.00
15 (4) 91 to 120 machines	5,000.00
16 (5) Over 120 machines	6,000.00

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

20
21 ~~26-57-225. Failure to secure permit unlawful.~~

22 ~~Any person required to pay taxes under the provisions of this~~
23 ~~subchapter who fails to secure a permit is guilty of a violation for the~~
24 ~~first and second offense and is guilty of a Class C misdemeanor for each~~
25 ~~additional offense.~~

26
27 ~~26-57-226. Sale, delivery, etc., without license — Penalty.~~

28 ~~Any person within the jurisdiction of this state who is not licensed to~~
29 ~~sell, deliver, or cause to be delivered tobacco products to consumers, or any~~
30 ~~person who sells, takes orders from, delivers, or causes to be delivered~~
31 ~~immediately or in the future any tobacco products to consumers, is guilty of~~
32 ~~a Class C misdemeanor for the first offense and a Class B misdemeanor for~~
33 ~~each additional offense.~~

34
35 ~~26-57-227. Operation of vending machine without license a public~~
36 ~~nuisance — Seizure and sale — Redemption.~~

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

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

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

13
 14 ~~26-57-228. Purchases from unregistered, unlicensed dealers unlawful.~~

15 ~~(a) It is unlawful for any retailer of tobacco products to purchase~~
 16 ~~these products from any person other than a registered manufacturer, licensed~~
 17 ~~wholesaler, or other licensed retailer.~~

18 ~~(b) Any retailer violating the provisions of this subchapter is guilty~~
 19 ~~of a Class B misdemeanor for each purchase defined in subsection (a) of this~~
 20 ~~section.~~

21
 22 ~~26-57-229. Licensee as wholesaler and retailer.~~

23 ~~(a) A person who is licensed as a wholesaler and as a retailer shall~~
 24 ~~maintain wholesale and retail stocks in separate buildings. However, this~~
 25 ~~subsection shall not apply if stamps denoting payment of the tax on the~~
 26 ~~wholesale stocks and the retail stocks of cigarettes are properly affixed.~~

27 ~~(b) Every wholesaler who maintains a business as a retailer shall keep~~
 28 ~~a record of his wholesale operations showing the amount of stamps purchased,~~
 29 ~~if any, and all purchases from whatever source, and all sales whether to~~
 30 ~~himself as retailer or to another. This record shall be subject to inspection~~
 31 ~~by the Department of Finance and Administration and the Tobacco Control~~
 32 ~~Board.~~

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

35 ~~(d) When a wholesaler refuses to keep the records required by or to~~
 36 ~~comply with the provisions of this section, the Director of the Tobacco~~

1 ~~Control Board shall revoke all permits that have been issued to him.~~

2
3 ~~26-57-230. Common carriers.~~

4 ~~(a) Common carriers transporting tobacco products may be required by~~
5 ~~the Director of the Department of Finance and Administration or the Tobacco~~
6 ~~Control Board to give a statement of all consignments of tobacco products~~
7 ~~showing date, point of origin, point of delivery, and to whom delivered.~~

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

11 ~~(c) Any person who fails or refuses to give to the Department of~~
12 ~~Finance and Administration or the Tobacco Control Board the statement,~~
13 ~~reports, or invoices required by this section or who refuses to permit the~~
14 ~~Department of Finance and Administration or the Tobacco Control Board to~~
15 ~~examine his records is guilty of a Class C misdemeanor.~~

16
17 ~~26-57-231. Failure to allow inspection unlawful.~~

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

25
26 ~~26-57-232. Wholesalers—Restrictions—Criminal violations.~~

27 ~~(a) Wholesalers shall conduct their business subject to the following~~
28 ~~restrictions:~~

29 ~~(1) The wholesaler shall secure a permit from the Director of~~
30 ~~the Tobacco Control Board;~~

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

33 ~~(3) They shall, before selling, delivering, or otherwise~~
34 ~~disposing of cigarettes to retailers in this state, affix stamps of the~~
35 ~~proper denominations to show that the tax has been paid. The stamp shall be~~
36 ~~affixed in the manner prescribed by the Director of the Department of Finance~~

1 ~~and Administration; and~~

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

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

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

17
 18 ~~26-57-233. Salesmen—Restrictions—Violations.~~

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

23 ~~(1) The salesman shall secure a permit from the Director of the~~
 24 ~~Tobacco Control Board;~~

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

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

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

35 ~~(B) He shall retain this information in a designated place~~
 36 ~~within this state for three (3) years subject to inspection by the Department~~

1 of Finance and Administration and the Tobacco Control Board.

2
3 ~~26-57-234. Retailers and vendors—Restrictions—Violations.~~

4 ~~(a) Retailers and vendors shall conduct their businesses subject to~~
5 ~~the following restrictions:~~

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

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

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

17 ~~(4) The retailer shall keep records showing the description and~~
18 ~~date of the receipt of each lot of tobacco products, from whom purchased, and~~
19 ~~when received on the premises, or any other requirements prescribed by the~~
20 ~~Director of the Department of Finance and Administration. These records shall~~
21 ~~be subject to inspection by the Department of Finance and Administration and~~
22 ~~the Tobacco Control Board;~~

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

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

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

32 ~~(c) Any retailer or vendor who fails or refuses to retain in his files~~
33 ~~invoices of tobacco products and stamps, or who fails or refuses to furnish~~
34 ~~the statements and information or make the reports concerning receipts and~~
35 ~~sales of tobacco products as required by this subchapter or prescribed by the~~
36 ~~Director of the Department of Finance and Administration, or who violates any~~

1 of the requirements of this section, is guilty of a violation.

2
3 ~~26-57-235. Cigarette stamps generally.~~

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

6 ~~(b) The Director of the Department of Finance and Administration shall~~
7 ~~prescribe the kind of stamps to be used in the administration of this~~
8 ~~subchapter.~~

9 ~~(c)(1) The director shall prepare and maintain an adequate supply of~~
10 ~~cigarette stamps.~~

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

13 ~~(3) The cost of printing the stamps shall be paid from the~~
14 ~~appropriation made for the administration of the Department of Finance and~~
15 ~~Administration.~~

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

20 ~~(B) The department shall maintain for not less than three~~
21 ~~(3) years information identifying the person that affixed the tax stamp to~~
22 ~~each package of cigarettes, which information shall not be confidential or~~
23 ~~exempt from disclosure to the public.~~

24
25 ~~26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]~~

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

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

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

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

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

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

3 ~~(g)(1) A commission shall be paid by the director to stamp deputies~~
 4 ~~for the sales and collection of cigarette tax stamps and for affixing the tax~~
 5 ~~stamps to each package of cigarettes.~~

6 ~~(2) The commission shall not be less than three and eight tenths~~
 7 ~~percent (3.8%) of the total aggregate cigarette tax collected.~~

8 ~~(h)(1) All deposits held by any bank for a stamp deputy which~~
 9 ~~represent the sales of stamps are trust funds and shall be held as a special~~
 10 ~~deposit.~~

11 ~~(2) In the event of the failure or insolvency of the bank, the~~
 12 ~~deposits shall be classed and considered as preferred claims due the State of~~
 13 ~~Arkansas.~~

14
 15 ~~26-57-236. Stamp deputies. [As amended by Acts 1997, No. 1337.]~~

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

18 ~~(b) The Director of the Department of Finance and Administration may~~
 19 ~~appoint and commission stamp deputies, who shall be the owners or officers of~~
 20 ~~wholesalers, to handle the stamps and collect the tax on tobacco products~~
 21 ~~before sales of tobacco products are made to the retailers.~~

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

25 ~~(d) Each stamp deputy shall furnish a bond in an amount and in the~~
 26 ~~form as prescribed by the Director of the Department of Finance and~~
 27 ~~Administration.~~

28 ~~(e) Stamp deputies shall keep records of all stamp sales and tax~~
 29 ~~collections and shall make the reports prescribed by the Director of the~~
 30 ~~Department of Finance and Administration.~~

31 ~~(f) A commission shall be paid by the Director of the Department of~~
 32 ~~Finance and Administration to stamp deputies for the sale of stamps for~~
 33 ~~cigarettes and the collection of cigarette taxes. The commission paid shall~~
 34 ~~not be less than three and eight tenths percent (3.8%) of the total aggregate~~
 35 ~~cigarette tax collected.~~

36 ~~(g) All deposits held by any bank for a stamp deputy which represent~~

1 ~~the sales of stamps are trust funds and shall be held as a special deposit.~~
 2 ~~In the event of the failure or insolvency of the bank, the deposits shall be~~
 3 ~~classed and considered as preferred claims due the State of Arkansas.~~

4
 5 ~~26-57-237. Cigarette stamps—Sale or delivery.~~

6 ~~(a) The Director of the Department of Finance and Administration or~~
 7 ~~his stamp deputy may sell or deliver cigarette stamps only to licensed~~
 8 ~~wholesalers.~~

9 ~~(b) No person shall have in his possession any cigarette stamps except~~
 10 ~~such as have been issued in the regular way in the manner provided for in~~
 11 ~~this subchapter.~~

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

18 ~~(2) When the stamps are shipped to the wholesaler or other~~
 19 ~~person, the shipping and insurance cost shall be borne by the wholesaler. The~~
 20 ~~wholesaler or other person to whom the stamps are shipped shall be liable for~~
 21 ~~payment of the stamps only upon actual receipt thereof.~~

22 ~~(3) The receipt of tax stamps by a cigarette or tobacco products~~
 23 ~~wholesaler or other person to whom the stamps are shipped shall be evidenced~~
 24 ~~by a written receipt signed by the person to whom the stamps are shipped or a~~
 25 ~~person designated by him.~~

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

30
 31 ~~26-57-238. Cigarette stamps—Refund on unsold, returned cigarettes.~~

32 ~~Where cigarettes to which stamps have been affixed are unsold and are~~
 33 ~~returned, by the retailer or the wholesaler who paid tax on them, to the~~
 34 ~~wholesaler or manufacturer from whom they were originally purchased, refund~~
 35 ~~of the tax paid on such cigarettes may be made in the manner prescribed by~~
 36 ~~the Director of the Department of Finance and Administration.~~

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~~26-57-239. Consumer to require stamps affixed in proper manner.~~

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

~~26-57-240. Counterfeiting of stamps unlawful—Penalty.~~

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

~~26-57-241. Reuse of containers unlawful—Penalty.~~

~~Any person who reuses or refills with cigarettes any box, package, or container from which tax paid tobacco products have been removed is guilty of a Class D felony.~~

~~26-57-242. Wholesaler—Transporting cigarettes with stamps affixed outside state for reentry.~~

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

~~(b) The prohibition contained in this section does not apply to any wholesaler of tobacco products who was actually engaged in and had established distribution practice of transporting cigarettes upon which the Arkansas stamp had been affixed outside the boundaries of the State of Arkansas for warehousing or reentry into the State of Arkansas, or both, for sale or resale on or before January 1, 1972.~~

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

3
 4 ~~26-57-243. Unstamped and untaxed products—Personal possession~~
 5 ~~limits.~~

6 ~~The possession limit of tobacco products by any person, upon his person~~
 7 ~~or in his personal luggage for his personal use, not taxed or stamped in~~
 8 ~~accordance with the provisions of this subchapter, is as follows:~~

9 ~~(1) One (1) carton of ten (10) packages plus one (1) package of~~
 10 ~~twenty (20) cigarettes. A person purchasing cigarettes from a United States~~
 11 ~~military base or installation may have in his or her possession three (3)~~
 12 ~~cartons of ten (10) packages;~~

13 ~~(2) One (1) box of fifty (50) cigars, small cigars, or~~
 14 ~~cigarillos; or~~

15 ~~(3) Three pounds (3 lbs.) of smoking tobacco.~~

16
 17 ~~26-57-244. Possession of untaxed, unstamped products—Notice and~~
 18 ~~prima facie evidence.~~

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

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

25 ~~(c) The provisions of this section shall not apply to wholesalers and~~
 26 ~~common carriers.~~

27
 28 ~~26-57-245. Unstamped products or products with unpaid taxes—~~
 29 ~~Purchase, sale, receipt, etc., a criminal offense.~~

30 ~~Except as otherwise authorized by this subchapter, any person who~~
 31 ~~purchases, sells, offers for sale, receives, possesses, or transports upon~~
 32 ~~his person, on his premises, or in his vehicle any cigarettes which do not~~
 33 ~~have affixed thereon the stamps required by this subchapter, or any other~~
 34 ~~tobacco products upon which the taxes imposed by this subchapter have not~~
 35 ~~been paid, is guilty of a criminal offense which is:~~

36 ~~(1) A Class C felony if the tax value of the total amount of~~

1 ~~tobacco products is equal to or exceeds one hundred dollars (\$100);~~

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

4
 5 ~~26-57-246. Possession of improperly handled products as prima facie~~
 6 ~~evidence.~~

7 ~~The possession of tobacco products which have not been handled~~
 8 ~~according to this subchapter by any person shall be prima facie evidence that~~
 9 ~~that person intended to evade the tax thereon in order to cheat and defraud~~
 10 ~~the State of Arkansas.~~

11
 12 ~~26-57-247. Seizure and disposition of improperly handled products.~~

13 ~~(a) Any cigarettes to which stamps have not been affixed as provided~~
 14 ~~in this subchapter are subject to seizure and shall be held as evidence for~~
 15 ~~prosecution.~~

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

20
 21 ~~26-57-248. Possession or sale of products with unpaid taxes—~~
 22 ~~Supplemental fines—Liquidated damages.~~

23 ~~(a) Any person who places in his stock or who has in his possession or~~
 24 ~~on his premises, or who sells or offers for sale, any tobacco products on~~
 25 ~~which the tax prescribed by law has not been paid shall, in addition to the~~
 26 ~~other fines and forfeitures, be subject to a fine of twenty five dollars~~
 27 ~~(\$25.00) for each package of cigarettes, little cigars, and cigarillos up to~~
 28 ~~twenty (20) packages, and a fine of fifty dollars (\$50.00) for each package~~
 29 ~~in excess of twenty (20) packages, so held, sold, or offered for sale and a~~
 30 ~~fine of fifty dollars (\$50.00) for each box of cigars and twenty five dollars~~
 31 ~~(\$25.00) for each unit of other tobacco products so held, sold, or offered~~
 32 ~~for sale.~~

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

35
 36 ~~26-57-249. Sale of products upon conviction—Procedure.~~

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

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

10
 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 may bring suit in the proper~~
 16 ~~court to recover such 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 ~~26-57-251. Civil and criminal actions brought in name of director—~~
 21 ~~Prosecution.~~

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

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

28
 29 ~~26-57-252. No bond for costs required.~~

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

33
 34 ~~26-57-253. Criminal actions—Appeals.~~

35 ~~(a) In all prosecutions in the district and city courts or other~~
 36 ~~courts of this state, the State of Arkansas shall have the same right of~~

1 ~~appeal to the circuit courts of this state and upon the same terms as the~~
 2 ~~defendant now has under the law in misdemeanor cases.~~

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

5
 6 ~~26-57-254. Health inspections.~~

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

14
 15 ~~26-57-255. Arkansas Tobacco Control Board.~~

16 ~~(a) There is hereby created the Arkansas Tobacco Control Board to~~
 17 ~~consist of eight (8) members appointed by the Governor. The board shall be~~
 18 ~~constituted as follows: Two (2) members of the board shall be tobacco~~
 19 ~~products wholesalers; two (2) members of the board shall be tobacco products~~
 20 ~~retailers; and four (4) members of the board shall be members of the public~~
 21 ~~at large who are not public employees or officials, at least one (1) of which~~
 22 ~~shall be an African American, and two (2) of whom shall be selected from a~~
 23 ~~list of at least eight (8) candidates supplied to the Governor by the~~
 24 ~~Arkansas Medical Society.~~

25 ~~(b) The Governor shall designate which member of the Tobacco Control~~
 26 ~~Board shall act as chairman, and that person shall serve as chairman for two~~
 27 ~~(2) years unless his membership on the board ceases prior to the end of the~~
 28 ~~two-year period.~~

29 ~~(c) All members of the Tobacco Control Board must be residents of the~~
 30 ~~State of Arkansas and confirmed by the Senate. The term of office shall be~~
 31 ~~five (5) years, except that the initial board shall be appointed to staggered~~
 32 ~~terms in that the term of one (1) member expires each year.~~

33 ~~(d) The Tobacco Control Board shall have responsibility for the~~
 34 ~~issuance, suspension, and revocation of the licenses and permits enumerated~~
 35 ~~in § 26-57-219. All action by the Tobacco Control Board shall be by a~~
 36 ~~majority vote of the full membership of the board, and the board may take no~~

1 official action in connection with any matter except at a regular or special
 2 meeting. In the event of a tie vote of the members of the board, the Director
 3 of the Tobacco Control Board may cast the deciding vote. The Tobacco Control
 4 Board shall have no jurisdiction over manufacturers of tobacco products.

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

9 (f) Each member of the Tobacco Control Board and the Director of the
 10 Tobacco Control Board shall take and subscribe to an oath that he will
 11 support and enforce the provisions of this subchapter, the tobacco control
 12 laws of this state, the Constitution of the State of Arkansas, and the
 13 Constitution of the United States of America.

14
 15 ~~26-57-256. Powers of the Arkansas Tobacco Control Board.~~

16 (a) ~~The Arkansas Tobacco Control Board shall:~~

17 (1) ~~Promulgate regulations for the proper enforcement and~~
 18 ~~implementation of this subchapter, and the Unfair Cigarette Sales Act, § 4-~~
 19 ~~75-701 et seq., subject to the restrictions in § 26-57-212(d);~~

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

22 (3) ~~Prescribe forms of applications for permits and licenses~~
 23 ~~under this subchapter;~~

24 (4)(A) ~~Cooperate with the Revenue Division of the Department of~~
 25 ~~Finance and Administration in the enforcement of the tax laws affecting the~~
 26 ~~sale of tobacco products in this state and in the enforcement of all other~~
 27 ~~state and local tax laws.~~

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

32 (i) ~~Federal tax identification numbers issued by the~~
 33 ~~Internal Revenue Service;~~

34 (ii) ~~Social Security numbers; and~~

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

1 ~~(C)(i) Each year, the board shall provide a list of all~~
 2 ~~applicants for the issuance or renewal of all tobacco permits and licenses to~~
 3 ~~the Director of the Department of Finance and Administration.~~

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

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

13 ~~(B)(i) After a notice and hearing held in accordance with~~
 14 ~~the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board~~
 15 ~~finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-~~
 16 ~~701 et seq., or the rules and regulations promulgated by the board, the board~~
 17 ~~may suspend, revoke, or not renew any or all permits and licenses issued by~~
 18 ~~the board to any person or entity.~~

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

22 ~~(iii) Each day of the violation shall be deemed a~~
 23 ~~separate violation.~~

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

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

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

35 ~~(c)(1) The board shall have no authority in criminal prosecutions or~~
 36 ~~the assessment or collection of any taxes or penalties related to the taxing~~

1 of tobacco products.

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

6
7 26-57-257. ~~Director of Arkansas Tobacco Control Board.~~

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

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

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

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

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

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

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

25 (3) ~~Judicial notice shall be taken of each use of this seal in~~
26 ~~all of the courts of the state.~~

27 (f) ~~Any process, notice, or other paper which the Director of the~~
28 ~~Arkansas Tobacco Control Board may be authorized by law to issue shall be~~
29 ~~deemed sufficient if signed by the Director of the Arkansas Tobacco Control~~
30 ~~Board and authenticated by the seal of the Director of the Arkansas Tobacco~~
31 ~~Control Board.~~

32 (g) ~~Any process, notice, or other paper which the board may be~~
33 ~~authorized by law to issue shall be deemed sufficient if signed by the chair~~
34 ~~of the board and authenticated by the seal of the board.~~

35 (h) ~~All acts, orders, proceedings, rules, regulations, entries,~~
36 ~~minutes, and other records of the Director of the Arkansas Tobacco Control~~

1 Board and all reports and documents filed with the Director of the Arkansas
 2 Tobacco Control Board may be proved in any court of this state by a copy
 3 thereof certified to by the Director of the Arkansas Tobacco Control Board
 4 with the seal of the Director of the Arkansas Tobacco Control Board attached.

5 (i) All acts, orders, proceedings, rules, regulations, entries,
 6 minutes, and other records of the board and all reports and documents filed
 7 with the Director of the Arkansas Tobacco Control Board may be proved in any
 8 court of this state by a copy thereof certified to by the chair of the board
 9 with the seal of the board attached.

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

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

17 (k) The Director of the Arkansas Tobacco Control Board shall recognize
 18 the Bureau of Alcohol and Drug Abuse Prevention of the Division of Health of
 19 the Department of Health and Human Services as the agency responsible for
 20 ensuring full compliance with § 1926(b) of the Public Health Service Act and
 21 shall call upon administrative departments of the state, county, and city
 22 governments, sheriffs, city police departments, or other law enforcement
 23 officers for such information and assistance as the Director of the Arkansas
 24 Tobacco Control Board may deem necessary in the performance of the duties
 25 imposed upon him or her by this subchapter.

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

29 (m) In the conduct of any hearings, the Director of the Arkansas
 30 Tobacco Control Board may:

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

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

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

36 (4)(A) Issue subpoenas to require the attendance of witnesses

1 ~~and the production of books and records.~~

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

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

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

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

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

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

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

31 ~~(2)(A) Each year, the Director of the Department of Finance and~~
 32 ~~Administration shall report to the board any and all permit and license~~
 33 ~~holders who are more than ninety (90) days delinquent on any state and local~~
 34 ~~taxes.~~

35 ~~(B) The board shall not issue or renew any permit or~~
 36 ~~license issued under this section for any permit or license holder more than~~

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

4 ~~(3)(A) Each year, the board shall send notices to all permit and~~
 5 ~~license holders more than ninety (90) days delinquent on any state and local~~
 6 ~~taxes.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 ~~(v) "Proof of age" means any document issued by a governmental agency~~

1 containing a description of the person, the person's photograph, or both, and
 2 giving the person's date of birth and includes, without being limited to, a
 3 passport, military identification card, or driver's license.

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

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

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

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

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

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

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

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

35
 36 ~~26-57-258. Continuation of permits, licenses, regulations, etc., of~~

1 ~~Department of Finance and Administration.~~

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

6
 7 ~~26-57-259. Nonpreemption.~~

8 ~~This act and the rules, regulations and other actions of the Tobacco~~
 9 ~~Control Board shall not be construed or interpreted so as to preempt or in~~
 10 ~~any other manner qualify or limit the enactment and enforcement of any~~
 11 ~~federal, state, county, municipal or other local regulation of the~~
 12 ~~manufacture, sale, storage or distribution of tobacco products that is more~~
 13 ~~restrictive than this act or the rules and regulations promulgated by the~~
 14 ~~Tobacco Control Board. This act and the rules, regulations and other actions~~
 15 ~~of the Tobacco Control Board shall not be construed or interpreted so as to~~
 16 ~~preempt or otherwise limit any legal or equitable claims or causes of action~~
 17 ~~brought under the common law or any federal or state statutes. Nothing in~~
 18 ~~this act, nor any rule or regulation of the Tobacco Control Board, shall be~~
 19 ~~construed or interpreted so as to require any state, county, municipal or~~
 20 ~~other local authority to exhaust any administrative remedies through the~~
 21 ~~Tobacco Control Board including, but not limited to, the right to seize and~~
 22 ~~forward to the Tobacco Control Board the state license of any vendor or~~
 23 ~~retailer found to have illegally sold tobacco products to a person under~~
 24 ~~eighteen (18) years of age; provided the vendor or retailer shall be given a~~
 25 ~~hearing before the Tobacco Control Board within five (5) business days of the~~
 26 ~~seizure.~~

27
 28 ~~26-57-260. Definitions.~~

29 ~~(a) As used in this section and § 26-57-261:~~

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

33 ~~(2)(A) "Affiliate" means a person who directly or indirectly~~
 34 ~~owns or controls, is owned or controlled by, or is under common ownership or~~
 35 ~~control with another person.~~

36 ~~(B) Solely for the purposes of the definition of~~

1 ~~"affiliate", the term:~~

2 ~~(i) "Owns", "is owned", and "ownership" mean~~
 3 ~~ownership of an equity interest, or the equivalent thereof, of ten percent~~
 4 ~~(10%) or more; and~~

5 ~~(ii) "Person" means an individual, partnership,~~
 6 ~~committee, association, corporation, or any other organization or group of~~
 7 ~~persons;~~

8 ~~(3) "Allocable share" means the allocable share as that term is~~
 9 ~~defined in the Master Settlement Agreement;~~

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

13 ~~(i) Any roll of tobacco wrapped in paper or in any~~
 14 ~~substance not containing tobacco;~~

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

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

24 ~~(B) "Cigarette" includes "roll your own", that is, any~~
 25 ~~tobacco which, because of its appearance, type, packaging, or labeling is~~
 26 ~~suitable for use and likely to be offered to or purchased by consumers as~~
 27 ~~tobacco for making cigarettes.~~

28 ~~(C) For purposes of this definition of "cigarette", nine~~
 29 ~~hundredths (0.09) of an ounce of roll your own tobacco shall constitute one~~
 30 ~~(1) individual cigarette;~~

31 ~~(5) "Master Settlement Agreement" means the settlement agreement~~
 32 ~~and related documents entered into on November 23, 1998, by the State and~~
 33 ~~leading United States tobacco product manufacturers;~~

34 ~~(6) "Qualified escrow fund" means an escrow arrangement with a~~
 35 ~~federally or state chartered financial institution having no affiliation with~~
 36 ~~any tobacco product manufacturer and having assets of at least one billion~~

1 dollars (\$1,000,000,000) when such arrangement requires that such financial
 2 institution hold the escrowed funds' principal for the benefit of releasing
 3 parties and prohibits the tobacco product manufacturer placing the funds into
 4 escrow from using, accessing, or directing the use of the funds' principal
 5 except as consistent with § 26-57-261(a)(2)(B);

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

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

10 (9) "Tobacco product manufacturer" means an entity that, after
 11 the date of enactment of this section, directly and not exclusively through
 12 any affiliate;

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

23 (ii) Is the first purchaser anywhere for resale in
 24 the United States of cigarettes manufactured anywhere that the manufacturer
 25 does not intend to be sold in the United States; or

26 (iii) Becomes a successor of an entity described in
 27 subdivision (9)(A)(i) or (9)(A)(ii) of this section.

28 (B) "Tobacco product manufacturer" shall not include an
 29 affiliate of a tobacco product manufacturer, unless such affiliate itself
 30 falls within any of subdivisions (9)(A)(i) — (9)(A)(iii) of this section;

31 (10)(A) "Units sold" means the number of individual cigarettes
 32 sold in the state by the applicable tobacco product manufacturer, whether
 33 directly or through a distributor, retailer, or similar intermediary or
 34 intermediaries, during the year in question, as measured by excise taxes
 35 collected by the state on packs or roll your own tobacco containers bearing
 36 the excise tax stamp of the State.

1 ~~(B) The Department of Finance and Administration shall~~
 2 ~~promulgate such regulations as are necessary to ascertain the amount of state~~
 3 ~~excise tax paid on the cigarettes of such tobacco product manufacturer for~~
 4 ~~each year.~~

5
 6 ~~26-57-261. Requirements.~~

7 ~~(a) Any tobacco product manufacturer selling cigarettes to consumers~~
 8 ~~within the state, whether directly or through a distributor, retailer, or~~
 9 ~~similar intermediary or intermediaries, after the date of enactment of this~~
 10 ~~section, shall do one (1) of the following:~~

11 ~~(1) Become a participating manufacturer, as that term is defined~~
 12 ~~in section II(jj) of the Master Settlement Agreement, and generally perform~~
 13 ~~its financial obligations under the Master Settlement Agreement; or~~

14 ~~(2)(A) Place into a qualified escrow fund by April 15 of the~~
 15 ~~year following the year in question the following amounts, as such amounts~~
 16 ~~are adjusted for inflation:~~

17 ~~(i) 1999: \$.0094241 per unit sold after the date of~~
 18 ~~enactment of this section;~~

19 ~~(ii) 2000: \$.0104712 per unit sold;~~

20 ~~(iii) For each of 2001 and 2002: \$.0136125 per unit~~
 21 ~~sold;~~

22 ~~(iv) For each of 2003 through 2006: \$.0167539 per~~
 23 ~~unit sold; and~~

24 ~~(v) For each of 2007 and each year thereafter:~~
 25 ~~\$.0188482 per unit sold.~~

26 ~~(B) A tobacco product manufacturer that places funds into~~
 27 ~~escrow pursuant to subdivision (a)(2)(A) of this section shall receive the~~
 28 ~~interest or other appreciation on such funds as earned. Such funds themselves~~
 29 ~~shall be released from escrow only under the following circumstances:~~

30 ~~(i) To pay a judgment or settlement on any released~~
 31 ~~claim brought against such tobacco product manufacturer by the state or any~~
 32 ~~releasing party located or residing in the state. Funds shall be released~~
 33 ~~from escrow under subdivision (a)(2)(B)(i) of this section:~~

34 ~~(a) In the order in which they were placed~~
 35 ~~into escrow; and~~

36 ~~(b) Only to the extent and at the time~~

1 necessary to make payments required under such judgment or settlement;

2 (ii) To the extent that a tobacco product
3 manufacturer establishes that the amount it was required to place into escrow
4 on account of units sold in the state in a particular year was greater than
5 the Master Settlement Agreement payments, as determined under section IX(i)
6 of the Master Settlement Agreement including after final determination of all
7 adjustments, that the manufacturer would have been required to make on
8 account of the units sold had it been a participating manufacturer, the
9 excess shall be released from escrow and revert back to such tobacco product
10 manufacturer; or

11 (iii) To the extent not released from escrow under
12 subdivisions (a)(2)(A)(i) or (a)(2)(A)(ii) of this section, funds shall be
13 released from escrow and revert back to such tobacco product manufacturer
14 twenty five (25) years after the date on which they were placed into escrow.

15 (C) Each tobacco product manufacturer who elects to place
16 funds into escrow pursuant to subdivision (a)(2) of this section shall
17 annually certify to the Attorney General that the tobacco product
18 manufacturer is in compliance with subdivision (a)(2) of this section. The
19 Attorney General may bring a civil action on behalf of the state against any
20 tobacco product manufacturer who fails to place into escrow the funds
21 required under this section. Any tobacco product manufacturer who fails in
22 any year to place into escrow the funds required under this section shall:

23 (i) Be required within fifteen (15) days to place
24 such funds into escrow as shall bring him or her into compliance with this
25 section. The court, upon a finding of a violation of subdivision (a)(2) of
26 this section, may impose a civil penalty to be paid to the general fund of
27 the state in an amount not to exceed five percent (5%) of the amount
28 improperly withheld from escrow per day of the violation and in a total
29 amount not to exceed one hundred percent (100%) of the original amount
30 improperly withheld from escrow;

31 (ii) In the case of a knowing violation, be required
32 within fifteen (15) days to place such funds into escrow as shall bring him
33 or her into compliance with this section. The court, upon a finding of a
34 knowing violation of subdivision (a)(2) of this section, may impose a civil
35 penalty to be paid to the general fund of the state in an amount not to
36 exceed fifteen percent (15%) of the amount improperly withheld from escrow

1 per day of the violation and in a total amount not to exceed three hundred
 2 percent (300%) of the original amount improperly withheld from escrow; and

3 (iii) In the case of a second knowing violation, be
 4 prohibited from selling cigarettes to consumers within the State, whether
 5 directly or through a distributor, retailer, or similar intermediary for a
 6 period not to exceed two (2) years.

7 (b) Each failure to make an annual deposit required under this section
 8 shall constitute a separate violation.

9
 10 ~~26-57-262. Sale of export cigarettes.~~

11 ~~(a) Findings and Purpose.~~

12 ~~(1) Cigarette smoking presents serious public health concerns to~~
 13 ~~the state and to the citizens of the state. The Surgeon General has~~
 14 ~~determined that smoking causes lung cancer, heart disease, and other serious~~
 15 ~~diseases and that there are hundreds of thousands of tobacco-related deaths~~
 16 ~~in the United States each year. These diseases most often do not appear until~~
 17 ~~many years after the person in question begins smoking.~~

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

21 ~~(3) It is the intent of the General Assembly to align state law~~
 22 ~~with federal laws, regulations and policies relating to the manufacture,~~
 23 ~~importation, and marketing of cigarettes, and in particular, the Federal~~
 24 ~~Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1331 et seq. and 26~~
 25 ~~U.S.C. Sec. 5754.~~

26 ~~(4) The General Assembly finds that consumers and retailers~~
 27 ~~purchasing cigarettes are entitled to be fully informed about any adverse~~
 28 ~~health effects of cigarette smoking by the inclusion of warning notices on~~
 29 ~~each package of cigarettes and to be assured through appropriate enforcement~~
 30 ~~measures that cigarettes they purchase were manufactured for consumption~~
 31 ~~within the United States.~~

32 ~~(b) Definitions. As used in this section:~~

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

36 ~~(i) Any roll of tobacco wrapped in paper or in any~~

1 ~~substance not containing tobacco;~~

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

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

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

15 ~~(C) For purposes of this definition of "cigarette", nine~~
 16 ~~one hundredths (0.09) of an ounce of "roll your own" tobacco shall constitute~~
 17 ~~one (1) individual "cigarette"; and~~

18 ~~(2) "Package" means a pack, carton, or container of any kind in~~
 19 ~~which cigarettes are offered for sale, sold, or otherwise distributed or~~
 20 ~~intended for distribution to consumers.~~

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

23 ~~(A) The package differs in any respect with the~~
 24 ~~requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.~~
 25 ~~§ 1331 et seq., for the placement of labels, warnings, or any other~~
 26 ~~information upon a package of cigarettes that is manufactured, packaged, or~~
 27 ~~imported for sale, distribution, or use within the United States;~~

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

31 ~~(C) The cigarettes in the package do not comply with any~~
 32 ~~other applicable requirements imposed pursuant to federal law and federal~~
 33 ~~implementing regulations;~~

34 ~~(D) The package in any way violates federal trademark or~~
 35 ~~copyright laws;~~

36 ~~(E) The package or a package containing individually~~

1 stamped packages has been altered by adding or deleting the wording, labels,
 2 or warnings described in subdivisions (c)(1)(A)-(F) of this section; or
 3 (F) With respect to the cigarettes, any person is not in
 4 compliance with 15 U.S.C. § 1335a relating to submission of ingredient
 5 information to federal authorities, 19 U.S.C. §§ 1681-1681b relating to
 6 imports of certain cigarettes, 26 U.S.C. § 5754, relating to previously
 7 exported tobacco products, or any other federal law or implementing federal
 8 regulations.

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

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

15 (4) The Department of Finance and Administration or the board
 16 may seize and destroy or sell to the manufacturer only for export packages
 17 that do not comply with this section.

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

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

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

30
 31 SECTION 8. Arkansas Code Title 26, Chapter 57, Subchapter 8 is
 32 repealed.

33 ~~26-57-801. Excise tax.~~

34 (a) Every person required by the Arkansas Tobacco Products Tax Act of
 35 1977, § 26-57-201 et seq., to pay the excise tax on tobacco products and
 36 every other person selling cigarette paper at wholesale within this state

1 ~~shall also pay an excise tax on the sale of cigarette paper.~~

2 ~~(b) The tax shall be in the amount of twenty five cents (25) per~~
 3 ~~package of approximately thirty two (32) sheets.~~

4 ~~(c) The tax shall be remitted to the Director of the Department of~~
 5 ~~Finance and Administration at the same time and in the same manner as~~
 6 ~~prescribed by the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et~~
 7 ~~seq.~~

8 ~~(d) The Director of the Department of Finance and Administration shall~~
 9 ~~promulgate such regulations as he deems necessary for the implementation of~~
 10 ~~this section.~~

11
 12 ~~26-57-802. Additional tax—Applicability—Reporting and remitting.~~

13 ~~(a) In addition to any other taxes levied on cigarettes, there is~~
 14 ~~levied a tax of fifty cents (50) per one thousand (1000) cigarettes sold in~~
 15 ~~the state.~~

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

22 ~~(A) The rate imposed by law on cigarettes sold in the~~
 23 ~~adjoining state plus the fifty cents (50) per one thousand (1,000)~~
 24 ~~cigarettes levied in this section and cited in § 26-57-803(a)(2); or~~

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

28 ~~(2) The rate shall not exceed the total tax levied on cigarettes~~
 29 ~~in this state.~~

30 ~~(c) The additional tax levied in this section shall be reported and~~
 31 ~~remitted in the same manner and at the same time as other taxes levied on~~
 32 ~~cigarettes in the Arkansas Tobacco Products Tax Act, §§ 26-57-201—26-57-~~
 33 ~~254.~~

34 ~~(d)(1) The first three million dollars (\$3,000,000) of the net~~
 35 ~~revenues derived from the additional tax levied in this section shall be~~
 36 ~~deposited in the State Treasury to the credit of the Aging and Adult Services~~

1 Fund Account, to be used exclusively for transportation services benefitting
 2 the elderly, including the Meals on Wheels Program and the remainder shall be
 3 deposited into the State Treasury as general revenues.

4 (2) As used in this subsection and pertaining to taxes levied on
 5 cigarettes, "the first three million dollars (\$3,000,000) of the net revenues
 6 derived from the additional tax" means the first three million dollars
 7 (\$3,000,000) each year of the net revenues derived from the additional tax.

8
 9 ~~26-57-803. Additional tax—Applicability.~~

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

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

24 (3) The tax on cigarettes sold in Arkansas within three hundred
 25 feet (300') of a state line, in any Arkansas city which adjoins a state line,
 26 or in any city which is separated only by a navigable river from a city which
 27 adjoins a state line shall be at the rate imposed by law on cigarettes sold
 28 in the adjoining state plus the twenty five cents (25¢) per one thousand
 29 (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not
 30 exceed the tax upon cigarettes imposed by this subchapter.

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

1 ~~1, 1993, there is levied an additional excise or privilege tax on tobacco~~
 2 ~~products at seven percent (7%) of the manufacturer's selling price. The tax~~
 3 ~~shall be computed before discounts.~~

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

7 ~~(d)(1)(A) The taxes levied by this section shall be reported and paid~~
 8 ~~by wholesalers licensed pursuant to § 26-57-214.~~

9 ~~(B) However, retailers shall be liable for reporting and~~
 10 ~~paying these taxes when a retailer purchases tobacco products directly from a~~
 11 ~~manufacturer or from a wholesaler or distributor not licensed pursuant to §~~
 12 ~~26-57-214.~~

13 ~~(2)(A) Any taxpayer who fails to report and remit the tobacco~~
 14 ~~tax due on tobacco products purchased from manufacturers, distributors, or~~
 15 ~~wholesalers who are not licensed under § 26-57-214 shall be subject to the~~
 16 ~~following penalties:~~

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

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

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

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

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

28
 29 ~~26-57-804. Additional tax on cigarettes.~~

30 ~~(a) In addition to the excise or privilege taxes levied under §§ 26-~~
 31 ~~57-208, 26-57-802, 26-57-803, and 26-57-1101, there is levied an additional~~
 32 ~~tax of twelve dollars and fifty cents (\$12.50) per one thousand (1,000)~~
 33 ~~cigarettes sold in the state.~~

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

1 ~~imposed by law on cigarettes sold in the adjoining city outside Arkansas.~~

2 ~~(B) The tax shall not exceed the tax upon cigarettes~~
 3 ~~imposed by Arkansas law.~~

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

9 ~~(B) The tax shall not exceed the tax upon cigarettes~~
 10 ~~imposed by Arkansas law.~~

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

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

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

26 ~~(e) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-~~
 27 ~~210 shall apply to this section.~~

28 ~~(d) Purchases of stamps pursuant to § 26-57-236 by wholesalers and~~
 29 ~~stamp deputies during May 2003 shall be limited to one hundred ten percent~~
 30 ~~(110%) of the amount of each purchaser's average stamp purchase for the~~
 31 ~~period January 2003 through April 2003.~~

32 ~~(e) The additional tax levied under this section shall be imposed,~~
 33 ~~reported, remitted, and administered in the same manner and at the same time~~
 34 ~~as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act~~
 35 ~~of 1977, § 26-57-201 et seq.~~

36 ~~(f) The director shall not pay the commission authorized by § 26-57-~~

1 ~~236(g) with respect to the tax levied by this section.~~

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

6
 7 ~~26-57-805. Additional tax on tobacco products other than cigarettes.~~

8 ~~(a)(1) In addition to the excise or privilege taxes levied under §§~~
 9 ~~26-57-208, 26-57-803, and 26-57-1102, there is levied an additional tax on~~
 10 ~~tobacco products other than cigarettes on the first sale to wholesalers or~~
 11 ~~retailers within the state at seven percent (7%) of the manufacturer's~~
 12 ~~selling price.~~

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

15 ~~(b)(1) The tax levied by this section shall be reported and paid by~~
 16 ~~wholesalers licensed pursuant to § 26-57-214.~~

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

21 ~~(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-~~
 22 ~~210 shall apply to this section.~~

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

27
 28 SECTION 9. Arkansas Code Title 26, Chapter 57, Subchapter 11 is
 29 repealed.

30 ~~26-57-1101. Additional tax—Cigarettes.~~

31 ~~In addition to the excise or privilege taxes levied under §§ 26-57-208~~
 32 ~~and 26-57-802 there is hereby levied a tax of one dollar twenty five cents~~
 33 ~~(\$1.25) per one thousand (1000) cigarettes sold in the state.~~

34
 35 ~~26-57-1102. Additional tax—Tobacco products other than cigarettes.~~

36 ~~(a)(1) In addition to the tax imposed by § 26-57-208(2), there is~~

1 ~~imposed an additional excise or privilege tax on tobacco products other than~~
 2 ~~cigarettes on the first sale to wholesalers or retailers within the state at~~
 3 ~~two percent (2%) of the manufacturer's selling price.~~

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

6 ~~(b)(1)(A) The taxes levied by this section and § 26-57-1101 shall be~~
 7 ~~reported and paid by wholesalers licensed pursuant to § 26-57-214.~~

8 ~~(B) However, retailers shall be liable for reporting and~~
 9 ~~paying these taxes when a retailer purchases tobacco products directly from a~~
 10 ~~manufacturer or from a wholesaler or distributor not licensed pursuant to §~~
 11 ~~26-57-214.~~

12 ~~(2)(A) Any taxpayer who fails to report and remit the tobacco~~
 13 ~~tax due on tobacco products purchased from manufacturers, distributors, or~~
 14 ~~wholesalers who are not licensed under § 26-57-214 shall be subject to the~~
 15 ~~following penalties:~~

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

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

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

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

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

27
 28 ~~26-57-1103. Deposit of general revenues.~~

29 ~~(a) Notwithstanding Acts 2001 (1st Ex. Sess.), No. 2, § 11, beginning~~
 30 ~~July 1, 2005, twenty nine percent (29%) of all moneys collected from the~~
 31 ~~additional tax levied in §§ 26-57-1101 and 26-57-1102 shall be deposited in~~
 32 ~~the State Treasury as special revenue and distributed as follows:~~

33 ~~(1) Except as provided in subsection (b) of this section,~~
 34 ~~twenty five percent (25%) shall be credited to the Arkansas Rx Program Fund;~~

35 ~~(2) Eight and one third percent (8 1/3%) shall be credited to the~~
 36 ~~Breast Cancer Control Fund;~~

1 ~~(3) Eight and one third percent (81/3%) shall be credited to the~~
 2 ~~Breast Cancer Research Fund;~~

3 ~~(4) Eight and one third percent (81/3%) shall be credited to the~~
 4 ~~Miscellaneous Agencies Fund Account for the Arkansas Prostate Cancer~~
 5 ~~Foundation; and~~

6 ~~(5) Fifty percent (50%) shall be credited to the Aging and Adult~~
 7 ~~Services Fund Account of the Department of Human Services Fund to be used to~~
 8 ~~assist the Meals on Wheels Program.~~

9 ~~(b) If the Director of the Department of Health and Human Services and~~
 10 ~~the Director of the Department of Finance and Administration certify that the~~
 11 ~~amount of fees estimated to be paid by qualified residents during a fiscal~~
 12 ~~year pursuant to § 20-76-515 and credited to the Arkansas Rx Program Fund is~~
 13 ~~sufficient to fully support the costs and expenses of the Arkansas Rx Program~~
 14 ~~for that fiscal year, the additional tax distributed under subdivision (a)(1)~~
 15 ~~of this section shall instead be distributed for that fiscal year as follows:~~

16 ~~(1) Twelve and one half percent (12.5%) shall be credited to the~~
 17 ~~Breast Cancer Control Fund; and~~

18 ~~(2) Twelve and one half percent (12.5%) shall be credited to the~~
 19 ~~Breast Cancer Research Fund.~~

20
 21 ~~26-57-1104. Reporting and remittance.~~

22 ~~The additional taxes levied in §§ 26-57-1101 and 26-57-1102 shall be~~
 23 ~~reported and remitted in the same manner and at the same time as other taxes~~
 24 ~~levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, §§ 26-~~
 25 ~~57-201—26-57-254.~~

26
 27 ~~26-57-1105. Applicability.~~

28 ~~The tax levied in §§ 26-57-1101 and 26-57-1102 shall be in effect on~~
 29 ~~and after July 1, 1997 and shall apply to any inventory or stocks of~~
 30 ~~cigarettes or tobacco products held by a wholesaler or retailer on that date.~~

31
 32 ~~26-57-1106. Distribution of funds for breast cancer research and~~
 33 ~~control—Allocation of moneys.~~

34 ~~(a) All remaining moneys collected from the additional tax levied in~~
 35 ~~§§ 26-57-1101 and 26-57-1102 shall be deposited in the State Treasury as~~
 36 ~~special revenues to be distributed as follows:~~

1 ~~(1) Twenty percent (20%) shall be credited to the Breast Cancer~~
 2 ~~Research Fund, which is created on the books of the Treasurer of State,~~
 3 ~~Auditor of State, and the Chief Fiscal Officer of the State to be used~~
 4 ~~exclusively for the purposes set forth in § 20-15-1303; and~~

5 ~~(2)(A) Eighty percent (80%) shall be credited to the Breast~~
 6 ~~Cancer Control Fund, which is created on the books of the Treasurer of State,~~
 7 ~~Auditor of State, and the Chief Fiscal Officer of the State to be used~~
 8 ~~exclusively for the purposes set forth in § 20-15-1304 and at the option of~~
 9 ~~the Division of Health of the Department of Health and Human Services in an~~
 10 ~~amount not to exceed the amount appropriated by the General Assembly for the~~
 11 ~~purpose of cervical cancer control.~~

12 ~~(B) The Director of the Division of Health of the~~
 13 ~~Department of Health and Human Services shall be the disbursing officer for~~
 14 ~~the Breast Cancer Control Fund, and the Chancellor of the University of~~
 15 ~~Arkansas for Medical Sciences shall be the disbursing officer for the Breast~~
 16 ~~Cancer Research Fund.~~

17 ~~(b) The moneys in the Breast Cancer Research Fund are to be allocated~~
 18 ~~to the Breast Cancer Research Program for the awarding of grants, chairs, and~~
 19 ~~contracts to researchers for research with respect to the cause, cure,~~
 20 ~~treatment, prevention, and earlier detection of breast cancer and for~~
 21 ~~developing leadership in research in Arkansas.~~

22 ~~(c)(1) The moneys in the Breast Cancer Control Fund for the control of~~
 23 ~~breast cancer are to be allocated according to the recommendations of the~~
 24 ~~Breast Cancer Control Advisory Board, which shall establish the scope of~~
 25 ~~services of the program and programmatic priorities based on the analysis of~~
 26 ~~available information.~~

27 ~~(2) The board shall also be responsible for developing~~
 28 ~~eligibility criteria to be applied in evaluating requests for breast cancer~~
 29 ~~control financial assistance from screened women who are found to be in need~~
 30 ~~of diagnostic and treatment services.~~

31 ~~(3) The board shall also review contractual agreements for~~
 32 ~~breast cancer control with providers who will be rendering services through~~
 33 ~~the program.~~

34
 35 ~~26-57-1107. Regulations.~~

36 ~~The Department of Finance and Administration is hereby authorized to~~

1 ~~promulgate regulations as necessary to implement the tax provisions of this~~
 2 ~~subchapter.~~

3
 4 ~~26-57-1108. Appropriation from general revenue fund—Additional tax~~
 5 ~~not collected.~~

6 ~~(a) The taxes levied by this subchapter shall not be collected during~~
 7 ~~any fiscal year for which the General Assembly has appropriated at least~~
 8 ~~eight hundred thousand dollars (\$800,000) from general revenues to the Breast~~
 9 ~~Cancer Research Fund and at least three million two hundred thousand dollars~~
 10 ~~(\$3,200,000) of general revenues to the Breast Cancer Control Fund and funded~~
 11 ~~those appropriations in Category A of the Revenue Stabilization Law for that~~
 12 ~~fiscal year.~~

13 ~~(b) The commission authorized by § 26-57-236(g) shall be at the rate~~
 14 ~~of three and eight tenths percent (3.8%) during any fiscal year for which the~~
 15 ~~General Assembly has appropriated at least eight hundred thousand dollars~~
 16 ~~(\$800,000) from general revenues to the Breast Cancer Research Fund and at~~
 17 ~~least three million two hundred thousand dollars (\$3,200,000) of general~~
 18 ~~revenues to the Breast Cancer Control Fund and funded those appropriations in~~
 19 ~~Category A of the Revenue Stabilization Law for that fiscal year, otherwise~~
 20 ~~the commission shall be as prescribed in § 26-57-236(g).~~

21
 22 SECTION 10. Arkansas Code Title 26, Chapter 57, Subchapter 13 is
 23 repealed.

24 ~~26-57-1301. Findings and purpose.~~

25 ~~The General Assembly finds that:~~

26 ~~(1) Violations of §§ 26-57-260 and 26-57-261 threaten the~~
 27 ~~integrity of the tobacco Master Settlement Agreement, the fiscal soundness of~~
 28 ~~the state, and the public health; and~~

29 ~~(2) Enacting procedural enhancements will help prevent~~
 30 ~~violations and aid the enforcement of §§ 26-57-260 and 26-57-261 and thereby~~
 31 ~~safeguard the Master Settlement Agreement, the fiscal soundness of the state,~~
 32 ~~and the public health.~~

33
 34 ~~26-57-1302. Definitions.~~

35 ~~(a) "Brand family" means all styles of cigarettes sold under the same~~
 36 ~~trademark and differentiated from one another by means of additional~~

~~modifiers or descriptors, including, but not limited to, "menthol", "lights", "kings", and "100s", and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes.~~

~~(b) "Cigarette" has the same meaning as in § 26-57-260(a)(4).~~

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

~~(d) "Licensee" means any person or entity who has been granted and holds a permit or license under § 26-57-215, including a wholesale cigarette license or permit, a wholesale tobacco license or permit, a salesman's license or permit, a retail cigarette license or permit, a retail tobacco license or permit, or a dealer's license or permit.~~

~~(e) "Master Settlement Agreement" has the same meaning as in § 26-57-260(a)(5).~~

~~(f) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.~~

~~(g) "Participating manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments to the agreement.~~

~~(h) "Qualified escrow fund" has the same meaning as that term is defined in § 26-57-260(a)(6).~~

~~(i) "Tobacco product manufacturer" has the same meaning as that term is defined in § 26-57-260(a)(9).~~

~~(j) "Units sold" has the same meaning as that term is defined in § 26-57-260(a)(10)(A).~~

~~(k) "Wholesaler" means:~~

~~(1) Any person or entity who has been granted and holds a wholesale cigarette license or permit or a wholesale tobacco license or permit pursuant to § 26-57-215; and~~

~~(2) Any person or entity who as a retailer purchases tobacco products directly from a manufacturer or an unlicensed wholesaler or distributor and is therefore liable for reporting and paying taxes under § 26-57-211(a)(1)(B).~~

~~26-57-1303. Certifications—Directory—Tax stamps.~~

1 ~~(a) Certification.~~

2 ~~(1) No later than April 30 each year, every tobacco product~~
 3 ~~manufacturer whose cigarettes are sold in Arkansas, whether directly or~~
 4 ~~through a wholesaler, retailer, or similar intermediary or intermediaries,~~
 5 ~~shall execute and deliver on a form prescribed by the Attorney General a~~
 6 ~~certification to the Attorney General certifying under penalty of perjury~~
 7 ~~that as of the date of the certification the tobacco product manufacturer~~
 8 ~~either:~~

9 ~~(A) Is a participating manufacturer; or~~

10 ~~(B) Is in full compliance with §§ 26-57-260 and 26-57-261,~~
 11 ~~including all quarterly installment payments that may be required under § 26-~~
 12 ~~57-1305(e).~~

13 ~~(2) A participating manufacturer shall include in its~~
 14 ~~certification a list of its brand families. The participating manufacturer~~
 15 ~~shall update the list thirty (30) calendar days before any addition to or~~
 16 ~~modification of its brand families by executing and delivering a supplemental~~
 17 ~~certification to the Attorney General.~~

18 ~~(3) A nonparticipating manufacturer shall include in its~~
 19 ~~certification:~~

20 ~~(A) An electronic mail address and facsimile number to~~
 21 ~~which notices from the Attorney General may be sent and a list of all of its~~
 22 ~~brand families and the number of units sold for each brand family that were~~
 23 ~~sold in the state during the preceding calendar year;~~

24 ~~(B) A list of all of its brand families that have been~~
 25 ~~sold in the state at any time during the current calendar year:~~

26 ~~(i) Indicating by an asterisk any brand family sold~~
 27 ~~in the state during the preceding calendar year but that is no longer being~~
 28 ~~sold in the state as of the date of the certification; and~~

29 ~~(ii) Identifying by name and address any other~~
 30 ~~manufacturer of the brand families in the preceding or current calendar year.~~

31 ~~(4) The nonparticipating manufacturer shall update the list~~
 32 ~~thirty (30) calendar days before any addition to or modification of its brand~~
 33 ~~families by executing and delivering a supplemental certification to the~~
 34 ~~Attorney General.~~

35 ~~(5) In the case of a nonparticipating manufacturer, the~~
 36 ~~certification shall further certify:~~

1 (A) ~~That the nonparticipating manufacturer is registered~~
 2 ~~to do business in the state or has appointed a resident agent for service of~~
 3 ~~process and provided notice thereof as required by § 26-57-1304;~~

4 (B) ~~That the nonparticipating manufacturer:~~

5 (i) ~~Has established and continues to maintain a~~
 6 ~~qualified escrow fund; and~~

7 (ii) ~~Has executed a qualified escrow agreement that~~
 8 ~~has been reviewed and approved by the Attorney General and that governs the~~
 9 ~~qualified escrow fund;~~

10 (C) ~~That the nonparticipating manufacturer is in full~~
 11 ~~compliance with §§ 26-57-260 and 26-57-261 and this subchapter and with any~~
 12 ~~regulations promulgated pursuant thereto;~~

13 (D) ~~The name, address, and telephone number of the~~
 14 ~~financial institution where the nonparticipating manufacturer has established~~
 15 ~~the qualified escrow fund required under §§ 26-57-260 and 26-57-261 and with~~
 16 ~~all regulations promulgated thereto;~~

17 (E) ~~The account number of the qualified escrow fund and~~
 18 ~~any subaccount number for the state;~~

19 (F) ~~The amount the nonparticipating manufacturer placed in~~
 20 ~~the fund for cigarettes sold in the state during the preceding calendar year,~~
 21 ~~the date and amount of each deposit, and such evidence or verification as may~~
 22 ~~be deemed necessary by the Attorney General to confirm the requirements of~~
 23 ~~the foregoing; and~~

24 (G) ~~The amount and date of any withdrawal or transfer of~~
 25 ~~funds the nonparticipating manufacturer made at any time from the fund or~~
 26 ~~from any other qualified escrow fund into which it ever made escrow payments~~
 27 ~~under §§ 26-57-260 and 26-57-261 and all regulations promulgated thereto.~~

28 (6) ~~A tobacco product manufacturer may not include a brand~~
 29 ~~family in its certification unless:~~

30 (A) ~~In the case of a participating manufacturer, the~~
 31 ~~participating manufacturer affirms that the brand family is to be deemed to~~
 32 ~~be its cigarettes for purposes of calculating its payments under the Master~~
 33 ~~Settlement Agreement for the relevant year in the volume and shares~~
 34 ~~determined under the Master Settlement Agreement; and~~

35 (B) ~~In the case of a nonparticipating manufacturer, the~~
 36 ~~nonparticipating manufacturer affirms that the brand family is to be deemed~~

1 ~~to be its cigarettes for purposes of §§ 26-57-260 and 26-57-261.~~

2 ~~(7) Nothing in § 26-57-1303(a)(6) shall be construed as limiting~~
 3 ~~or otherwise affecting the state's right to maintain that a brand family~~
 4 ~~constitutes cigarettes of a different tobacco product manufacturer for~~
 5 ~~purposes of calculating payments under the Master Settlement Agreement or for~~
 6 ~~purposes of §§ 26-57-260 and 26-57-261.~~

7 ~~(8) Tobacco product manufacturers shall maintain all invoices~~
 8 ~~and documentation of sales and other information relied upon for the~~
 9 ~~certification for a period of five (5) years unless otherwise required by law~~
 10 ~~to maintain them for a greater period of time.~~

11 ~~(b) Directory of Cigarettes Approved for Stamping and Sale.~~

12 ~~(1)(A) Not later than the last business day of May of each year,~~
 13 ~~the Attorney General shall develop and make available for public inspection~~
 14 ~~and shall publish on the Attorney General's website a directory listing all~~
 15 ~~tobacco product manufacturers that have provided current and accurate~~
 16 ~~certifications conforming to the requirements of subsection (a) of this~~
 17 ~~section and all brand families that are listed in the certifications except~~
 18 ~~as provided in this section.~~

19 ~~(B) The Attorney General shall not include or retain in~~
 20 ~~the directory the name or brand families of any nonparticipating manufacturer~~
 21 ~~that has failed to provide the required certification or whose certification~~
 22 ~~the Attorney General determines is not in compliance with subsection (a) of~~
 23 ~~this section unless the Attorney General has determined that the violation~~
 24 ~~has been cured to the satisfaction of the Attorney General.~~

25 ~~(C) Neither a tobacco product manufacturer nor brand~~
 26 ~~family shall be included or retained in the directory if the Attorney General~~
 27 ~~concludes in the case of a nonparticipating manufacturer that:~~

28 ~~(i) Any escrow payment required under §§ 26-57-260~~
 29 ~~and 26-57-261 for any period for any brand family, whether or not listed by~~
 30 ~~the nonparticipating manufacturer, has not been fully paid into a qualified~~
 31 ~~escrow fund governed by a qualified escrow agreement that has been approved~~
 32 ~~by the Attorney General; or~~

33 ~~(ii) Any outstanding final judgment, including~~
 34 ~~interest on the judgment, for a violation of §§ 26-57-260 and 26-57-261 has~~
 35 ~~not been fully satisfied for the brand family or the manufacturer.~~

36 ~~(D) The Attorney General shall update the directory as~~

1 necessary in order to correct mistakes and to add or remove a tobacco product
 2 manufacturer or brand family to keep the directory in conformity with the
 3 requirements of this subchapter.

4 (E) Every wholesaler shall provide and update as necessary
 5 an electronic mail address to the Attorney General for the purpose of
 6 receiving any notifications as may be required by this subchapter.

7 (F)(i) Notwithstanding the provisions of this section, in
 8 the case of any nonparticipating manufacturer who has established a qualified
 9 escrow account pursuant to §§ 26-57-260 and 26-57-261 that has been approved
 10 by the Attorney General, the Attorney General may not remove the
 11 nonparticipating manufacturer or its brand families from the directory until
 12 at least fifteen (15) days after the nonparticipating manufacturer has been
 13 given notice of such an intended action.

14 (ii) Notice shall be sufficient and be deemed
 15 immediately received by a nonparticipating manufacturer if the notice is sent
 16 either electronically or by facsimile to an electronic mail address or
 17 facsimile number, as the case may be, provided by the nonparticipating
 18 manufacturer in its most recent certification filed pursuant to subsection
 19 (a) of this section.

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

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

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

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

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

1 ~~Attorney General removes the cigarettes from the directory.~~

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

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

9 ~~(B) In the case of a retailer, the cigarettes are sold or~~
 10 ~~delivered to retail customers within twenty one (21) days after receipt of~~
 11 ~~delivery of such cigarettes from a wholesaler so long as the cigarettes in~~
 12 ~~question were lawfully purchased from the same wholesaler.~~

13 ~~(4) No brand families may be purchased by or delivered to a~~
 14 ~~wholesaler once the manufacturer and brand families are removed from the~~
 15 ~~directory.~~

16 ~~(5) Any manufacturer, wholesaler, or retailer selling cigarettes~~
 17 ~~for resale of a manufacturer or brand family that has been removed from the~~
 18 ~~directory maintained by the Attorney General pursuant to subsection (b) of~~
 19 ~~this section shall notify the purchaser of such cigarettes of that fact at~~
 20 ~~the time of delivery of the cigarettes.~~

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

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

30
 31 ~~26-57-1304. Requirement for agent for service of process.~~

32 ~~(a)(1) As a condition precedent to having its brand families included~~
 33 ~~or retained in the directory maintained by the Attorney General pursuant to §~~
 34 ~~26-57-1303(b), any nonresident or foreign nonparticipating manufacturer that~~
 35 ~~has not registered to do business in the state as a foreign corporation or~~
 36 ~~business entity shall appoint and continually engage without interruption the~~

1 ~~services of an agent in this state to act as agent for the service of process~~
 2 ~~on whom all process and any action or proceeding against it concerning or~~
 3 ~~arising out of the enforcement of this subchapter and §§ 26-57-260 and 26-57-~~
 4 ~~261 may be served in any manner authorized by law.~~

5 ~~(2) The service shall constitute legal and valid service of~~
 6 ~~process on the nonparticipating manufacturer.~~

7 ~~(3) The nonparticipating manufacturer shall provide the name,~~
 8 ~~address, phone number, and proof of the appointment and availability of the~~
 9 ~~agent to and to the satisfaction of the Attorney General.~~

10 ~~(b)(1) The nonparticipating manufacturer shall provide notice to the~~
 11 ~~Attorney General thirty (30) calendar days before the termination of the~~
 12 ~~authority of an agent and shall provide proof to the satisfaction of the~~
 13 ~~Attorney General of the appointment of a new agent no less than five (5)~~
 14 ~~calendar days before the termination of an existing agent appointment.~~

15 ~~(2) If an agent terminates an agency appointment, the~~
 16 ~~nonparticipating manufacturer shall notify the Attorney General of the~~
 17 ~~termination within five (5) calendar days and shall include proof to the~~
 18 ~~satisfaction of the Attorney General of the appointment of a new agent.~~

19 ~~(c)(1) Any nonparticipating manufacturer whose cigarettes are sold in~~
 20 ~~this state and who has not appointed and engaged an agent as required by this~~
 21 ~~subchapter shall be deemed to have appointed the Secretary of State as the~~
 22 ~~agent and may be proceeded against in courts of this state by service of~~
 23 ~~process upon the Secretary of State.~~

24 ~~(2) However, the appointment of the Secretary of State as the~~
 25 ~~agent shall not satisfy the condition precedent for having the brand families~~
 26 ~~of the nonparticipating manufacturer included or retained in the directory~~
 27 ~~maintained by the Attorney General pursuant to § 26-57-1303(b).~~

28
 29 ~~26-57-1305. Reporting of information—Escrow installments.~~

30 ~~(a) Reporting by Wholesalers.~~

31 ~~(1) Not later than twenty (20) calendar days after the end of~~
 32 ~~each calendar quarter, each wholesaler shall submit such information as the~~
 33 ~~Attorney General requires to facilitate compliance with this subchapter,~~
 34 ~~including, but not limited to, a list by brand family of the total number of~~
 35 ~~cigarettes or in the case of "roll your own", the equivalent stick count for~~
 36 ~~which the wholesaler affixed tax stamps during the previous calendar quarter~~

1 ~~or otherwise paid the tax due for the cigarettes.~~

2 ~~(2) The wholesaler shall maintain and make available to the~~
 3 ~~Attorney General all invoices and documentation of sales of all~~
 4 ~~nonparticipating manufacturer cigarettes and any other information relied~~
 5 ~~upon in reporting to the Attorney General for a period of five (5) years.~~

6 ~~(b) Disclosure of Information.~~

7 ~~(1) The Arkansas Tobacco Control Board and the Department of~~
 8 ~~Finance and Administration may disclose to the Attorney General any~~
 9 ~~information in their possession as requested by the Attorney General for~~
 10 ~~purposes of determining compliance with and enforcing the provisions of this~~
 11 ~~subchapter.~~

12 ~~(2) The board, the department, and the Attorney General may~~
 13 ~~share with each other any information received under this subchapter and may~~
 14 ~~share the information with other federal, state, or local agencies only for~~
 15 ~~purposes of enforcement of this subchapter, §§ 26-57-260 and 26-57-261, or~~
 16 ~~corresponding laws of other states.~~

17 ~~(c) Verification of Qualified Escrow Fund. The Attorney General may~~
 18 ~~require at any time from the nonparticipating manufacturer proof from the~~
 19 ~~financial institution in which the manufacturer has established a qualified~~
 20 ~~escrow fund for the purpose of compliance with §§ 26-57-260 and 26-57-261 of:~~

21 ~~(1) The amount of money in the fund, exclusive of interest;~~

22 ~~(2) The amount and date of each deposit to the fund; and~~

23 ~~(3) The amount and date of each withdrawal from the fund.~~

24 ~~(d) Requests for Additional Information. In addition to the~~
 25 ~~information required to be submitted under this subchapter, the Attorney~~
 26 ~~General may require a licensee or tobacco product manufacturer to submit any~~
 27 ~~additional information, including, but not limited to, samples of the~~
 28 ~~packaging or labeling of each brand family as is necessary to enable the~~
 29 ~~Attorney General to determine whether a tobacco product manufacturer is in~~
 30 ~~compliance with this subchapter.~~

31 ~~(e) Quarterly Escrow Installments for New Tobacco Product~~
 32 ~~Manufacturers.~~

33 ~~(1) To promote compliance with this subchapter, the Attorney~~
 34 ~~General may require any manufacturer added to the directory after the first~~
 35 ~~publication of the directory on the Attorney General's website to make escrow~~
 36 ~~deposits required by §§ 26-57-260 and 26-57-261 in quarterly installments~~

1 through the first two (2) years in which the sales covered by the deposits
 2 are made.

3 (2) ~~The Attorney General may require production of information~~
 4 ~~sufficient to enable the Attorney General to determine the adequacy of the~~
 5 ~~amount of each installment deposit.~~

6
 7 ~~26-57-1306. Penalties and other remedies.~~

8 ~~(a) License Revocation and Civil Penalty.~~

9 (1) ~~In addition to or in lieu of any other civil or criminal~~
 10 ~~remedy provided by law, upon a determination that a licensee has violated §~~
 11 ~~26-57-1303(c) or any regulation adopted under this subchapter, the Director~~
 12 ~~of the Arkansas Tobacco Control Board may revoke or suspend the licensee's~~
 13 ~~licenses or permits pursuant to law and the Arkansas Tobacco Control Board's~~
 14 ~~rules and regulations governing the procedure for revocation or suspension of~~
 15 ~~the licenses or permits.~~

16 (2) ~~Each tax stamp affixed to and each sale or offer to sell~~
 17 ~~cigarettes in violation of § 26-57-1303(c) shall constitute a separate~~
 18 ~~violation.~~

19 (3) ~~For each violation the board may also impose a civil penalty~~
 20 ~~in an amount not to exceed the greater of five hundred percent (500%) of the~~
 21 ~~retail value of the cigarettes or five thousand dollars (\$5,000) upon a~~
 22 ~~determination of a violation of § 26-57-1303(b) or of any regulations adopted~~
 23 ~~under this subchapter.~~

24 (b) ~~Contraband and Seizure. Any cigarettes that have been sold,~~
 25 ~~offered for sale, or possessed for sale in this state or imported for~~
 26 ~~personal consumption in this state in violation of § 26-57-1303(c) shall be~~
 27 ~~deemed contraband, and the cigarettes shall be subject to seizure and~~
 28 ~~forfeiture as provided in § 5-64-505, and all of the cigarettes so seized and~~
 29 ~~forfeited shall be destroyed and not resold.~~

30 ~~(c) Injunction.~~

31 (1) ~~The Attorney General may seek an injunction to restrain a~~
 32 ~~threatened or actual violation of § 26-57-1303(c), § 26-57-1305(a), or § 26-~~
 33 ~~57-1305(d) by a licensee and to compel the licensee to comply with those~~
 34 ~~provisions.~~

35 (2) ~~In any action brought under this section, the state shall be~~
 36 ~~entitled to recover the costs of investigation, costs of the action, and~~

1 ~~reasonable attorney's fees.~~

2 ~~(d) Unlawful Sale and Distribution.~~

3 ~~(1) It is unlawful for a person to sell or distribute cigarettes~~
 4 ~~or to acquire, hold, own, possess, transport, import, or cause to be~~
 5 ~~imported, cigarettes that the person knows or should know are intended for~~
 6 ~~distribution or sale in the state in violation of § 26-57-1303(e).~~

7 ~~(2) A violation of this subsection is a Class A misdemeanor.~~

8 ~~(e) Deceptive and Unconscionable Trade Practice. A violation of § 26-~~
 9 ~~57-1303(e) is a deceptive or unconscionable trade practice under § 4-88-101~~
 10 ~~et seq.~~

11
 12 ~~26-57-1307. Miscellaneous provisions.~~

13 ~~(a) Notice and Review of Determination.~~

14 ~~(1) A determination by the Attorney General to not include or to~~
 15 ~~remove from the directory a brand family or tobacco product manufacturer~~
 16 ~~shall be subject to review by the filing of a civil action for prospective~~
 17 ~~declaratory or injunctive relief.~~

18 ~~(2) The Pulaski County Circuit Court shall have exclusive~~
 19 ~~jurisdiction over the civil action.~~

20 ~~(3) In authorizing the civil action, the state does not waive~~
 21 ~~its sovereign immunity from claims for monetary relief, costs, or attorney's~~
 22 ~~fees, and no such relief shall be recoverable in any such civil action.~~

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

28 ~~(c) Dates. For the year 2003:~~

29 ~~(1) The first report of wholesalers required by § 26-57-1305(a)~~
 30 ~~shall be due thirty (30) calendar days after April 3, 2003;~~

31 ~~(2) The certifications by a tobacco product manufacturer~~
 32 ~~described in § 26-57-1303(a) shall be due forty five (45) calendar days after~~
 33 ~~April 3, 2003; and~~

34 ~~(3) The directory described in § 26-57-1303(b) shall be~~
 35 ~~published or made available within ninety (90) calendar days after April 3,~~
 36 ~~2003.~~

1 ~~(d) Promulgation of Regulations. The Attorney General, the Arkansas~~
2 ~~Tobacco Control Board, and the Department of Finance and Administration may~~
3 ~~promulgate regulations necessary to effect the purposes of this subchapter.~~

4 ~~(e) Recovery of Costs and Fees by Attorney General. In an action~~
5 ~~brought by the Attorney General to enforce this subchapter, the Attorney~~
6 ~~General shall be entitled to recover the costs of the investigation, expert~~
7 ~~witness fees, costs of the action, and reasonable attorney's fees.~~

8 ~~(f) Disgorgement of Profits for Violations of Subchapter.~~

9 ~~(1) If a court determines that a person or entity has violated~~
10 ~~this subchapter, the court shall order any profits, gain, gross receipts, or~~
11 ~~other benefit from the violation to be disgorged and paid to the Treasurer of~~
12 ~~State for deposit in the State Central Services Fund.~~

13 ~~(2) Unless otherwise expressly provided, the remedies or~~
14 ~~penalties provided by this subchapter are cumulative to each other and to the~~
15 ~~remedies or penalties available under all other laws of this state.~~

16 ~~(g) Construction and Severability.~~

17 ~~(1) If a court of competent jurisdiction finds that the~~
18 ~~provisions of this subchapter and of §§ 26-57-260 and 26-57-261 conflict and~~
19 ~~cannot be harmonized, the provisions of §§ 26-57-260 and 26-57-261 shall~~
20 ~~control.~~

21 ~~(2) If any section, subsection, subdivision, paragraph,~~
22 ~~sentence, clause, or phrase of this subchapter causes §§ 26-57-260 and 26-57-~~
23 ~~261 to no longer constitute a qualifying or model statute as those terms are~~
24 ~~defined in the Master Settlement Agreement, that portion of this subchapter~~
25 ~~shall not be valid.~~

26 ~~(3) If any section, subsection, subdivision, paragraph,~~
27 ~~sentence, clause, or phrase of this subchapter is for any reason held to be~~
28 ~~invalid, unlawful, or unconstitutional, the decision shall not affect the~~
29 ~~validity of the remaining portions of this subchapter or any part of this~~
30 ~~subchapter.~~

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