

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

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

# A Bill

HOUSE BILL 1204

5 By: Representatives Reep, Wills, Shelby, Allen, T. Baker, J. Brown, Carroll, Cheatham, Cook, J.  
6 Edwards, Gaskill, R. Green, Harrelson, House, Hyde, Lindsey, Maloch, Maxwell, Moore, Pennartz,  
7 Powers, Rainey, J. Roebuck, L. Smith, Tyler, Webb, Wells, McCrary  
8 By: Senators Steele, J. Jeffress  
9

## For An Act To Be Entitled

10  
11 AN ACT TO INCREASE THE TAX ON CIGARETTES AND  
12 OTHER TOBACCO PRODUCTS; TO MODERNIZE THE TOBACCO  
13 TAX RATE ON MOIST SNUFF; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 TO INCREASE THE TAX ON CIGARETTES AND  
17 CERTAIN TOBACCO PRODUCTS AND TO  
18 MODERNIZE THE TAX ON MOIST SNUFF.  
19

20  
21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code § 26-57-203(18) and (19), concerning the  
25 definitions in the Arkansas Tobacco Products Tax Act of 1977, are amended to  
26 read as follows:

27 (18) "Warehouse" means a place where tobacco products are stored  
28 for another person and to or from which place the tobacco products are  
29 shipped or delivered upon order by the owner of the tobacco products to the  
30 warehouse; ~~and~~

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



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

8 (20) "Moist snuff" means any finely cut, ground, or powdered  
 9 tobacco product commonly sold in tins that is intended to be placed or dipped  
 10 in the oral cavity instead of smoked; and

11 (21) "Tin" means a discrete packaging unit commonly used at  
 12 retail for moist snuff containing either loose moist snuff or a number of  
 13 prepackaged doses of moist snuff.

14  
 15 SECTION 2. Arkansas Code § 26-57-208 is amended to read as follows:  
 16 26-57-208. Levy of tax – Rates of tax.

17 An excise or privilege tax is levied as follows:

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

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

26 (ii) The tax shall not exceed the tax upon  
 27 cigarettes imposed by this subchapter.

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

32 (ii) The tax shall not exceed the tax upon  
 33 cigarettes imposed by this subchapter.

34 (D)(i) The reduced border zone tax rates set forth in  
 35 subdivisions (1)(B) and (C) of this section apply only to sales made at  
 36 retail by Arkansas border zone retailers to actual consumers of the

1 cigarettes.

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

5 (b) The full amount of Arkansas cigarette  
6 excise tax will be due on any cigarettes sold in such a manner;

7 (2)(A) The Beginning on March 1, 2009, the excise or privilege  
8 tax on tobacco products other than cigarettes or moist snuff on the sale by  
9 wholesalers to retailers, or by licensed retailers to the Director of the  
10 Department of Finance and Administration within the state is sixteen percent  
11 (16%) of the manufacturer's selling price.

12 (B) The tax shall be computed on the actual manufacturer's  
13 invoice price before discounts;

14 (3)(A) Beginning on March 1, 2009, the excise or privilege tax  
15 on moist snuff on the sale by wholesalers to retailers, or by licensed  
16 retailers to the director within the state shall be the greater of:

17 (i) Eighty-three cents (83¢) per ounce including a  
18 proportional rate for fractions of an ounce; or

19 (ii) Thirty-two percent (32%) of the manufacturer's  
20 selling price which shall be computed on the actual manufacturer's invoice  
21 price before discounts.

22 (B) Beginning July 1, 2010, the director shall annually  
23 increase the amount of the excise or privilege tax in subdivision (3)(A)(i)  
24 of this section based on:

25 (i) The Consumer Price Index, or its successor, for  
26 tobacco products other than cigarettes; or

27 (ii) Other reliable tobacco product price trend data  
28 indicating pricing for tobacco products other than cigarettes as established  
29 by rule by the director.

30 (C) The excise or privilege tax on moist snuff assessed by  
31 subdivision (3)(A) of this section shall not be less than one dollar and  
32 fifteen cents (\$1.15) per tin.

33 ~~(3)(4)~~(A)(i) The taxes levied by this section shall be reported  
34 and paid by wholesalers licensed pursuant to § 26-57-214.

35 (ii) However, retailers shall be liable for  
36 reporting and paying these taxes when a retailer purchases tobacco products

1 directly from a manufacturer or from a wholesaler or distributor not licensed  
 2 pursuant to § 26-57-214.

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

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

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

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

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

16 (C) The provisions of this subdivision ~~(3)~~(4) shall not  
 17 affect the provisions of § 26-57-228; and

18 ~~(4)~~(5) As provided in § 26-57-244, the director shall have the  
 19 authority to make a direct assessment of excise tax against any person in  
 20 possession of an untaxed tobacco product or unstamped cigarettes.

21 (6)(A) The first nine hundred sixty-two thousand dollars  
 22 (\$962,000) collected under subdivision (3) of this section each fiscal year  
 23 are special revenues to be distributed under §§ 26-57-1101 - 26-57-1108.

24 (B) If the tax levied by subsection (3) of this section is  
 25 effective for less than a full fiscal year, a proportionate amount of the  
 26 first nine hundred sixty two thousand dollars (\$962,000) shall be distributed  
 27 as provided in §§ 26-57-1101 – 26-57-1108 for that portion of the fiscal year  
 28 during which the tax is effective.

29  
 30 SECTION 3. Arkansas Code § 26-57-803(b), concerning the additional  
 31 tax, is amended to read as follows:

32 (b) ~~In~~ Beginning on March 1, 2009, in addition to the tax imposed by §  
 33 26-57-208(2), there is levied an additional excise or privilege tax on the  
 34 sale of tobacco products other than cigarettes or moist snuff by wholesalers  
 35 to retailers or by licensed retailers to the Director of the Department of  
 36 Finance and Administration at seven percent (7%) of the manufacturer's

1 selling price. The tax shall be computed before discounts.

2  
 3 SECTION 4. Arkansas Code § 26-57-805(a)(1), concerning the additional  
 4 tax on tobacco products other than cigarettes, is amended to read as follows:

5 (a)(1) ~~In~~ Beginning on March 1, 2009, in addition to the excise or  
 6 privilege taxes levied under §§ 26-57-208, 26-57-803, and 26-57-1102, there  
 7 is levied an additional tax on tobacco products other than cigarettes or  
 8 moist snuff on the first sale to wholesalers or retailers within the state at  
 9 seven percent (7%) of the manufacturer's selling price.

10  
 11 SECTION 5. Arkansas Code Title 26, Chapter 57, Subchapter 8 is amended  
 12 to add an additional section to read as follows:

13 26-57-806. Additional tax on cigarettes.

14 (a) Beginning on March 1, 2009, in addition to the excise or privilege  
 15 taxes levied under §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-  
 16 1101, there is levied an additional tax of twenty-eight dollars (\$28.00) per  
 17 one thousand (1,000) cigarettes sold in the state.

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

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

24 (2)(A) The tax on cigarettes sold in Arkansas within three  
 25 hundred feet (300') of a state line, in a city in Arkansas that adjoins a  
 26 state line or in a city in Arkansas which is separated only by a navigable  
 27 river from a city which adjoins a state line, shall be at the rate imposed by  
 28 law on cigarettes sold in the adjoining state.

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

31 (3)(A) A wholesaler or retailer shall not sell cigarettes to a  
 32 retailer located outside of a border zone described in subdivisions (b)(1)  
 33 and (2) of this section unless the full amount of tax levied by this section  
 34 and §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804 and 26-57-1101, without  
 35 regard to any reduced border zone rate, has been paid as evidenced by  
 36 cigarette stamps affixed to each container of cigarettes.

1                   (B) A retailer located outside of a border zone described  
 2 in subdivisions (b)(1) and (2) of this section shall not possess or offer for  
 3 sale cigarettes unless the full amount of tax levied by this section and §§  
 4 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101, without regard to  
 5 the reduced border zone rate, has been paid as evidenced by cigarette stamps  
 6 affixed to each container of cigarettes.

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

10                   (c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-  
 11 210 apply to this section.

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

16                   (e) The total number of cigarette stamps purchased by a wholesaler or  
 17 stamp deputy pursuant to § 26-57-236 during the months of January and  
 18 February of 2009 may not exceed one hundred and ten percent (110%) of the  
 19 total number of stamps purchased by the wholesaler or stamp deputy during the  
 20 months of January and February of 2008.

21                   (f) The director shall not pay the commission authorized under § 26-  
 22 57-236(g) on the additional taxes levied by this section.

23                   (g) 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 in accordance with the Revenue  
 27 Stabilization Law, § 19-5-201 et seq.

28  
 29                   SECTION 6. Arkansas Code Title 26, Chapter 57, Subchapter 8 is amended  
 30 to add an additional section to read as follows:

31                   26-57-807. Additional tax on tobacco products other than cigarettes  
 32 and moist snuff.

33                   (a)(1) Beginning on March 1, 2009, in addition to the excise or  
 34 privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805 and 26-57-  
 35 1102, there is levied an additional tax on tobacco products other than  
 36 cigarettes or moist snuff on the first sale to wholesalers or retailers

1 within the state at nineteen percent (19%) of the manufacturer's selling  
 2 price.

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

5 (b)(1) The tax levied by this section shall be reported and paid by  
 6 wholesalers licensed under § 26-57-214.

7 (2) However, retailers are liable for reporting and paying the  
 8 additional tax under this section when a retailer purchases tobacco products  
 9 other than cigarettes or moist snuff directly from a manufacturer or from a  
 10 wholesaler or distributor not licensed under § 26-57-214.

11 (c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-  
 12 210 apply to this section.

13 (d) The revenue derived from the additional tax imposed by this  
 14 section shall be credited to the General Revenue Fund Account of the State  
 15 Apportionment Fund, there to be distributed with the other gross general  
 16 revenue collections for that month in accordance with the Revenue  
 17 Stabilization Law, § 19-5-201 et seq.

18  
 19 SECTION 7. Arkansas Code § 26-57-1102(a)(1), concerning the additional  
 20 tax on tobacco products other than cigarettes, is amended to read as follows:

21 (a)(1) ~~In~~ Beginning on March 1, 2009, in addition to the tax imposed  
 22 by § 26-57-208(2), there is imposed an additional excise or privilege tax on  
 23 tobacco products other than cigarettes or moist snuff on the first sale to  
 24 wholesalers or retailers within the state at two percent (2%) of the  
 25 manufacturer's selling price.

26  
 27 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
 28 General Assembly of the State of Arkansas that existing funding levels do not  
 29 provide an adequate level of medical care or medical professionals for the  
 30 needs of the State. This bill shall provide additional funding that is  
 31 needed and required to bring the level of medical care and medical  
 32 professionals in Arkansas to an adequate and humane level. Therefore, an  
 33 emergency is declared to exist and this act being immediately necessary for  
 34 the preservation of the public peace, health, and safety shall become  
 35 effective on:

36 (1) The date of its approval by the Governor;

1                   (2) If the bill is neither approved nor vetoed by the Governor,  
2 the expiration of the period of time during which the Governor may veto the  
3 bill; or

4                   (3) If the bill is vetoed by the Governor and the veto is  
5 overridden, the date the last house overrides the veto.

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