

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

A Bill

HOUSE BILL 1858

4
5 By: Representative Betts
6
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND VARIOUS ARKANSAS LAWS CONCERNING
10 THE REGULATION OF TOBACCO PRODUCTS; AND FOR OTHER
11 PURPOSES.
12

Subtitle

13
14 TO AMEND VARIOUS ARKANSAS LAWS
15 CONCERNING THE REGULATION OF TOBACCO
16 PRODUCTS.
17

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

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

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

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

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

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

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



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

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

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

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

16

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

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

23

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

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

31

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

33 4-75-714. Enforcement Agents – Selection – Qualifications – Authority.

34 ~~The Director of the Arkansas Tobacco Control Board shall designate the~~
35 ~~personnel assigned as agents of the Arkansas Tobacco Control Board, who, upon~~
36 ~~meeting the qualifications established by the Arkansas Commission on Law~~

1 ~~Enforcement Standards and Training, shall have the powers of specialized law~~
2 ~~enforcement officers for the purpose of conducting investigations pertaining~~
3 ~~to violations of tobacco laws in this state.~~

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

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

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

10 (1) Be considered a law enforcement officer under § 12-9-101 et
11 seq.; and

12 (2) Have statewide law enforcement jurisdiction and authority.

13 (d) The right of any agent of Arkansas Tobacco Control or other law
14 enforcement officer to enter, search, inspect records, and seize contraband
15 in or on any licensed premises shall be deemed to be a condition of the
16 license or permit to sell tobacco products granted by this state.

17
18 SECTION 6. Arkansas Code § 5-27-227(o), concerning the revocation of
19 permits or licenses to distribute or sell tobacco products upon conviction of
20 providing a minor with tobacco products or cigarette papers, is amended to
21 read as follows:

22 (o) A person convicted of violating any provision of this
23 section whose permit or license to distribute or sell a tobacco product is
24 suspended or revoked upon conviction shall surrender to the court any permit
25 or license to distribute or sell a tobacco product and the court shall
26 transmit the permit or license to distribute or sell a tobacco product to the
27 Director of the Department of Finance and Administration and instruct the
28 Director of ~~the~~ Arkansas Tobacco Control ~~Board~~:

29 (1) To suspend or revoke the person's permit or license to
30 distribute or sell a tobacco product and to not renew the permit or license;
31 and

32 (2) Not to issue any new permit or license to that person for
33 the period of time determined by the court in accordance with this section.
34

35 SECTION 7. Arkansas Code § 26-57-203(8), concerning the definition of
36 licensed under the Arkansas Tobacco Products Tax Act of 1977, is amended to

1 read as follows:

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

6

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

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

15

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

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

27

28 SECTION 10. Arkansas Code § 26-57-214 is amended to read as follows:
29 26-57-214. Registration and licensing required prior to doing business.

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

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

36 (c) A wholesaler, retailer, general tobacco products vendor, or

1 restricted tobacco products vendor who intends to sell tobacco products at or
 2 from one (1) or more places of business owned, rented, or leased by it shall
 3 be required to obtain a separate license for each such place of business.

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

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

8 (3) A salesperson who wishes to take or process orders, solicit
 9 business, make deliveries, or cause deliveries to be made in this state shall
 10 have a salesperson license.

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

15
 16 SECTION 11. Arkansas Code § 26-57-215(a), concerning licensure by the
 17 Director of the Arkansas Tobacco Control Board, is amended to read as
 18 follows:

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

23
 24 SECTION 12. Arkansas Code § 26-57-215(b)(3), concerning the
 25 surrendering of a salesperson's license to the Director of the Arkansas
 26 Tobacco Control Board, is amended to read as follows:

27 (3) Every salesperson of any tobacco product in this state
 28 shall secure a salesperson's license. Application shall be made by the
 29 wholesaler or general tobacco products vendor who is the salesperson's
 30 employer. A salesperson's license is not transferable to another employer and
 31 must be surrendered to the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ by
 32 the employer upon termination of the salesperson's employment.

33
 34 SECTION 13. Arkansas Code § 26-57-215(b)(6)(A)(i), concerning
 35 obtaining a license from the Director of the Arkansas Tobacco Control Board,
 36 is amended to read as follows:

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

9
 10 SECTION 14. Arkansas Code §§ 26-57-221 through 26-57-223 are amended
 11 to read as follows:

12 26-57-221. Permits and licenses – Not transferable.

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

16
 17 26-57-222. Permits and licenses – Duplicates.

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

22
 23 26-57-223. Permits and licenses – Suspension or revocation.

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

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

31
 32 SECTION 15. Arkansas Code § 26-57-227(b), concerning the seizure of
 33 tobacco vending machines by the Director of the Arkansas Tobacco Control
 34 Board, is amended to read as follows:

35 (b) Any tobacco product vending machine so operated may be seized and
 36 sold by the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ at public auction

1 upon the order of the Pulaski County Circuit Court.

2

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

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

10

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

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

16

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

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

28

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

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

34

35 SECTION 20. Arkansas Code § 26-57-234(b), concerning the revocation of
36 retail permits by the Director of the Arkansas Tobacco Control Board, is

1 amended to read as follows:

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

5
 6 SECTION 21. Arkansas Code § 26-57-242(c), concerning the revocation of
 7 wholesaler's permits by the Director of the Arkansas Tobacco Control Board,
 8 is amended to read as follows:

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

11
 12 SECTION 22. Arkansas Code § 26-57-247(b), concerning the seizure of
 13 tobacco products by the Director of the Arkansas Tobacco Control Board, is
 14 amended to read as follows:

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

19
 20 SECTION 23. Arkansas Code § 26-57-248 is amended to read as follows:

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 or her stock or who has in his or her
 24 possession or on his or her premises, or who sells or offers for sale, any
 25 tobacco products on which the tax prescribed by law has not been paid in
 26 addition to the other fines and forfeitures ~~shall~~ may be subject to a fine
 27 of:

28 (1) Twenty-five dollars (\$25.00) for each package of cigarettes,
 29 little cigars, and cigarillos up to twenty (20) packages and fifty dollars
 30 (\$50.00) for each package in excess of twenty (20) packages, so held, sold,
 31 or offered for sale; and

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

35 (b) The penalty shall be held to be in the nature of ~~liquidated~~
 36 ~~damages~~ a civil penalty and may be collected by civil action and may be

1 levied by the Arkansas Tobacco Control Board or any circuit court of this
 2 state.

3
 4 SECTION 24. Arkansas Code § 26-57-249 is amended to read as follows:

5 26-57-249. ~~Sale~~ Destruction of products upon conviction – Procedure.

6 (a) Upon conviction of any ~~defendant person~~ person charged with ~~the a~~
 7 violation of ~~this subchapter~~ any tobacco law or rule which resulted in the
 8 seizure of tobacco products, the court shall issue an order to destroy the
 9 tobacco products confiscated by the Director of ~~the~~ Arkansas Tobacco Control
 10 Board or by any state, county, or municipal officer in this state, ~~which were~~
 11 ~~possessed or owned by the defendant and which have not been handled according~~
 12 ~~to the provisions of this subchapter.~~

13 (b) Upon a finding of guilty of any person charged with a violation of
 14 a state tobacco law or rule in a proceeding before the Arkansas Tobacco
 15 Control Board that resulted in the seizure of tobacco products, the Arkansas
 16 Tobacco Control Board shall issue an order to destroy the tobacco products
 17 confiscated by the director or by any state, county, or municipal officer in
 18 this state.

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

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

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

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

34
 35 SECTION 26. Arkansas Code § 26-57-255(d)(2), concerning votes by the
 36 Arkansas Tobacco Control Board, is amended to read as follows:

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

6
 7 SECTION 27. Arkansas Code § 26-57-256 is amended to read as follows:
 8 26-57-256. Powers of the Arkansas Tobacco Control Board.

9 (a) The Arkansas Tobacco Control Board shall:

10 (1) Promulgate ~~regulations~~ rules for the proper enforcement and
 11 implementation of this subchapter and the Unfair Cigarette Sales Act, § 4-75-
 12 701 et seq., subject to the restrictions in § 26-57-212(d);

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

15 (3) Prescribe forms of applications for permits and licenses
 16 under this subchapter;

17 (4)(A) Cooperate with the Revenue Division of the Department of
 18 Finance and Administration in the enforcement of the tax laws affecting the
 19 sale of tobacco products in this state and in the enforcement of all other
 20 state and local tax laws.

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

25 (i) Federal tax identification numbers issued by the
 26 Internal Revenue Service;

27 (ii) Social Security numbers; and

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

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

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

36 (5)(A) Conduct public hearings when appropriate regarding any

1 permit and license authorized by this subchapter or in violation of this
 2 subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227,
 3 or any other federal, state, or local statute, ordinance, rule, or regulation
 4 concerning the sale of tobacco products to minors or the rules ~~and~~
 5 ~~regulations~~ promulgated by the board.

6 (B)(i) After a notice and hearing held in accordance with
 7 the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board
 8 finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-
 9 701 et seq., or the rules ~~and regulations~~ promulgated by the board, the board
 10 may suspend, revoke, or not renew any or all permits and licenses issued by
 11 the board to any person or entity.

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

16 (iii) Each day of the violation shall be deemed a
 17 separate violation.

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

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

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

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

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

36 (d) The board may assess penalties for a violation of § 5-27-227(a)

1 according to the following schedule:

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

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

11 (3) A civil penalty not to exceed one thousand dollars
 12 (\$1,000) for a third violation within a forty-eight-month period and
 13 suspension of the license or permit enumerated in § 26-57-219 for a period
 14 not to exceed seven (7) days;

15 (4) A civil penalty not to exceed two thousand dollars
 16 (\$2,000) for a fourth or subsequent violation within a forty-eight-month
 17 period and suspension of the license or permit enumerated in § 26-57-219 for
 18 a period not to exceed fourteen (14) days; and

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

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

24 (2) The notice shall contain the date and time of the
 25 alleged violation.

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

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

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

36 (1) The business has adopted and enforced a written policy

1 against selling cigarettes or tobacco products to persons less than eighteen
2 (18) years of age;

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

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

8 (4) The business has established and imposed disciplinary
9 sanctions for noncompliance; and

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

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

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

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

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

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

34 (2) For a retail location, for purposes of the penalty
35 schedule set forth in subsection (d) of this section, violations accumulated
36 and assessed against a prior owner of the retail location shall not be

1 accumulated against a new owner of the same retail location.

2
 3 SECTION 28. Arkansas Code § 26-57-257 is amended to read as follows:
 4 26-57-257. Director of Arkansas Tobacco Control ~~Board~~.

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

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

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

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

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

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

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

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

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

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

33 (h) All acts, orders, proceedings, rules, regulations, entries,
 34 minutes, and other records of the Director of ~~the~~ Arkansas Tobacco Control
 35 ~~Board~~ and all reports and documents filed with the Director of ~~the~~ Arkansas
 36 Tobacco Control ~~Board~~ may be proved in any court of this state by a copy

1 thereof certified to by the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~
 2 with the seal of the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ attached.

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

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

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

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

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

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

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

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

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

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

35 (B) Any circuit court by written order may require the
 36 attendance of witnesses or the production of relevant books or other records

1 subpoenaed by the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~, and the
 2 court may compel obedience to its order by proceedings for contempt.

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

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

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

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

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

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

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

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

1 agreement for the delinquent tax.

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

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

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

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

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

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

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

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

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

1 ~~alleged violation.~~

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

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

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

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

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

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

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

21 ~~(4) The business has established and imposed disciplinary~~
 22 ~~sanctions for noncompliance; and~~

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

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

34 ~~(v) "Proof of age" means any document issued by a governmental agency~~
 35 ~~containing a description of the person, the person's photograph, or both, and~~
 36 ~~giving the person's date of birth and includes, without being limited to, a~~

1 ~~passport, military identification card, or driver's license.~~

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

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

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

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

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

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

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

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

34
 35 SECTION 29. Arkansas Code § 26-57-262(c)(3) and (4), concerning the
 36 powers of the Arkansas Tobacco Control Board, are amended to read as follows:

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

5 (4) The Department of Finance and Administration or ~~the~~
 6 ~~board~~ Arkansas Tobacco Control may seize and destroy or sell to the
 7 manufacturer only for export packages that do not comply with this section.
 8

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

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

15
 16 SECTION 31. Arkansas Code § 26-57-1302(c), concerning the definition
 17 of director as applied to enforcement enhancements, is amended to read as
 18 follows:

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

21
 22 SECTION 32. Arkansas Code § 26-57-1303(c), concerning prohibitions
 23 against the stamping, sale or import of cigarettes not listed in the
 24 directory of tobacco product manufacturers or brand families, is amended to
 25 read as follows:

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

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

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

33 (B) Sell, offer, or possess ~~for sale~~ in this state, or
 34 import for personal consumption in this state, cigarettes of a tobacco
 35 product manufacturer or brand family that the person or entity knows is not
 36 included in the directory maintained by the Attorney General pursuant to

1 subsection (b) of this section.

2 (2) Persons and entities are deemed to have received notice that
3 cigarettes of a tobacco product manufacturer or a brand family are not
4 included in the directory maintained by the Attorney General pursuant to
5 subsection (b) of this section at the time the Attorney General's website
6 fails to list any such cigarettes in the directory or at the time the
7 Attorney General removes the cigarettes from the directory.

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

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

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

20 (ii) Possession of cigarettes after the twenty-one-
21 day day period in subdivision (c)(3)(B)(i) of this section has expired is a
22 violation of this subdivision (c)(3).

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

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

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

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

5
6 SECTION 33. Arkansas Code § 26-57-1306(a)(1), concerning the
7 revocation of licenses and permits by the Director of the Arkansas Tobacco
8 Control Board, is amended to read as follows:

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 or permittee has
11 violated § 26-57-1303(c) or any ~~regulation rule~~ adopted under this
12 subchapter, the Director of ~~the~~ Arkansas Tobacco Control ~~Board~~ may revoke or
13 suspend the licensee's licenses or permits pursuant to law and the Arkansas
14 Tobacco Control Board's rules ~~and regulations~~ governing the procedure for
15 revocation or suspension of the licenses or permits.

16
17 SECTION 34. Arkansas Code § 26-57-1307(b), concerning the renewal of
18 permits or licenses by the Director of the Arkansas Tobacco Control Board, is
19 amended to read as follows:

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