

1 State of Arkansas  
2 88th General Assembly  
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4

# A Bill

HOUSE BILL 1791

5 By: Representatives J. Edwards, Carter  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT  
9 OF 1977; AND FOR OTHER PURPOSES.  
10  
11

## Subtitle

12 TO AMEND THE ARKANSAS TOBACCO PRODUCTS  
13 TAX ACT OF 1977.  
14  
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16

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

19 SECTION 1. Arkansas Code § 26-57-203 is amended to read as follows:  
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) "Brand family" means the same as defined in § 26-57-1302;

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

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

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

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

33 (4) "Cigarette" means the same as defined in § 26-57-260 to the  
34 extent that the cigarette is subject to federal excise tax;

35 (5) "Cigarette inputs" means machinery or other component parts  
36 typically used in the manufacture of cigarettes, including without limitation



1 tobacco, whether processed or unprocessed, cigarette papers and tubes,  
 2 cigarette filters and component parts intended for use in the making of  
 3 cigarette filters, and machinery typically used in the making of cigarettes;

4 (6) "Cigarette rolling machine" means a machine, device, or  
 5 other type of equipment that is intended to be used or may be used to make  
 6 rolled tobacco, or a substitute for rolled tobacco, for smoking from other  
 7 tobacco products, including without limitation roll-your-own tobacco and pipe  
 8 tobacco;

9 ~~(4)~~ (7) "Consumer" means a member of the public at large;

10 (8) "Days" means calendar days unless otherwise specified;

11 (9) "Directory" means:

12 (A) The directory compiled by the Attorney General under §  
 13 26-57-1303, if the reference is to the directory used in Arkansas; or

14 (B) The directory compiled under the law in another state,  
 15 if the reference is to another state's directory;

16 ~~(5)~~ (10) "First sale" means the sale of tobacco products made by  
 17 a manufacturer to licensed wholesalers and licensed vendors or a licensed  
 18 retailer only;

19 ~~(6)~~ (11)(A) "General tobacco products vendor" means ~~any~~ a person  
 20 that ~~operates~~:

21 (i) Operates a vending machine or that uses ~~any~~  
 22 ~~either~~ another mechanical device from which cigarettes or other tobacco  
 23 products are delivered to the consumer by inserting coins in the machine or  
 24 device, ~~and that purchases; and~~

25 (ii) Purchases tobacco products only from licensed  
 26 wholesalers.

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

30 ~~(7)~~ (12) "Gross sales" means the amount received for tobacco  
 31 products sold at retail, including both the federal and state taxes of the  
 32 tobacco products when purchased by a retailer;

33 (13)(A) "Importer" means a person:

34 (i) In the United States to which non-tax-paid  
 35 cigarettes manufactured in a foreign country are shipped or consigned;

36 (ii) That removes cigarettes for sale or consumption

1 in the United States from a customs-bonded manufacturing warehouse; or

2 (iii) That smuggles or otherwise unlawfully brings  
3 cigarettes into the United States.

4 (B) "Importer" includes a sales entity affiliate of the  
5 importer;

6 (14) "Knowing" means, with respect to a violation or failure, a  
7 violation or failure in which the person knowingly engages in conduct without  
8 a good faith belief that the conduct is consistent with this subchapter;

9 ~~(8)~~ (15) "Licensed" means that the person has received a license  
10 or permit from the Director of Arkansas Tobacco Control and is otherwise  
11 qualified to do business in this state, except that "licensed" does not mean  
12 that a person is registered as a manufacturer;

13 ~~(9)~~ (16)(A) "Manufacturer" means ~~any~~ a person ~~who~~ that produces  
14 ~~any~~ a tobacco product for sale ~~and includes, but is not limited to,~~ including  
15 without limitation importers and distributors that deal in tobacco products  
16 as manufacturers and that are required under this subchapter to sell only to  
17 licensed wholesalers or licensed retailers located in ~~Arkansas,~~ the state.

18 (B) "Manufacturer" includes a sales entity affiliate of  
19 the manufacturer;

20 (17) "Nonparticipating manufacturer" means the same as defined  
21 in § 26-57-1302;

22 (18)(A) "Package" means a pack or other container on which a  
23 stamp could be applied consistent with and as required by this subchapter  
24 that contains one (1) or more individual cigarettes for sale.

25 (B) "Package" does not include a container of multiple  
26 packages;

27 (19) "Participating manufacturer" means the same as defined in §  
28 26-57-1302;

29 ~~(10)~~ (20) "Person" means ~~any~~ an individual, retailer,  
30 wholesaler, manufacturer, firm, association, company, partnership, limited  
31 liability company, corporation, joint-stock company, club, agency, syndicate,  
32 the State of Arkansas, county, municipal corporation or other political  
33 subdivision of ~~this~~ the state, receiver, trustee, fiduciary, or trade  
34 association;

35 ~~(11)~~ (21) "Place of business" means the place where orders are  
36 taken or received or where tobacco products are sold;

1           (22) "Purchase" means an acquisition in any manner or by any  
2 means for any consideration, including without limitation transporting or  
3 receiving product in connection with a purchase;

4           ~~(12)~~ (23) "Restricted tobacco products vendor" means a person  
5 that is licensed to operate vending machines owned by the person only on the  
6 person's own premises, and is otherwise subject to all other restrictions  
7 imposed on a general tobacco products vendor;

8           ~~(13)~~ (24) "Retailer" means any a person who that purchases  
9 tobacco products from licensed wholesalers for the purpose of selling them  
10 the tobacco products over the counter at retail to consumers;

11           (25)(A) "Sale" or "sell" means a transfer, exchange, or barter  
12 in any manner or by any means for any consideration, including distributing  
13 or shipping product in connection with a sale.

14           (B) A sale "in" or "into" a state refers to the state in  
15 which the destination point of the product is located in the sale without  
16 regard to where title was transferred.

17           (C) A sale "from" a state refers to the sale of cigarettes  
18 that are located in that state to the destination in question without regard  
19 to where title was transferred;

20           (26)(A) "Sales entity affiliate" means an entity that:

21                   (i) Sells cigarettes the entity acquires directly  
22 from a manufacturer or importer; and

23                   (ii) Is affiliated with the manufacturer or importer  
24 from which the entity acquires the cigarettes.

25           (B) "Sales entity affiliate" includes entities in a  
26 relationship in which one entity directly or indirectly through one (1) or  
27 more intermediaries controls, is controlled by, or is under common control  
28 with the other entity;

29           ~~(14)~~ (27) "Salesperson" means the agent or employee of a  
30 wholesaler that sells or offers for sale to licensed wholesalers or licensed  
31 retailers or that solicits for sale, takes orders for, or in any manner  
32 promotes the sale or use of tobacco products;

33           ~~(15)~~ (28)(A) "Stamps" means the Arkansas cigarette stamps  
34 denoting the tax on cigarettes.

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

1           ~~(16)~~ (29) "Tobacco products" means all products containing  
 2 tobacco for consumption ~~and includes, but is not limited to,~~ including  
 3 without limitation cigarettes, cigars, little cigars, cigarillos, chewing  
 4 tobacco, smokeless tobacco, snuff, smoking tobacco, including pipe tobacco,  
 5 and smoking tobacco substitutes;

6           ~~(17)~~ (30) "Tobacco products vending machine" means ~~any a~~ a coin-  
 7 operated vending machine from which tobacco products are sold;

8           (31) "Unstamped cigarettes" means cigarettes that are not  
 9 contained in a package bearing a stamp permitted under this chapter;

10          ~~(18)~~ (32) "Warehouse" means a place where tobacco products are  
 11 stored for another person and to or from which place the tobacco products are  
 12 shipped or delivered upon order by the owner of the tobacco products to the  
 13 warehouse; and

14          ~~(19)~~ (33)(A) "Wholesaler" means ~~any a~~ a person, ~~not~~ other than a  
 15 manufacturer or a person owned or operated by a manufacturer, ~~that does;~~

16                   (i) Does business within ~~this~~ the state at or from  
 17 an established place of business that purchases unstamped or untaxed  
 18 cigarettes or other tobacco products directly from manufacturers that  
 19 distribute tobacco products in Arkansas, ~~and that sells~~ the state; and

20                   (ii) Sells to properly licensed cigarette vendors or  
 21 retailers.

22                   (B) However, ~~where~~ if an Arkansas city is separated from a  
 23 city in another state only by a state line, a person that is a resident of  
 24 the Arkansas city that maintains a warehouse in the adjoining city in the  
 25 adjoining state may qualify as a wholesaler under this subchapter if that  
 26 person ~~is;~~

27                           (i) Is regularly engaged in the sale of tobacco  
 28 products to licensed retailers within Arkansas as a first sale; ~~and is~~

29                           (ii) Is eligible to purchase unstamped cigarettes  
 30 ~~direct~~ directly from manufacturers.

31  
 32           SECTION 2. Arkansas Code § 26-57-209 is amended to read as follows:  
 33           26-57-209. Exemption from tax.

34           (a) The following are not subject to the taxes imposed under § 26-57-  
 35 208:

36                   (1) Tobacco products sold to military departments of the United

1 States or the ~~State of Arkansas~~ state for resale on military bases within  
2 ~~this the state;~~ and tobacco

3 (2) Tobacco products sold and delivered to authorized purchasers  
4 outside ~~this the~~ state for resale, and to other wholesalers licensed under  
5 this subchapter, ~~are not subject to the taxes imposed by § 26-57-208.~~

6 (b) A person licensed under this chapter that sells cigarettes to  
7 military departments of the United States or the state for resale on military  
8 bases under this section shall affix a tax-exempt stamp on the package,  
9 carton, or other container of cigarettes before transfer, shipment, or  
10 delivery.

11  
12 SECTION 3. Arkansas Code § 26-57-210 is repealed.

13 ~~26-57-210. Waiver of tax.~~

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

19  
20 SECTION 4. Arkansas Code § 26-57-235, concerning cigarette stamps, is  
21 amended to add an additional subsection to read as follows:

22 (d)(1) Cigarettes sold in, into, or from the state shall be in  
23 packages of twenty (20) or twenty-five (25) cigarettes.

24 (2) The purchase or sale of individual cigarettes is prohibited.

25  
26 SECTION 5. Arkansas Code § 26-57-236, as amended by Acts 1997, No.  
27 434, is repealed.

28 ~~26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]~~

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

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

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

36 ~~(d) Each stamp deputy shall furnish a bond in an amount and in the~~

1 form as prescribed by the director.

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

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

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

9 (2) ~~The commission shall not be less than three percent (3%) of~~  
 10 the total aggregate cigarette tax collected.

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

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

17  
 18 SECTION 6. Arkansas Code § 26-57-236, as amended by Acts 1997, No.  
 19 1337, is amended to read as follows:

20 26-57-236. Stamp deputies - Appointment and revocation of appointment  
 21 - Reporting. [As amended by Acts 1997, No. 1337.]

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

24 (b) ~~The director may appoint and commission stamp deputies who shall~~  
 25 be the owners or officers of wholesalers to handle the stamps and collect the  
 26 tax on tobacco products before sales of tobacco products are made to the  
 27 retailers.

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

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

32 (e) ~~Stamp deputies shall keep records of all stamp sales and tax~~  
 33 collections and shall make the reports prescribed by the director.

34 (f) ~~The Director of the Department of Finance and Administration shall~~  
 35 pay a commission to stamp deputies for the sale of cigarette tax stamps, the  
 36 affixing of a cigarette tax stamps stamp to each package of cigarettes, and

1 ~~the collection of cigarette taxes. The commission paid shall not be less than~~  
 2 ~~three percent (3%) of the total aggregate cigarette tax collected.~~

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

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

9 (b)(1) The director may appoint and commission stamp deputies to  
 10 handle the stamps and collect the tax on tobacco products before sales of  
 11 tobacco products are made to the retailers.

12 (2) The director shall not appoint and commission a person as a  
 13 stamp deputy unless the person:

14 (A) Is the owner or officer of a wholesaler licensed under  
 15 this subchapter;

16 (B) Certifies each calendar quarter on a form prescribed  
 17 by the director that the person has and will comply with the requirements of  
 18 this subchapter;

19 (C) Consents to the jurisdiction of the state to enforce  
 20 the requirements of this subchapter and waives any claim of sovereign  
 21 immunity to the contrary;

22 (D) Provides complete and accurate reports as required by  
 23 this subchapter;

24 (E) Waives the confidentiality laws necessary to permit  
 25 the director to:

26 (i) Create and make available the list described in  
 27 subdivision (b)(6) of this section; and

28 (ii) Share information reported under this  
 29 subchapter and other laws with the taxing authorities or law enforcement  
 30 authorities of other states or with any other entity permitted by the  
 31 director to aggregate the data;

32 (F) Has furnished a bond in an amount and in the form  
 33 prescribed by the director; and

34 (G) If located outside of the state, has appointed an  
 35 agent in this state to act as agent for the service of process for the  
 36 purpose of enforcing this subchapter.

1           (3) An appointment and commission as a stamp deputy by the  
2 director is effective for one (1) year.

3           (4) A stamp deputy acting within the scope of the stamp deputy's  
4 authority is an agent of the director and is accountable as such for any  
5 wrongful acts.

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

8           (6)(A) The director shall list on the website of the Department  
9 of Finance and Administration the names of all persons appointed and  
10 commissioned as stamp deputies under this section.

11           (B) Manufacturers, importers, and sales entity affiliates  
12 are entitled to rely on the list described in subdivision (b)(6)(A) of this  
13 section in selling cigarettes.

14           (c)(1) A stamp deputy's appointment and commission are subject to  
15 revocation if the stamp deputy:

16           (A) Fails to submit a report required under this  
17 subchapter or the Tobacco Products Reporting Act, § 26-57-1401 et seq.;

18           (B) Files an incomplete or inaccurate report or an  
19 inaccurate certification;

20           (C) Fails to pay taxes due under this subchapter;

21           (D) Sells cigarettes in or into the state in a package  
22 that bears a stamp permitted under this subchapter that is not the correct  
23 stamp and provides for a lower level of tax than the correct stamp;

24           (E) Sells unstamped cigarettes in, into, or from the state  
25 or possesses unstamped cigarettes in the state except as permitted under this  
26 subchapter;

27           (F) Purchases, sells in or into the state, or affixes a  
28 tax stamp to a package containing cigarettes of a manufacturer or brand  
29 family that is not listed on the directory of cigarettes approved for  
30 stamping and sale published by the Attorney General under § 26-57-1303, or  
31 possesses cigarettes described in subdivision (c)(1)(F) more than twenty-one  
32 (21) days after receiving notice that the manufacturer or brand family is not  
33 on the state directory, except as otherwise permitted under this subchapter;

34           (G) Purchases or sells cigarettes in violation of this  
35 subchapter; or

36           (H) Has his or her appointment and commission or similar

1 license or permit revoked or terminated in any other state based on acts or  
2 omissions that would, if done in Arkansas, be grounds for the revocation of  
3 the stamp deputy's appointment and commission under this section unless the  
4 stamp deputy demonstrates that the revocation or termination in the other  
5 state was effected without due process.

6 (2)(A) If a stamp deputy commits a violation under subdivisions  
7 (c)(1)(A)–(D) of this section that was not knowing, the stamp deputy is  
8 entitled to cure the violation within thirty (30) days of the violation.

9 (B) The appointment and commission of a stamp deputy who  
10 fully cures the violation under subdivision (c)(2)(A) of this section shall  
11 not be revoked as a result of the violation.

12 (C) A violation that has been cured under this subdivision  
13 (c)(2) is not a violation for purposes of subdivision (c)(3) and subsection  
14 (d).

15 (3)(A) If a stamp deputy commits a violation under subdivision  
16 (c)(1) of this section, the stamp deputy is subject to the following civil  
17 penalties:

18 (i) For a first violation, up to one thousand  
19 dollars (\$1,000); and

20 (ii) For a second or subsequent violation, up to  
21 five thousand dollars (\$5,000) per violation.

22 (B) For violations under subdivisions (c)(1)(E)–(H) of  
23 this section, each sale constitutes a separate violation.

24 (4)(A) The director shall:

25 (i) Promptly remove from the list of stamp deputies  
26 maintained under subdivision (b)(6) of this section a stamp deputy whose  
27 appointment and commission has been revoked; and

28 (ii) Publish a notice of the termination on the  
29 department's website.

30 (B) Beginning ten (10) days following the publication of a  
31 notice under subdivision (c)(4)(A), a person shall not sell cigarettes to or  
32 purchase cigarettes from a stamp deputy whose appointment and commission has  
33 been revoked.

34 (5) If a stamp deputy whose appointment and commission have been  
35 revoked is also the manufacturer of cigarettes, the stamp deputy and its  
36 brand families shall be removed from the directory of cigarettes approved for

1 stamping and sale maintained by the Attorney General under § 26-57-1303.

2 (d) A stamp deputy whose appointment and commission have been revoked  
3 under subsection (c) of this section is eligible for reinstatement:

4 (1) Ninety (90) days following revocation for a first violation  
5 under subdivisions (c)(1)(A)–(D) of this section that was not knowing;

6 (2) One hundred eighty (180) days following revocation for a  
7 second failure under subdivisions (c)(1)(A)–(D) of this section that was not  
8 knowing;

9 (3) One (1) year following revocation for a third or subsequent  
10 violation under subdivisions (c)(1)(A)–(D) of this section that was not  
11 knowing;

12 (4) One (1) year following revocation for a first knowing  
13 violation under subdivision (c)(1) of this section; and

14 (5) Three (3) years following revocation for a second or  
15 subsequent knowing violation under subdivision (c)(1) of this section.

16 (e)(1)(A) By the fifteenth day of each month, a stamp deputy shall  
17 file a report in the form prescribed by the director, and the stamp deputy  
18 shall certify to the state that the report is complete and accurate.

19 (B) The report required under subdivision (e)(1)(A) shall  
20 contain the following information:

21 (i) The total number of cigarettes acquired by the  
22 stamp deputy during the month for sale in or into the state and for sale from  
23 Arkansas into another state;

24 (ii) The total number of cigarettes sold in or into  
25 the state by the stamp deputy during the month;

26 (iii) The total number of cigarettes held in  
27 inventory in the state or for sale into the state by the stamp deputy as of  
28 the end of the previous month;

29 (iv) The total number of stamps the stamp deputy  
30 affixed during the month, including the following:

31 (a) How many of each type of stamp the stamp  
32 deputy affixed by number;

33 (b) The total dollar amount of tax paid; and

34 (c) The total number of cigarettes contained  
35 in the packages to which the stamp deputy affixed each type of tax stamp; and

36 (v) Any additional information required by the

1 director to assist in the enforcement of this chapter, §§ 26-57-260 and 26-  
2 57-261, and §§ 26-57-1301 – 26-57-1308.

3 (2) In addition to the reports submitted under this section, the  
4 stamp deputy shall submit any information required by the director, including  
5 without limitation the manufacturer, brand family, and number of the  
6 cigarettes on which the reports are submitted.

7 (3) The director may share the information reported under this  
8 section with the taxing authorities or law enforcement authorities of  
9 Arkansas or another state or with any other entity permitted by the director  
10 to aggregate such data.

11 (f)(1) The director shall pay a commission to each stamp deputy for  
12 the sale of cigarette tax stamps, the affixing of a cigarette tax stamp to  
13 each package of cigarettes, and the collection of cigarette taxes.

14 (2) The commission paid under subdivision (f)(1) of this section  
15 shall not be less than three percent (3%) of the total aggregate cigarette  
16 tax collected by the stamp deputy.

17 (g)(1) All deposits held by a bank for a stamp deputy that represent  
18 the sales of stamps are trust funds and shall be held as special deposits.

19 (2) If the bank becomes insolvent, the deposits under  
20 subdivision (g)(1) of this section shall be classed and considered as  
21 preferred claims of the state.

22  
23 SECTION 7. Arkansas Code § 26-57-244 is amended to read as follows:

24 26-57-244. Possession of untaxed, unstamped products – Notice and  
25 prima facie evidence.

26 (a) It is unlawful for ~~any a~~ a person to receive or have in ~~his or her~~  
27 the person's possession for sale, consumption, or any other purpose, any  
28 untaxed tobacco products or unstamped cigarettes unless the tax prescribed by  
29 this subchapter has been paid directly to the Director of the Department of  
30 Finance and Administration by the person in possession of the untaxed tobacco  
31 products or unstamped cigarettes.

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

35 (c) If tax has been paid to the director on any untaxed tobacco  
36 products or unstamped cigarettes, a consumer may establish proof of such

1 payment by providing a receipt or any other documentation that clearly  
2 indicates that the tax was paid.

3 (d) ~~The provisions of this~~ This section ~~do~~ does not relieve any retail  
4 cigarette and tobacco permit holder from the obligations placed on them by §  
5 26-57-228.

6 (e) ~~No~~ A retail cigarette or tobacco permit holder shall not have in  
7 his or her possession any unstamped cigarettes ~~nor shall he or she have in~~  
8 ~~his or her possession~~ or any tobacco products on which the tax prescribed by  
9 this subchapter has not been paid.

10 (f)(1) An Arkansas consumer who purchases any untaxed tobacco products  
11 or unstamped cigarettes shall be liable for reporting and remitting all  
12 excise tax due on ~~such~~ the tobacco products or cigarettes as levied under  
13 this subchapter.

14 (2) The tax due shall be reported on forms provided by the  
15 director on or before the fifteenth day of the month following the month in  
16 which the untaxed purchase was made.

17 (3) The report shall provide the information prescribed by the  
18 director.

19 (4) When a report is filed, the consumer shall remit the full  
20 amount of tax due on the untaxed purchase to the director.

21 (g) The director is authorized to directly assess the excise tax due  
22 on any untaxed tobacco products or unstamped cigarettes against a consumer  
23 who purchases ~~such~~ the items and fails to report and remit the excise tax due  
24 in a timely manner.

25 (h) Subsections (f) and (g) of this section ~~shall be~~ are subject to  
26 ~~the provisions of~~ the Arkansas Tax Procedure Act, § 26-18-101 et seq.

27 (i)(1) ~~The provisions of this section shall not apply to wholesalers~~  
28 ~~and common carriers.~~ A wholesaler may possess unstamped cigarettes for sale  
29 in or into the state if the wholesaler:

30 (A) Is permitted to purchase, sell, and affix a stamp to  
31 the package containing the cigarettes under § 26-57-1303(c); and

32 (B) Affixes the appropriate stamp to the package  
33 containing the cigarettes within fifteen (15) days of receipt of the  
34 cigarettes and before selling the cigarettes in or into the state.

35 (2) A wholesaler may possess unstamped cigarettes for sale from  
36 Arkansas into another state if the wholesaler:

1           (A) Is permitted to purchase, sell, and affix a stamp to  
2 the package containing the cigarettes under the other state's tobacco  
3 legislation or directory law, if any;

4           (B) Affixes the stamp required by the other state within  
5 fifteen (15) days of receipt of the cigarettes and before selling the  
6 cigarettes in or into the other state; and

7           (C) Would not violate the law of the other state by  
8 selling or affixing the stamp.

9           (3)(A)(i) Except as provided in § 26-57-242, a wholesaler may  
10 transfer, transport, or cause to be transported unstamped cigarettes that the  
11 wholesaler owns and is permitted to possess from one of the wholesaler's  
12 facilities in Arkansas to another of the wholesaler's facilities.

13           (ii) If the wholesaler's facility to which the  
14 cigarettes are transferred is located in Arkansas, the applicable time period  
15 for affixing a stamp remains in effect and continues to run from the date of  
16 the wholesaler's original receipt of the cigarettes.

17           (iii) If the wholesaler's facility to which the  
18 cigarettes are transferred is located outside of Arkansas, the wholesaler  
19 shall report the quantity and brand of the cigarettes to the director, the  
20 Attorney General, and the taxing authority of the other state within fifteen  
21 (15) days following the end of the month in which the transfer was made.

22           (B) A stamp deputy may not transfer cigarettes from  
23 Arkansas into another state if the transfer would violate the law of the  
24 other state.

25           (j)(1) A common carrier or contract carrier may possess and transport  
26 unstamped cigarettes in connection with a sale or other transfer permitted  
27 under this subchapter if the common carrier or contract carrier has in its  
28 possession:

29           (A) Documents establishing that title to the unstamped  
30 cigarettes remains with the manufacturer, importer, or wholesaler; or

31           (B) Bills of lading or other shipping documents  
32 establishing that the common carrier or contract carrier is delivering the  
33 cigarettes on behalf of a person authorized to sell or transfer the unstamped  
34 cigarettes under this subchapter.

35           (2) The documents required under subdivision (j)(1) of this  
36 section shall list the name and address of the person to whom the cigarettes

1 are being delivered.

2 (k) A manufacturer or importer and the contractor, agent, common  
 3 carrier, or contract carrier of a manufacturer or importer may possess,  
 4 transport, or cause to be transported unstamped cigarettes in, into, or from  
 5 the state for use in connection with consumer testing permitted under the  
 6 laws of the state in which the testing is to be done if the:

7 (1) Cigarettes are not currently commercially marketed in the  
 8 United States;

9 (2) Manufacturer pays applicable state excise taxes on the  
 10 cigarettes;

11 (3) Nonparticipating manufacturer, if any, deposits the necessary  
 12 escrow on the cigarettes under § 26-57-261;

13 (4) Participating manufacturer, if any, includes the cigarettes  
 14 in the participating manufacturer's volume for purposes of the Master  
 15 Settlement Agreement, as defined in § 26-57-260;

16 (5) Cigarettes are provided at no cost to the consumer testing  
 17 participants; and

18 (6) Cigarettes used by a manufacturer or importer for consumer  
 19 testing do not exceed a reasonable quantity.

20  
 21 SECTION 8. Arkansas Code § 26-57-245 is amended to read as follows:

22 26-57-245. Unstamped products or products with unpaid taxes –  
 23 Purchase, sale, receipt, etc., a criminal offense – Deceptive trade practice.

24 (a) Except as otherwise authorized by this subchapter, any a person  
 25 who knowingly purchases, sells, offers for sale, receives, possesses, or  
 26 transports upon his or her person, on his or her premises, or in his or her  
 27 vehicle any cigarettes ~~which~~ that do not have affixed thereon the stamps  
 28 required by this subchapter, or any other tobacco products upon which the  
 29 taxes imposed by this subchapter have not been paid, is guilty of a criminal  
 30 offense that is a:

31 (1) Class C felony if the tax value of the total amount of  
 32 tobacco products is equal to or exceeds one hundred dollars (\$100); or

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

35 (b)(1) A violation under subsection (a) of this section is a deceptive  
 36 or unconscionable trade practice under §§ 4-88-101 – 4-88-115 and may be

1 enforced by the Attorney General.

2 (2) Each sale or offer to sell cigarettes or other tobacco  
3 products in violation of subsection (a) of this section constitutes a  
4 separate violation.

5  
6 SECTION 9. Arkansas Code Title 26, Chapter 57, Subchapter 2 is amended  
7 to add two additional sections to read as follows:

8 26-57-263. Cigarette inputs – Cigarette rolling machines.

9 (a)(1) It is unlawful for a person to sell cigarettes or cigarette  
10 inputs to, or purchase cigarettes from, a person in another state if the sale  
11 or purchase would violate the law of the other state.

12 (2) A cigarette input sold, possessed, transported, caused to be  
13 transported, or purchased in violation of this section is contraband and is  
14 subject to seizure and forfeiture to the state.

15 (b)(1) A person licensed, permitted, appointed, or commissioned under  
16 this subchapter and a person that directly or indirectly controls a person  
17 licensed, permitted, appointed, or commissioned under this subchapter shall  
18 not possess or otherwise utilize a cigarette rolling machine.

19 (2) A person that knowingly violates subdivision (b)(1) of this  
20 section shall be subject to the following civil penalties:

21 (A) The revocation or termination of any license, permit,  
22 appointment, or commission under this subchapter; and

23 (B)(i) A civil penalty of up to fifty thousand dollars  
24 (\$50,000) in any action brought by the Director of the Department of Finance  
25 and Administration, Arkansas Tobacco Control, or the Attorney General.

26 (ii) Civil penalties collected under subdivision  
27 (b)(2)(B) of this section shall be general revenues of the state.

28 (3) A person that violates subdivision (b)(1) of this section  
29 shall also be guilty of a criminal offense that is:

30 (A) A Class C felony if the tax value of any cigarettes  
31 produced by means of the cigarette rolling machine is one hundred dollars  
32 (\$100) or more; or

33 (B) A Class A misdemeanor if the tax value of any  
34 cigarettes produced by means of the cigarette rolling machine is less than  
35 one hundred dollars (\$100).

36 (4)(A) This subsection (b) does not apply to cigarette rolling

1 machines intended and designed for use by individual consumers who do not  
 2 intend to offer the resulting product for resale.

3 (B) A cigarette rolling machine that has the capability to  
 4 roll two hundred (200) cigarettes in less than fifteen (15) minutes is  
 5 presumed to be for commercial use.

6  
 7 26-57-264. Attorney General.

8 (a) Upon request of the Attorney General, any information provided to  
 9 the Director of the Department of Finance and Administration or Arkansas  
 10 Tobacco Control shall be provided to the Attorney General.

11 (b) The Attorney General may enforce §§ 26-57-245(b), 26-57-248, and  
 12 26-57-250 by filing a civil action in the circuit court of Pulaski County.

13  
 14 SECTION 10. EFFECTIVE DATE. Sections 6 and 7(i), (j), and (k) of this  
 15 act are effective on and after January 1, 2012.

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