

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 1950

5 By: Representatives J. Edwards, Carter
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE STATUTES REGARDING TOBACCO
9 PRODUCTS; TO PROVIDE FOR THE DISCLOSURE OF
10 INFORMATION RELATING TO TOBACCO SALES AND TAXATION;
11 TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT OF
12 1977; TO AMEND THE STATUTES REGARDING THE ENFORCEMENT
13 OF THE ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977; TO
14 CREATE THE TOBACCO PRODUCTS REPORTING ACT; AND FOR
15 OTHER PURPOSES.
16
17

Subtitle

18 TO AMEND THE STATUTES REGARDING THE
19 TAXATION OF TOBACCO PRODUCTS; TO PROVIDE
20 FOR THE DISCLOSURE OF INFORMATION
21 RELATING TO TOBACCO SALES AND TAXATION;
22 AND TO CREATE THE TOBACCO PRODUCTS
23 REPORTING ACT.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 26-18-303, concerning the disclosure of tax
30 records, is amended to add an additional subsection to read as follows:

31 (j)(1) The General Assembly finds that:

32 (A) The collection of cigarette and other tobacco products
33 taxes and the enforcement of the Arkansas Tobacco Products Tax Act, § 26-57-
34 201 et seq., §§ 26-57-260 and 26-57-261, and §§ 26-57-1301 – 26-57-1307,
35 effect the fiscal soundness of the state and the public health;

36 (B) The Attorney General and the Director of Arkansas



1 Tobacco Control play an important role in the enforcement of the state's
2 tobacco laws; and

3 (C) The sharing of documents and other information between
4 the Director of the Department of Finance and Administration, the Attorney
5 General, and the Director of Arkansas Tobacco Control will put the state in a
6 better position to prevent tobacco diversion and prevent cigarettes from
7 being sold to youth and an already addicted adult population.

8 (2) The Director of the Department of Finance and Administration
9 may disclose documents and other information submitted by stamp deputies
10 appointed under § 26-57-236 or those persons licensed or permitted under the
11 terms of the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.,
12 to the Attorney General or the Director of Arkansas Tobacco Control upon the
13 request of the Attorney General or the Director of Arkansas Tobacco Control.

14 (3)(A) The documents and other information provided under this
15 subsection shall not be disclosed by the Attorney General or the Director of
16 Arkansas Tobacco Control to a person other than a person specifically
17 authorized by the Attorney General or the Director of Arkansas Tobacco
18 Control to receive the documents or other information.

19 (B) However, the Attorney General and the Director of
20 Tobacco Control may share the documents and other information provided under
21 this subsection with the taxing authorities or law enforcement agencies of
22 Arkansas or another state or with any other entity permitted by the Attorney
23 General to aggregate the documents and other information, if the parties
24 agree to the confidentiality requirements under this subsection.

25 (4)(A) The Attorney General and the Director of Arkansas Tobacco
26 Control may use the documents and other information provided under this
27 subsection by the Director of the Department of Finance and Administration in
28 proceedings before any court.

29 (B)(i) However, the documents and other information shall
30 not be presented in court except with the approval of the court in which the
31 action is pending and after adequate notice to the person who initially
32 furnished the documents or other information to the Director of the
33 Department of Finance and Administration.

34 (ii) When confidential information is presented with
35 court approval, the documents and other information and the related evidence
36 shall be held in camera and shall be part of the court record or trial

1 transcript only if under seal.

2
3 SECTION 2. Arkansas Code § 26-57-203 is amended to read as follows:
4 26-57-203. Definitions.

5 As used in this subchapter:

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

8 (2) "Brand family" means the same as defined in § 26-57-1302;

9 ~~(2) (3) "Cigar" means any roll of tobacco wrapped in leaf~~
10 ~~tobacco or in any substance containing tobacco, other than any roll of~~
11 ~~tobacco that is a cigarette under subdivision (3) of this section;~~

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

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

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

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

19 (5) "Cigarette inputs" means machinery or other component parts
20 typically used in the manufacture of cigarettes, including without limitation
21 tobacco, whether processed or unprocessed, cigarette papers and tubes,
22 cigarette filters and component parts intended for use in the making of
23 cigarette filters, and machinery typically used in the making of cigarettes;

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

29 ~~(4) (7) "Consumer" means a member of the public at large;~~

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

31 (9) "Directory" means:

32 (A) The directory compiled by the Attorney General under §
33 26-57-1303, if the reference is to the directory used in Arkansas; or

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

36 ~~(5) (10) "First sale" means the sale of tobacco products made by~~

1 a manufacturer to licensed wholesalers and licensed vendors or a licensed
 2 retailer only;

3 ~~(6)~~ (11)(A) "General tobacco products vendor" means ~~any a~~ a person
 4 that ~~operates~~;

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

9 (ii) Purchases tobacco products only from licensed
 10 wholesalers.

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

14 ~~(7)~~ (12) "Gross sales" means the amount received for tobacco
 15 products sold at retail, including both the federal and state taxes of the
 16 tobacco products when purchased by a retailer;

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

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

20 (ii) That removes cigarettes for sale or consumption
 21 in the United States from a customs-bonded manufacturing warehouse; or

22 (iii) That smuggles or otherwise unlawfully brings
 23 cigarettes into the United States.

24 (B) "Importer" includes a sales entity affiliate of the
 25 importer;

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

29 ~~(8)~~ (15) "Licensed" means that the person has received a license
 30 or permit from the Director of Arkansas Tobacco Control and is otherwise
 31 qualified to do business in this state, except that "licensed" does not mean
 32 that a person is registered as a manufacturer;

33 ~~(9)~~ (16)(A) "Manufacturer" means ~~any a~~ a person ~~who that~~ that produces
 34 ~~any a~~ a tobacco product for sale ~~and includes, but is not limited to,~~ including
 35 without limitation importers and distributors that deal in tobacco products
 36 as manufacturers and that are required under this subchapter to sell only to

1 licensed wholesalers or licensed retailers located in ~~Arkansas~~, the state.

2 (B) "Manufacturer" includes a sales entity affiliate of
3 the manufacturer;

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

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

9 (B) "Package" does not include a container of multiple
10 packages;

11 (19) "Participating manufacturer" means the same as defined in §
12 26-57-1302;

13 ~~(10)~~ (20) "Person" means any an individual, retailer,
14 wholesaler, manufacturer, firm, association, company, partnership, limited
15 liability company, corporation, joint-stock company, club, agency, syndicate,
16 the State of Arkansas, county, municipal corporation or other political
17 subdivision of ~~this~~ the state, receiver, trustee, fiduciary, or trade
18 association;

19 ~~(11)~~ (21) "Place of business" means the place where orders are
20 taken or received or where tobacco products are sold;

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

24 ~~(12)~~ (23) "Restricted tobacco products vendor" means a person
25 that is licensed to operate vending machines owned by the person only on the
26 person's own premises, and is otherwise subject to all other restrictions
27 imposed on a general tobacco products vendor;

28 ~~(13)~~ (24) "Retailer" means any a person ~~who~~ that purchases
29 tobacco products from licensed wholesalers for the purpose of selling ~~them~~
30 the tobacco products over the counter at retail to consumers;

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

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

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

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

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

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

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

13 ~~(14)~~ (27) "Salesperson" means the agent or employee of a
 14 wholesaler that sells or offers for sale to licensed wholesalers or licensed
 15 retailers or that solicits for sale, takes orders for, or in any manner
 16 promotes the sale or use of tobacco products;

17 ~~(15)~~ (28)(A) "Stamps" means the Arkansas cigarette stamps
 18 denoting the tax on cigarettes.

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

21 ~~(16)~~ (29) "Tobacco products" means all products containing
 22 tobacco for consumption ~~and includes, but is not limited to,~~ including
 23 without limitation cigarettes, cigars, little cigars, cigarillos, chewing
 24 tobacco, smokeless tobacco, snuff, smoking tobacco, including pipe tobacco,
 25 and smoking tobacco substitutes;

26 ~~(17)~~ (30) "Tobacco products vending machine" means ~~any a~~ a coin-
 27 operated vending machine from which tobacco products are sold;

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

30 ~~(18)~~ (32) "Warehouse" means a place where tobacco products are
 31 stored for another person and to or from which place the tobacco products are
 32 shipped or delivered upon order by the owner of the tobacco products to the
 33 warehouse; and

34 ~~(19)~~ (33)(A) "Wholesaler" means ~~any a~~ a person, ~~not other than~~
 35 manufacturer or a person owned or operated by a manufacturer, ~~that does;~~

36 (i) Does business within ~~this~~ the state at or from

1 an established place of business that purchases unstamped or untaxed
 2 cigarettes or other tobacco products directly from manufacturers that
 3 distribute tobacco products in ~~Arkansas, and that sells~~ the state; and

4 (ii) Sells to properly licensed cigarette vendors or
 5 retailers.

6 (B) However, ~~where~~ if an Arkansas city is separated from a
 7 city in another state only by a state line, a person that is a resident of
 8 the Arkansas city that maintains a warehouse in the adjoining city in the
 9 adjoining state may qualify as a wholesaler under this subchapter if that
 10 person ~~is~~:

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

13 (ii) Is eligible to purchase unstamped cigarettes
 14 ~~direct~~ directly from manufacturers.

15
 16 SECTION 3. Arkansas Code § 26-57-209 is amended to read as follows:
 17 26-57-209. Exemption from tax.

18 (a) The following are not subject to the taxes imposed under § 26-57-
 19 208:

20 (1) Tobacco products sold to military departments of the United
 21 States or the ~~State of Arkansas~~ state for resale on military bases within
 22 ~~this the state;~~ and tobacco

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

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

31
 32 SECTION 4. Arkansas Code § 26-57-210 is repealed.
 33 ~~26-57-210. Waiver of tax.~~

34 ~~The Director of the Department of Finance and Administration has the~~
 35 ~~authority to waive the tax on any tobacco products donated or given to~~
 36 ~~inmates of correctional institutions or patients of hospitals by any~~

1 ~~patriotic or charitable organization or by the United States Government in~~
 2 ~~the manner prescribed by the director.~~

3
 4 SECTION 5. Arkansas Code § 26-57-235, concerning cigarette stamps, is
 5 amended to add an additional subsection to read as follows:

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

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

9
 10 SECTION 6. Arkansas Code § 26-57-236, as amended by Acts 1997, No.
 11 434, is repealed.

12 ~~26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]~~

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

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

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

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

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

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

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

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

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

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

1
 2 SECTION 7. Arkansas Code § 26-57-236, as amended by Acts 1997, No.
 3 1337, is amended to read as follows:

4 26-57-236. Stamp deputies – Appointment and revocation of appointment
 5 – Reporting. [As amended by Acts 1997, No. 1337.]

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

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

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

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

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

18 ~~(f) The Director of the Department of Finance and Administration shall~~
 19 ~~pay a commission to stamp deputies for the sale of cigarette tax stamps, the~~
 20 ~~affixing of a cigarette tax stamps stamp to each package of cigarettes, and~~
 21 ~~the collection of cigarette taxes. The commission paid shall not be less than~~
 22 ~~three percent (3%) of the total aggregate cigarette tax collected.~~

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

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

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

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

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

36 (B) Certifies each calendar quarter on a form prescribed

1 by the director that the person has and will comply with the requirements of
2 this subchapter;

3 (C) Consents to the jurisdiction of the state to enforce
4 the requirements of this subchapter and waives any claim of sovereign
5 immunity to the contrary;

6 (D) Provides complete and accurate reports as required by
7 this subchapter;

8 (E) Waives the confidentiality laws necessary to permit
9 the director to:

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

12 (ii) Share information reported under this
13 subchapter and other laws with the taxing authorities or law enforcement
14 authorities of other states or with any other entity permitted by the
15 director to aggregate the data;

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

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

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

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

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

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

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

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

36 (A) Fails to submit a report required under this

1 subchapter or the Tobacco Products Reporting Act, § 26-57-1401 et seq.;

2 (B) Files an incomplete or inaccurate report or an
3 inaccurate certification;

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

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

8 (E) Sells unstamped cigarettes in, into, or from the state
9 or possesses unstamped cigarettes in the state except as permitted under this
10 subchapter;

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

18 (G) Purchases or sells cigarettes in violation of this
19 subchapter; or

20 (H) Has his or her appointment and commission or similar
21 license or permit revoked or terminated in any other state based on acts or
22 omissions that would, if done in Arkansas, be grounds for the revocation of
23 the stamp deputy's appointment and commission under this section unless the
24 stamp deputy demonstrates that the revocation or termination in the other
25 state was effected without due process.

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

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

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

35 (3)(A) If a stamp deputy commits a violation under subdivision
36 (c)(1) of this section, the stamp deputy is subject to the following civil

1 penalties:

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

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

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

8 (4)(A) The director shall:

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

12 (ii) Publish a notice of the termination on the
13 department's website.

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

18 (5) If a stamp deputy whose appointment and commission have been
19 revoked is also the manufacturer of cigarettes, the stamp deputy and its
20 brand families shall be removed from the directory of cigarettes approved for
21 stamping and sale maintained by the Attorney General under § 26-57-1303.

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

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

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

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

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

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

36 (e)(1)(A) By the fifteenth day of each month, a stamp deputy shall

1 file a report in the form prescribed by the director, and the stamp deputy
2 shall certify to the state that the report is complete and accurate.

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

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

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

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

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

15 (a) How many of each type of stamp the stamp
16 deputy affixed by number;

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

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

20 (v) Any additional information required by the
21 director to assist in the enforcement of this chapter, §§ 26-57-260 and 26-
22 57-261, and §§ 26-57-1301 – 26-57-1308.

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

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

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

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

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

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

6
7 SECTION 8. Arkansas Code § 26-57-244 is amended to read as follows:
8 26-57-244. Possession of untaxed, unstamped products – Notice and
9 prima facie evidence.

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

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

19 (c) If tax has been paid to the director on any untaxed tobacco
20 products or unstamped cigarettes, a consumer may establish proof of such
21 payment by providing a receipt or any other documentation that clearly
22 indicates that the tax was paid.

23 (d) ~~The provisions of this~~ This section ~~do~~ does not relieve any retail
24 cigarette and tobacco permit holder from the obligations placed on them by §
25 26-57-228.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (B) A stamp deputy may not transfer cigarettes from
7 Arkansas into another state if the transfer would violate the law of the
8 other state.

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

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

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

19 (2) The documents required under subdivision (j)(1) of this
20 section shall list the name and address of the person to whom the cigarettes
21 are being delivered.

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

27 (1) Cigarettes are not currently commercially marketed in the
28 United States;

29 (2) Manufacturer pays applicable state excise taxes on the
30 cigarettes;

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

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

36 (5) Cigarettes are provided at no cost to the consumer testing

1 participants; and

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

5 SECTION 9. Arkansas Code § 26-57-245 is amended to read as follows:

6 26-57-245. Unstamped products or products with unpaid taxes –
 7 Purchase, sale, receipt, etc., a criminal offense – Deceptive trade practice.

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

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

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

19 (b)(1) A violation under subsection (a) of this section is a deceptive
 20 or unconscionable trade practice under §§ 4-88-101 – 4-88-115 and may be
 21 enforced by the Attorney General.

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

26 SECTION 10. Arkansas Code Title 26, Chapter 57, Subchapter 2 is
 27 amended to add two additional sections to read as follows:

28 26-57-263. Cigarette inputs – Cigarette rolling machines.

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

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

35 (b)(1) A person licensed, permitted, appointed, or commissioned under
 36 this subchapter and a person that directly or indirectly controls a person

1 licensed, permitted, appointed, or commissioned under this subchapter shall
2 not possess or otherwise utilize a cigarette rolling machine.

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

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

7 (B)(i) A civil penalty of up to fifty thousand dollars
8 (\$50,000) in any action brought by the Director of the Department of Finance
9 and Administration, Arkansas Tobacco Control, or the Attorney General.

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

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

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

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

20 (4)(A) This subsection (b) does not apply to cigarette rolling
21 machines intended and designed for use by individual consumers who do not
22 intend to offer the resulting product for resale.

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

26
27 26-57-264. Attorney General.

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

31 (b) The Attorney General may enforce §§ 26-57-245(b), 26-57-248, and
32 26-57-250 by filing a civil action in the circuit court of Pulaski County.

33
34 SECTION 11. Arkansas Code § 26-57-1302, concerning certain definitions
35 related to tobacco products and taxes, is amended to add two additional
36 subsections to read as follows:

1 (l) "Importer" means the same as defined in § 26-57-203; and

2 (m) "Newly qualified nonparticipating manufacturer" means a
 3 nonparticipating manufacturer that has not previously been listed in the
 4 directory maintained by the Attorney General under § 26-57-1303.

5
 6 SECTION 12. Arkansas Code § 26-57-1303(a) and (b), concerning
 7 certification of tobacco product manufacturers and the directory of
 8 cigarettes approved for stamping and sale, are amended to read as follows:

9 (a) Certification.

10 (1) No later than April 30 each year, every tobacco product
 11 manufacturer whose cigarettes are sold in ~~Arkansas~~ the state, whether
 12 directly or through a wholesaler, retailer, or similar intermediary or
 13 intermediaries, shall execute and deliver on a form prescribed by the
 14 Attorney General a certification to the Attorney General certifying under
 15 penalty of perjury that as of the date of the certification the tobacco
 16 product manufacturer either:

17 (A) Is a participating manufacturer; or

18 (B) Is in full compliance with §§ 26-57-260 and 26-57-261,
 19 including all quarterly installment payments that may be required under § 26-
 20 57-1305(e).

21 (2)~~(A)~~ A participating manufacturer shall include in its
 22 certification a list of its brand families.

23 (B) The participating manufacturer shall update the list
 24 required under subdivision (a)(2)(A) of this section thirty (30) calendar
 25 days before ~~any~~ an addition to or modification of ~~its~~ the participating
 26 manufacturer's brand families by executing and delivering a supplemental
 27 certification to the Attorney General.

28 (3) A nonparticipating manufacturer shall include in its
 29 certification:

30 (A) An electronic mail address and fax number to which
 31 notices from the Attorney General may be sent and a list of all of its brand
 32 families and the number of units sold for each brand family that were sold in
 33 the state during the preceding calendar year; and

34 (B) A list of ~~all of its~~ the nonparticipating
 35 manufacturer's brand families that have been sold in the state at any time
 36 during the current calendar year:

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

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

6 (4) The nonparticipating manufacturer shall update the list
 7 required under subdivision (a)(3) of this section thirty (30) calendar days
 8 before ~~any~~ an addition to or modification of ~~its~~ the nonparticipating
 9 manufacturer's brand families by executing and delivering a supplemental
 10 certification to the Attorney General.

11 (5) ~~In the case of~~ The certification for a nonparticipating
 12 manufacturer, ~~the certification~~ shall further certify:

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

16 (B) That the nonparticipating manufacturer:

17 (i) Has established and continues to maintain a
 18 qualified escrow fund; and

19 (ii) Has executed a qualified escrow agreement that
 20 has been reviewed and approved by the Attorney General and that governs the
 21 qualified escrow fund;

22 (C) That the nonparticipating manufacturer is in full
 23 compliance with §§ 26-57-260 and 26-57-261, ~~and this subchapter, and with any~~
 24 ~~regulations promulgated pursuant thereto~~ the rules promulgated under §§ 26-
 25 57-260 and 26-57-261 and this subchapter;

26 (D) The name, address, and telephone number of the
 27 financial institution ~~where~~ with which the nonparticipating manufacturer has
 28 established the qualified escrow fund required under §§ 26-57-260 and 26-57-
 29 261 and ~~with all regulations promulgated thereto~~ the rules promulgated under
 30 §§ 26-57-260 and 26-57-261;

31 (E) The account number of the qualified escrow fund and
 32 any subaccount number for the state;

33 (F) The amount the nonparticipating manufacturer placed in
 34 the fund for cigarettes sold in the state during the preceding calendar year,
 35 the date and amount of each deposit, and ~~such~~ the evidence or verification ~~as~~
 36 ~~may be deemed necessary by~~ the Attorney General deems necessary to confirm

1 the requirements of the ~~foregoing~~ this subsection; and

2 (G) The amount and date of ~~any~~ each withdrawal or transfer
3 of funds the nonparticipating manufacturer made ~~at any time~~ from the fund or
4 from any other qualified escrow fund into which it ~~ever~~ made escrow payments
5 under §§ 26-57-260 and 26-57-261 and ~~all regulations promulgated thereto~~, the
6 rules promulgated under §§ 26-57-260 and 26-57-261;

7 (H)(i) That the nonparticipating manufacturer consents to
8 be sued in the courts of the state for purposes of the Attorney General
9 enforcing §§ 25-57-260 and 26-57-261, this subchapter, or the rules
10 promulgated under §§ 26-57-260 and 26-57-261.

11 (ii) The consent to suit under subdivision
12 (a)(5)(H)(i) of this section shall be demonstrated by the execution and
13 submission of a consent-to-suit form prepared by the Attorney General, with
14 proof of authority to consent and execute the form; and

15 (I)(i) In the case of a nonparticipating manufacturer
16 located outside of the United States, that it has provided a declaration on a
17 form prescribed by the Attorney General from each of its importers into the
18 United States of any of its brand families to be sold in the state that the
19 importer accepts joint and several liability with the nonparticipating
20 manufacturer for all escrow deposits due under § 26-57-261 and for all
21 penalties assessed under § 26-57-261.

22 (ii) A declaration under subdivision (a)(5)(I)(i) of
23 this section shall appoint for the declarant a resident agent for service of
24 process in Arkansas under § 26-57-1304.

25 (6) A tobacco product manufacturer may not include a brand
26 family in its certification unless:

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

32 (B) In the case of a nonparticipating manufacturer, the
33 nonparticipating manufacturer affirms that the brand family is ~~to be deemed~~
34 ~~to be~~ its cigarettes for purposes of §§ 26-57-260 and 26-57-261.

35 (7) ~~Nothing in subdivision~~ Subdivision (a)(6) of this section
36 ~~shall be construed as limiting~~ does not limit or otherwise ~~affecting~~ affect

1 the state's right to maintain that a brand family constitutes cigarettes of a
2 different tobacco product manufacturer for purposes of calculating payments
3 under the Master Settlement Agreement or for purposes of §§ 26-57-260 and 26-
4 57-261.

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

9 (9) A tobacco product manufacturer shall include in its
10 certification a statement that it holds a valid permit under 26 U.S.C. §
11 5713, as it existed on January 1, 2011, and shall provide a copy of the
12 permit to the Attorney General upon request.

13 (10)(A) It is unlawful for a person to submit a certification
14 required by this section that asserts the truth of any material matter that
15 the person knows to be false or inaccurate.

16 (B) In addition to any other provision of law, the
17 Attorney General may seek a civil penalty in an amount not to exceed ten
18 thousand dollars (\$10,000) against a person that violates this subsection.

19 (C) A civil penalty collected under this section is
20 general revenue of the state.

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

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

29 ~~(B)~~ (2) The Attorney General shall not include or retain in the
30 directory described in this subsection (b) the name or brand families of any
31 ~~nonparticipating~~ manufacturer that has failed to provide the required
32 certification or whose certification the Attorney General determines is not
33 in compliance with subsection (a) of this section unless the Attorney General
34 has determined that the violation has been cured to the satisfaction of the
35 Attorney General.

36 ~~(C)~~ (3) Neither a tobacco product manufacturer nor brand family

1 shall be included or retained in the directory described in this subsection
2 (b) if the Attorney General concludes in the case of a nonparticipating
3 manufacturer that:

4 ~~(i)~~ (A) Any An escrow payment required under §§ 26-57-260
5 and 26-57-261 for any period for any brand family, whether or not listed by
6 the nonparticipating manufacturer, has not been fully paid into a qualified
7 escrow fund governed by a qualified escrow agreement that has been approved
8 by the Attorney General; ~~or~~

9 ~~(ii)~~ (B) Any An outstanding final judgment, including
10 interest on the judgment, for a violation of §§ 26-57-260 and 26-57-261 has
11 not been fully satisfied for the brand family or the manufacturer; ~~or~~

12 (C) The total nationwide reported sales of cigarettes on
13 which federal excise tax is paid exceeds the sum of its nationwide reports
14 under 15 U.S.C. § 376, as it existed on January 1, 2011, and any interstate
15 reports by more than five percent (5%) of its total sales or one million
16 (1,000,000) cigarettes, whichever is less, unless the nonparticipating
17 manufacturer cures or satisfactorily explains the discrepancy within thirty
18 (30) days after receiving notice of the discrepancy.

19 (4) A tobacco product manufacturer or brand family shall not be
20 maintained in the directory described in this subsection (b) if the Attorney
21 General concludes that:

22 (A) The tobacco product manufacturer knowingly sold
23 cigarettes to a stamp deputy whose appointment and commission has been
24 revoked by the Director of the Department of Finance and Administration under
25 § 26-57-236;

26 (B) The tobacco product manufacturer or any of the tobacco
27 product manufacturer's affiliates, sales entity affiliates, officers, or
28 directors has pleaded guilty or nolo contendere to or been found guilty of a
29 felony crime relating to the sale or taxation of cigarettes or tobacco
30 products; or

31 (C)(i) The tobacco product manufacturer and the tobacco
32 product manufacturer's brand families have been removed from the directory of
33 another state based on acts or omissions that would, if done in this state,
34 serve as a basis for removal from the directory maintained by the Attorney
35 General under this section, unless the manufacturer demonstrates that its
36 removal from the other state's directory was effected without due process.

1 (ii) A tobacco product manufacturer that is removed
 2 from the state directory under this subsection (b) shall be eligible for
 3 relisting in the directory described in this subsection (b) on the earlier of
 4 the date on which the tobacco product manufacturer cures the violation or the
 5 date on which the tobacco product manufacturer is reinstated to the directory
 6 in the other state.

7 ~~(D)~~ (5) The Attorney General shall update the directory
 8 described in this subsection (b) as necessary in order to correct mistakes
 9 and to add or remove a tobacco product manufacturer or brand family to keep
 10 the directory in conformity with the requirements of this subchapter.

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

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

21 ~~(ii)~~ (B) Notice under subdivision (b)(7)(A) of this
 22 section shall be sufficient and be deemed immediately received by a
 23 ~~nonparticipating~~ manufacturer if the notice is sent either electronically or
 24 by facsimile to an electronic mail address or facsimile number, as the case
 25 may be, provided by the ~~nonparticipating~~ manufacturer in its most recent
 26 certification filed ~~pursuant to~~ under subsection (a) of this section.

27
 28 SECTION 13. Arkansas Code § 26-57-1304(a), concerning the requirement
 29 for an agent for service of process, is amended to read as follows:

30 (a)(1)(A) As a condition precedent to having its brand families
 31 included or retained in the directory maintained by the Attorney General
 32 ~~pursuant to~~ under § 26-57-1303(b), ~~any~~ a nonresident or foreign
 33 nonparticipating manufacturer that has not registered to do business in the
 34 state as a foreign corporation or business entity shall appoint and
 35 continually engage without interruption the services of an agent in this
 36 state to act as agent for the service of process on whom all process and any

1 action or proceeding against it concerning or arising out of the enforcement
2 of this subchapter and §§ 26-57-260 and 26-57-261 may be served in any manner
3 authorized by law.

4 (B)(i) As an additional condition precedent to having its
5 brand families included or retained in the directory described in § 26-57-
6 1303(b), a nonparticipating manufacturer located outside of the United States
7 shall, cause each of its importers into the United States of each of its
8 brand families to be sold in the state to appoint and continually engage
9 without interruption the services of an agent in this state in accordance
10 with this section.

11 (ii) The obligations of a nonparticipating
12 manufacturer imposed by this section with respect to appointment of an agent
13 also applies to an importer with respect to the appointment of an agent.
14

15 SECTION 14. Arkansas Code § 26-57-1306, concerning penalties related
16 to the sale, distribution, and stamping of tobacco products, is amended to
17 add an additional subsection to read as follows:

18 (f)(1) In addition to any other provision of law, the Attorney General
19 may seek a civil penalty in an amount not to exceed five hundred dollars
20 (\$500) per day for the failure of a wholesaler to timely or accurately comply
21 with § 26-57-1305(a).

22 (2) A civil penalty collected under this section is general
23 revenue of the state.
24

25 SECTION 15. Arkansas Code § 26-57-1307, concerning miscellaneous
26 provisions relating to the sale, distribution, and stamping of tobacco
27 products, is amended to add an additional subsection to read as follows:

28 (h) For each nonparticipating manufacturer located outside the United
29 States, each importer into the United States of the nonparticipating
30 manufacturer's brand families that are sold in the state and each wholesaler
31 has joint and several liability with the nonparticipating manufacturer for
32 deposit of all escrow amounts due under § 26-57-261 and payment of all
33 penalties imposed under § 26-57-261.
34

35 SECTION 16. Arkansas Code Title 26, Chapter 57, Subchapter 13 is
36 amended to add an additional section to read as follows:

1 26-57-1308. Bond.

2 (a) If a newly qualified nonparticipating manufacturer is to be listed
3 in the directory maintained by the Attorney General under § 26-57-1303 or if
4 the Attorney General determines that a nonparticipating manufacturer who has
5 filed a certification under § 26-57-1303 poses an elevated risk for
6 noncompliance with either § 26-57-1305 or §§ 26-57-260 and 26-57-261, the
7 nonparticipating manufacturer and the nonparticipating manufacturer's brand
8 families shall not be included in the directory unless the nonparticipating
9 manufacturer or its United States importer that undertakes joint and several
10 liability for the nonparticipating manufacturer's performance under § 26-57-
11 1307 has posted a bond in accordance with this section.

12 (b)(1) The bond required under subsection (a) of this section shall be
13 posted by corporate surety located within the United States in an amount
14 equal to the greater of fifty thousand dollars (\$50,000) or the amount of
15 escrow the manufacturer in either its current form or predecessor form was
16 required to deposit as a result of its previous two (2) calendar quarters
17 sales in the state.

18 (2) The bond required under subsection (a) of this section shall
19 be written in favor of the state and shall be conditioned on the performance
20 by the nonparticipating manufacturer or its United States importer that
21 undertakes joint and several liability for the manufacturer's performance
22 under § 26-57-1307 of all of the nonparticipating manufacturer's duties and
23 obligations under § 26-57-1305 or §§ 26-57-260 and 26-57-261.

24 (c) A nonparticipating manufacturer may be deemed to pose an elevated
25 risk for noncompliance with this section if:

26 (1) The nonparticipating manufacturer or any affiliate thereof
27 has underpaid an escrow obligation with respect to any state during the
28 calendar year or within the past three (3) calendar years unless:

29 (A) The manufacturer did not knowingly or recklessly make
30 an underpayment, and the manufacturer promptly cured the underpayment within
31 one hundred eighty (180) days of receiving the notice of the underpayment; or

32 (B) The underpayment or lack of payment is the subject of
33 a good faith dispute as documented to the satisfaction of the Attorney
34 General, and the underpayment is cured within one hundred eighty (180) days
35 of entry of a final order establishing the amount of the required escrow
36 payment;

1 (2) A state has removed the manufacturer, the manufacturer's
2 brands or brand families, an affiliate of the manufacturer, or any of the
3 affiliate's brands or brand families from the state's tobacco directory for
4 noncompliance with the state law during the calendar year or within the past
5 three (3) calendar years; or

6 (3) A state has litigation pending against, or an unsatisfied
7 judgment against, the manufacturer or any affiliate of the manufacturer for
8 escrow, penalties, costs, or attorney fees related to noncompliance with
9 state escrow laws.

10 (d) A newly qualified nonparticipating manufacturer may be required to
11 post a bond under this section for the first three (3) years of the newly
12 qualified nonparticipating manufacturer's listing or longer if the newly
13 qualified nonparticipating manufacturer has been deemed to pose an elevated
14 risk for noncompliance.

15
16 SECTION 17. Arkansas Code Title 26, Chapter 57, is amended to add an
17 additional subchapter to read as follows:

18 Subchapter 14 – Tobacco Products Reporting Act

19
20 26-57-1401. Title.

21 This subchapter shall be known as the "Tobacco Products Reporting Act".

22
23 26-57-1402. Legislative findings and intent.

24 (a) The General Assembly finds that:

25 (1) In 2009, the Office of the Inspector General of the United
26 States Department of Justice concluded that tobacco diversion costs the
27 federal and state governments approximately five billion dollars
28 (\$5,000,000,000) in revenue from unpaid taxes annually;

29 (2) The primary reason that tobacco diversion is profitable is
30 the disparity among the states' excise taxes;

31 (3) Purchasing cigarettes in a state with low tax rates and
32 illegally reselling the cigarettes in a state with high tax rates can yield
33 enormous profits for the people engaging in the scheme; and

34 (4) As further recognized by the United States Department of
35 Justice, the diversion of tobacco can occur anywhere in the supply chain,
36 including diversion by manufacturers, wholesalers, and retail outlets.

1 (b)(1) This subchapter is intended to provide information to the
2 Department of Finance and Administration, Arkansas Tobacco Control Board, and
3 the Attorney General regarding the sale, transfer, and shipment of cigarette,
4 roll-your-own, and other tobacco products.

5 (2) With the data provided under this subchapter, the state will
6 be in a better position to prevent tobacco diversion and prevent cigarettes
7 from being sold to young people and an already addicted adult population.

8
9 26-57-1403. Cumulative effect.

10 The reporting requirements of this subchapter are cumulative in nature
11 and are not intended to replace the existing reporting mechanisms currently
12 provided under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et
13 seq., and §§ 26-57-1303 and 26-57-1305.

14
15 26-57-1404. Definitions.

16 As used in this subchapter:

17 (1) A term that is defined in §§ 26-57-203, 26-57-260, or 26-57-
18 1302 the same as defined in §§ 26-57-203, 26-57-260, or 26-57-1302.

19 (2) "Federal returns" means all federal excise tax returns and
20 all monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau
21 Form 5210.5, and all adjustments, changes, and amendments to the federal
22 excise tax returns and monthly operational reports on Alcohol and Tobacco Tax
23 and Trade Bureau Form 5210.5.

24
25 26-57-1405. Report of cigarettes not on state directory.

26 (a) Within fifteen (15) days following the end of the month in which
27 cigarettes were acquired, sold, possessed, transferred, or transported, a
28 person that acquires, purchases, sells, possesses, transfers, transports, or
29 causes to be transported in or into the state cigarettes of a manufacturer or
30 brand family that are not on the directory of cigarettes approved for
31 stamping and sale maintained by the Attorney General under § 26-57-1303
32 shall:

33 (1) File a report on the form prescribed by the Attorney
34 General; and

35 (2) Certify to the state that the report is complete and
36 accurate.

1 (b) The report required under subsection (a) of this section shall
2 contain the following information:

3 (1)(A) The total number of cigarettes.

4 (B) The following information shall be identified by name
5 and number of cigarettes:

6 (i) The manufacturer of the cigarettes;

7 (ii) The brand family of the cigarettes;

8 (iii) In the case of a sale or transfer, the name
9 and address of the recipient of the cigarettes;

10 (iv) In the case of an acquisition or purchase, the
11 name and address of the seller or sender of the cigarettes; and

12 (v) Each state directory on which the manufacturer
13 and brand family of the cigarettes are listed and each state for which the
14 person is authorized to affix stamps;

15 (2)(A)(i) In the case of acquisition, purchase, or possession,
16 the details of the person's subsequent sale or transfer of the cigarettes.

17 (ii) The following details shall be identified by
18 name and number of cigarettes:

19 (a) The brand family of the cigarettes;

20 (b) The date of the sale or transfer;

21 (c) The name and address of the recipient;

22 (d) The number of stamps of each state other
23 than Arkansas that the person affixed to the package containing the
24 cigarettes;

25 (e) The total number of cigarettes contained
26 in the package to which the person affixed a stamp from each state other than
27 Arkansas;

28 (f) The manufacturer and brand family of the
29 package to which the person affixed a stamp from any state other than
30 Arkansas; and

31 (g) Within fifteen (15) days following the end
32 of the month in which the sale or transfer was made, a certification that the
33 person reported each sale or transfer to the taxing authority of each state
34 other than Arkansas, including a copy of the reports attached to the
35 certification.

36 (B) If the subsequent sale or transfer of the cigarettes

1 is from Arkansas into another state in a package not bearing a stamp of the
2 other state, the report described in this section shall also contain the
3 information required under § 26-57-1405(b)(3); and

4 (3) Any further information that the Attorney General may
5 require to assist the state in enforcing this subchapter, the Arkansas
6 Tobacco Products Tax Act of 1977, § 26-57-201 et seq., §§ 26-57-260 and 26-
7 57-261, and §§ 26-57-1301 – 26-57-1308.

8 (c) Reports required under this section are in addition to other
9 reports required under this subchapter, the Arkansas Tobacco Products Tax Act
10 of 1977, § 26-57-201 et seq., and §§ 26-57-261, 26-57-1303, and 26-57-1305.

11 (d) The Attorney General may share the information reported under this
12 section with the taxing authority or law enforcement agency of Arkansas or
13 another state or with any other entity permitted by the Attorney General to
14 aggregate the data.

15
16 26-57-1406. Manufacturer and importer reports.

17 (a) Within fifteen (15) days following the end of each month, each
18 manufacturer and importer that sells cigarettes in or into the state shall:

19 (1) File a report on the form prescribed by the Attorney
20 General; and

21 (2) Certify to the state that the report is complete and
22 accurate.

23 (b)(1) The report required under subsection (a) of this section shall
24 contain the total number of cigarettes sold by the manufacturer or importer
25 in or into the state during the month.

26 (2) The following information shall be identified by name and
27 number of cigarettes:

28 (A) The manufacturer of the cigarettes;

29 (B) The brand family of the cigarettes; and

30 (C) The purchaser of the cigarettes.

31 (3) A manufacturer's or importer's report under this section
32 shall include cigarettes sold in or into the state through each sales entity
33 affiliate, if any.

34 (c) If a manufacturer or importer timely submits to the Attorney
35 General the required reports with respect to cigarettes under 15 U.S.C. §
36 376, as it existed on January 1, 2011, and certifies to the state that the

1 reports are complete and accurate, then the requirements of subsection (a) of
2 this section are satisfied and no further report is required under this
3 section with respect to cigarettes.

4 (d) Upon request by the Attorney General, a manufacturer or importer
5 shall provide a copy of each report that:

6 (1) Is similar to the report required under this section; and

7 (2) Was filed by the manufacturer or importer in a state other
8 than Arkansas.

9 (e) Each manufacturer and importer that sells cigarettes in or into
10 the state shall either:

11 (1) Submit the manufacturer's or importer's federal returns to
12 the Attorney General within sixty (60) days after the close of the quarter in
13 which the returns were filed; or

14 (2) Submit to the United States Treasury a request or consent
15 under 26 U.S.C. § 6103(c), as in effect on January 1, 2011, authorizing the
16 Alcohol and Tobacco Tax and Trade Bureau and, in the case of a foreign
17 manufacturer or importer, the United States Customs Service, to disclose the
18 manufacturer's or importer's federal returns to the Attorney General within
19 sixty (60) days after the close of the quarter in which the returns were
20 filed.

21 (f) The Attorney General may share the information reported under this
22 section with the taxing authority or law enforcement agency of Arkansas or
23 another state or with any other entity permitted by the Attorney General to
24 aggregate the data.

25
26 26-57-1407. Out-of-state sales reports.

27 (a) Within fifteen (15) days following the end of each month, a person
28 that sells cigarettes from Arkansas into another state shall:

29 (1) File a report on the form prescribed by the Attorney
30 General; and

31 (2) Certify to Arkansas that the report is complete and
32 accurate.

33 (b) The report required under subsection (a) of this section shall
34 contain the following information:

35 (1)(A) The total number of cigarettes sold from Arkansas into
36 another state by the person during the month.

1 (B) The following information shall be identified by name
2 and number of cigarettes:

3 (i) The manufacturer of the cigarettes;

4 (ii) The brand family of the cigarettes; and

5 (iii) The name and address of each recipient of the
6 cigarettes;

7 (2) The number of stamps of each state other than Arkansas that
8 the person affixed to each package containing cigarettes;

9 (3) The total number of cigarettes contained in each package to
10 which the person affixed a stamp from a state other than Arkansas; and

11 (4) The manufacturer and brand family of each package to which
12 the person affixed a stamp from a state other than Arkansas.

13 (c)(1) If a person sells cigarettes during the month from Arkansas
14 into another state in a package not bearing a stamp of the other state, the
15 report required under subsection (a) of this section shall also include the
16 following:

17 (A)(i) The total number of cigarettes contained in each
18 package.

19 (ii) The following information shall be identified
20 by name and number of cigarettes:

21 (a) The manufacturer of the cigarettes;

22 (b) The brand family of the cigarettes; and

23 (c) The name and address of each recipient of
24 the cigarettes;

25 (B) The person's basis for belief that the state permits
26 the sale of cigarettes to consumers in a package not bearing a stamp; and

27 (C) The amount of excise tax, use tax, or similar tax
28 imposed on the cigarettes and paid by the person to the state on the
29 cigarettes.

30 (2) A manufacturer or importer shall include the information
31 described in subdivisions (c)(1)(B) and (C) of this section only as to
32 cigarettes not sold to a person authorized by the law of the other state to
33 affix the stamp required by the other state.

34 (d)(1) For a manufacturer or importer, the report required under this
35 section shall include cigarettes sold from Arkansas into another state
36 through a sales entity affiliate.

1 (2) A sales entity affiliate shall file a separate report under
2 this section only to the extent that the sales entity affiliate sold
3 cigarettes from Arkansas into another state that were not separately reported
4 under this section by the affiliated manufacturer or importer.

5 (e) The report required under this section shall also include reports
6 filed with the taxing authority of each state other than Arkansas into which
7 the cigarettes were sold.

8 (f) The Attorney General may share the information reported under this
9 section with the taxing authority or law enforcement agency of Arkansas or
10 another state or with any other entity permitted by Attorney General to
11 aggregate the data.

12
13 26-57-1408. Violations.

14 (a)(1) A manufacturer that fails to file a complete and accurate
15 report required under this subchapter may cure the failure within thirty (30)
16 days.

17 (2) If a manufacturer fails to fully cure a failure during the
18 thirty-day period, the manufacturer and the manufacturer's brand families
19 shall be removed from the directory of cigarettes approved for stamping and
20 sale maintained by the Attorney General under § 26-57-1303.

21 (b)(1) A person that is not a stamp deputy or manufacturer that fails
22 to file a complete and accurate report under this subchapter may cure the
23 failure within thirty (30) days.

24 (2) If a person that is not a stamp deputy or manufacturer fails
25 to fully cure a failure during the thirty-day period, the person is subject
26 to a civil penalty of up to one thousand dollars (\$1,000) per violation and
27 is ineligible to hold any license, appointment, or commission of the state
28 regarding cigarette sales for:

29 (A) Ninety (90) days for the first failure;

30 (B) One hundred eighty (180) days for the second failure;

31 and

32 (C) One (1) year for the third and subsequent failures.

33
34 26-57-1409. Rules.

35 The Attorney General shall promulgate rules necessary to implement this
36 subchapter.

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SECTION 18. EFFECTIVE DATE. Sections 7 and 8(i), (j), and (k) of this act are effective on and after January 1, 2012.