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2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/9/11
A Bill

HOUSE BILL 1950

5 By: Representatives J. Edwards, Carter
6

7 **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
18 **Subtitle**

19 TO AMEND THE STATUTES REGARDING THE
20 TAXATION OF TOBACCO PRODUCTS; TO PROVIDE
21 FOR THE DISCLOSURE OF INFORMATION
22 RELATING TO TOBACCO SALES AND TAXATION;
23 AND TO CREATE THE TOBACCO PRODUCTS
24 REPORTING ACT.
25

26
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 a cigarette as defined in § 26-57-260 that
18 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 person
4 that ~~operates~~;

5 (i) Operates a vending machine or that uses ~~any~~
6 ~~other~~ 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) That is the first person in the United States to
19 which non-tax-paid cigarettes manufactured in a foreign country are shipped
20 or consigned;

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

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

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

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

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

34 ~~(9)~~ (16)(A) "Manufacturer" means ~~any~~ a person ~~who~~ that produces
35 ~~any~~ a tobacco product for sale ~~and includes, but is not limited to,~~ including
36 without limitation importers and distributors that deal in tobacco products

1 as manufacturers and that are required under this subchapter to sell only to
2 licensed wholesalers or licensed retailers located in ~~Arkansas~~, the state.

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

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

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

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

12 (19) "Participating manufacturer" means the same as defined in §
13 26-57-1302;

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

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

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

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

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

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

35 (B) A sale "in" or "into" a state refers to the state in
36 which the destination point of the product is located in the sale without

1 regard to where title was transferred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 26-57-209. Exemption from tax.

19 (a) The following are not subject to the taxes imposed under § 26-57-
 20 208:

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

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

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

32
 33 SECTION 4. Arkansas Code § 26-57-210 is repealed.

34 ~~26-57-210. Waiver of tax.~~

35 ~~The Director of the Department of Finance and Administration has the~~
 36 ~~authority to waive the tax on any tobacco products donated or given to~~

1 ~~inmates of correctional institutions or patients of hospitals by any~~
2 ~~patriotic or charitable organization or by the United States Government in~~
3 ~~the manner prescribed by the director.~~

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

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

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

10
11 SECTION 6. Arkansas Code § 26-57-236, as amended by Acts 1997, No.
12 434, is repealed.

13 ~~26-57-236. Stamp deputies. [As amended by Acts 1997, No. 434.]~~

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

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

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

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

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

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

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

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

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

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

1 ~~Arkansas.~~

2

3 SECTION 7. Arkansas Code § 26-57-236, as amended by Acts 1997, No.
4 1337, is amended to read as follows:

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

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

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

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

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

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

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

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

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

31 (b)(1) The director may appoint and commission stamp deputies to
32 handle the stamps and collect the tax on *cigarettes* before sales of
33 *cigarettes* are made to the retailers.

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

36 (A) Is the owner or officer of a wholesaler licensed under

1 this subchapter;

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

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

8 (D) Provides complete and accurate reports as required by
9 this subchapter;

10 (E) Waives the confidentiality laws necessary to permit
11 the director to:

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

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

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

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

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

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

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

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

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

36 (c)(1) A stamp deputy's appointment and commission are subject to

1 revocation if the stamp deputy:

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

4 (B) Files an incomplete or inaccurate report or an
5 inaccurate certification;

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

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

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

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

20 (G) Purchases or sells cigarettes in violation of this
21 subchapter; or

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

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

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

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

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

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

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

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

10 (4)(A) The director shall:

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

14 (ii) Publish a notice of the termination on the
15 department's website.

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

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

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

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

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

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

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

36 (5) Three (3) years following revocation for a second or

1 subsequent knowing violation under subdivision (c)(1) of this section.

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

5 (B) The report required under subdivision (e)(1)(A) shall
6 contain the following *information identified by name and number of cigarettes*
7 *and the manufacturer and brand family of the cigarettes:*

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

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

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

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

18 (a) How many of each type of stamp the stamp
19 deputy affixed by number;

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

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

23 (v) Any additional information required by the
24 director to assist in the enforcement of this chapter, §§ 26-57-260 and 26-
25 57-261, and §§ 26-57-1301 – 26-57-1308.

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

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

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

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

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

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

9
10 SECTION 8. Arkansas Code § 26-57-244 is amended to read as follows:

11 26-57-244. Possession of untaxed, unstamped products – Notice and
12 prima facie evidence.

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

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

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

26 (d) ~~The provisions of this~~ This section ~~do~~ does not relieve any retail
27 cigarette and tobacco permit holder from the obligations placed on them by §
28 26-57-228.

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

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

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

4 (3) The report shall provide the information prescribed by the
5 director.

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

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

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

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

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

19 (B) Provides on at least a monthly basis and on the form
20 prescribed by the director a report indicating the following for each brand
21 family:

22 (i) The number of cigarettes purchased during the
23 reporting period;

24 (ii) The number of cigarettes on which the
25 wholesaler affixed the tax stamp prescribed by this subchapter;

26 (iii) The number of cigarettes on which the
27 wholesaler affixed the tax stamp or other similar indicia of taxation
28 prescribed by another state's laws; and

29 (iv) The number of cigarettes that remain in the
30 wholesaler's inventory.

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

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

36 (B) Would not violate the law of the other state by

1 selling or affixing the tax stamp; and

2 (C) Provides on at least a monthly basis and on the form
3 prescribed by the director a report indicating the following for each brand
4 family:

5 (i) The number of cigarettes purchased during the
6 reporting period;

7 (ii) The number of cigarettes on which the
8 wholesaler affixed the tax stamp prescribed by this subchapter;

9 (iii) The number of cigarettes on which the
10 wholesaler affixed the tax stamp or other similar indicia of taxation
11 prescribed by another state's laws; and

12 (iv) The number of cigarettes that remain in the
13 wholesaler's inventory.

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

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

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

27 (B) A stamp deputy may not transfer cigarettes from
28 Arkansas into another state if the transfer would violate the law of the
29 other state.

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

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

36 (B) Bills of lading or other shipping documents

1 establishing that the common carrier or contract carrier is delivering the
2 cigarettes on behalf of a person authorized to sell or transfer the unstamped
3 cigarettes under this subchapter.

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

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

12 (1) Cigarettes are not currently commercially marketed in the
13 United States;

14 (2) Manufacturer pays applicable state excise taxes on the
15 cigarettes;

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

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

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

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

25
26 SECTION 9. Arkansas Code § 26-57-245 is amended to read as follows:

27 26-57-245. Unstamped products or products with unpaid taxes –
28 Purchase, sale, receipt, etc., a criminal offense – Deceptive trade practice.

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

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

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

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

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

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

10
11 *SECTION 10. Arkansas Code § 26-57-260(10)(A), concerning the*
12 *definition of "units sold" for purposes of §§ 26-57-260 and 26-57-261, is*
13 *amended to read as follows:*

14 *"Units sold" means the ~~number of individual cigarettes sold in~~*
15 *~~the state by the applicable tobacco product manufacturer, whether directly or~~*
16 *~~through a distributor, retailer, or similar intermediary or intermediaries,~~*
17 *~~during the year in question, as measured by excise taxes collected by the~~*
18 *~~state on packs or roll-your-own tobacco containers bearing the excise tax~~*
19 *~~stamp of the state same as defined in § 26-57-1302.~~*

20
21 *SECTION 11. Arkansas Code Title 26, Chapter 57, Subchapter 2 is*
22 *amended to add two additional sections to read as follows:*

23 26-57-263. Cigarette inputs – Cigarette rolling machines.

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

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

30 (b)(1) A person licensed, permitted, appointed, or commissioned under
31 this subchapter and a person that directly or indirectly controls a person
32 licensed, permitted, appointed, or commissioned under this subchapter shall
33 not possess or otherwise utilize a cigarette rolling machine.

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

36 (A) The revocation or termination of any license, permit,

1 appointment, or commission under this subchapter; and

2 (B)(i) A civil penalty of up to fifty thousand dollars
3 (\$50,000) in any action brought by the Director of the Department of Finance
4 and Administration, Arkansas Tobacco Control, or the Attorney General.

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

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

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

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

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

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

21
22 26-57-264. Attorney General.

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

26 (b) The Attorney General may enforce §§ 26-57-245(b), 26-57-248, and
27 26-57-250 by filing a civil action in the circuit court of Pulaski County.

28
29 *SECTION 12. Arkansas Code § 26-57-1302(j), concerning the definition*
30 *of "units sold", is amended to read as follows:*

31 *(j)(1) ~~"Units sold" has the same meaning as that term is defined in §~~*
32 *~~26-57-260(10)(A) means the number of individual cigarettes sold in the state~~*
33 *~~by the applicable tobacco product manufacturer, whether directly or~~*
34 *~~indirectly through a distributor, retailer, or similar intermediary, during~~*
35 *~~the year.~~*

36 *(2) "Units sold" includes all nonparticipating manufacturer*

1 cigarettes that are required to be sold in a package bearing a stamp required
2 under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

3
4 SECTION 13. Arkansas Code § 26-57-1302, concerning certain definitions
5 related to tobacco products and taxes, is amended to add two additional
6 subsections to read as follows:

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

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

11
12 SECTION 14. Arkansas Code § 26-57-1303(a) and (b), concerning
13 certification of tobacco product manufacturers and the directory of
14 cigarettes approved for stamping and sale, are amended to read as follows:

15 (a) Certification.

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

23 (A) Is a participating manufacturer; or

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

27 (2)(A) A participating manufacturer shall include in its
28 certification a list of its brand families.

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

34 (3) A nonparticipating manufacturer shall include in its
35 certification:

36 (A) An electronic mail address and fax number to which

1 notices from the Attorney General may be sent and a list of all of its brand
2 families and the number of units sold for each brand family that were sold in
3 the state during the preceding calendar year; and

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

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

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

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

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

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

22 (B) That the nonparticipating manufacturer:

23 (i) Has established and continues to maintain a
24 qualified escrow fund; and

25 (ii) Has executed a qualified escrow agreement that
26 has been reviewed and approved by the Attorney General and that governs the
27 qualified escrow fund;

28 (C) That the nonparticipating manufacturer is in full
29 compliance with §§ 26-57-260 and 26-57-261, ~~and this subchapter,~~ and ~~with any~~
30 ~~regulations promulgated pursuant thereto~~ the rules promulgated under §§ 26-
31 57-260 and 26-57-261 and this subchapter;

32 (D) The name, address, and telephone number of the
33 financial institution ~~where~~ with which the nonparticipating manufacturer has
34 established the qualified escrow fund required under §§ 26-57-260 and 26-57-
35 261 and ~~with all regulations promulgated thereto~~ the rules promulgated under
36 §§ 26-57-260 and 26-57-261;

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

3 (F) The amount the nonparticipating manufacturer placed in
4 the fund for cigarettes sold in the state during the preceding calendar year,
5 the date and amount of each deposit, and ~~such the~~ evidence or verification ~~as~~
6 ~~may be deemed necessary by~~ the Attorney General deems necessary to confirm
7 the requirements of the ~~foregoing~~ this subsection; ~~and~~

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

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

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

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

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

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

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

1 determined under the Master Settlement Agreement; and

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

5 (7) ~~Nothing in subdivision~~ Subdivision (a)(6) of this section
6 ~~shall be construed as limiting~~ does not limit or otherwise ~~affecting~~ affect
7 the state's right to maintain that a brand family constitutes cigarettes of a
8 different tobacco product manufacturer for purposes of calculating payments
9 under the Master Settlement Agreement or for purposes of §§ 26-57-260 and 26-
10 57-261.

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

15 (9) A tobacco product manufacturer shall include in its
16 certification a statement that it holds a valid permit under 26 U.S.C. §
17 5713, as it existed on January 1, 2011, and shall provide a copy of the
18 permit to the Attorney General upon request.

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

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

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

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

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

35 ~~(B)~~ (2) The Attorney General shall not include or retain in the
36 directory described in this subsection (b) the name or brand families of any

1 ~~nonparticipating~~ manufacturer that has failed to provide the required
2 certification or whose certification the Attorney General determines is not
3 in compliance with subsection (a) of this section unless the Attorney General
4 has determined that the violation has been cured to the satisfaction of the
5 Attorney General.

6 ~~(C)~~ (3) Neither a tobacco product manufacturer nor brand family
7 shall be included or retained in the directory described in this subsection
8 (b) if the Attorney General concludes in the case of a nonparticipating
9 manufacturer that:

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

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

18 (C) The total nationwide reported sales of cigarettes on
19 which federal excise tax is paid exceeds the sum of its nationwide reports
20 under 15 U.S.C. § 376, as it existed on January 1, 2011, and any interstate
21 reports by more than five percent (5%) of its total sales or one million
22 (1,000,000) cigarettes, whichever is less, unless the nonparticipating
23 manufacturer cures or satisfactorily explains the discrepancy within thirty
24 (30) days after receiving notice of the discrepancy.

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

28 (A) The tobacco product manufacturer knowingly sold
29 cigarettes to a stamp deputy whose appointment and commission has been
30 revoked by the Director of the Department of Finance and Administration under
31 § 26-57-236;

32 (B) The tobacco product manufacturer or any of the tobacco
33 product manufacturer's affiliates, sales entity affiliates, officers, or
34 directors has pleaded guilty or nolo contendere to or been found guilty of a
35 felony crime relating to the sale or taxation of cigarettes or tobacco
36 products; or

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

7 (ii) A tobacco product manufacturer that is removed
8 from the state directory under this subsection (b) shall be eligible for
9 relisting in the directory described in this subsection (b) on the earlier of
10 the date on which the tobacco product manufacturer cures the violation or the
11 date on which the tobacco product manufacturer is reinstated to the directory
12 in the other state.

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

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

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

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

33
34 *SECTION 15.* Arkansas Code § 26-57-1304(a), concerning the requirement
35 for an agent for service of process, is amended to read as follows:

36 (a)(1)(A) As a condition precedent to having its brand families

1 included or retained in the directory maintained by the Attorney General
2 ~~pursuant to~~ under § 26-57-1303(b), ~~any~~ a nonresident or foreign
3 nonparticipating manufacturer that has not registered to do business in the
4 state as a foreign corporation or business entity shall appoint and
5 continually engage without interruption the services of an agent in this
6 state to act as agent for the service of process on whom all process and any
7 action or proceeding against it concerning or arising out of the enforcement
8 of this subchapter and §§ 26-57-260 and 26-57-261 may be served in any manner
9 authorized by law.

10 (B)(i) As an additional condition precedent to having its
11 brand families included or retained in the directory described in § 26-57-
12 1303(b), a nonparticipating manufacturer located outside of the United States
13 shall, cause each of its importers into the United States of each of its
14 brand families to be sold in the state to appoint and continually engage
15 without interruption the services of an agent in this state in accordance
16 with this section.

17 (ii) The obligations of a nonparticipating
18 manufacturer imposed by this section with respect to appointment of an agent
19 also applies to an importer with respect to the appointment of an agent.

20
21 *SECTION 16.* Arkansas Code § 26-57-1306, concerning penalties related
22 to the sale, distribution, and stamping of tobacco products, is amended to
23 add an additional subsection to read as follows:

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

28 (2) A civil penalty collected under this section is general
29 revenue of the state.

30
31 *SECTION 17.* Arkansas Code § 26-57-1307, concerning miscellaneous
32 provisions relating to the sale, distribution, and stamping of tobacco
33 products, is amended to add an additional subsection to read as follows:

34 (h) For each nonparticipating manufacturer located outside the United
35 States, each importer into the United States of the nonparticipating
36 manufacturer's brand families that are sold in the state has joint and

1 several liability with the nonparticipating manufacturer for deposit of all
2 escrow amounts due under § 26-57-261 and payment of all penalties imposed
3 under § 26-57-261.

4
5 *SECTION 18.* Arkansas Code Title 26, Chapter 57, Subchapter 13 is
6 amended to add an additional section to read as follows:

7 26-57-1308. Bond.

8 (a) If a newly qualified nonparticipating manufacturer is to be listed
9 in the directory maintained by the Attorney General under § 26-57-1303 or if
10 the Attorney General determines that a nonparticipating manufacturer who has
11 filed a certification under § 26-57-1303 poses an elevated risk for
12 noncompliance with either § 26-57-1305 or §§ 26-57-260 and 26-57-261, the
13 nonparticipating manufacturer and the nonparticipating manufacturer's brand
14 families shall not be included in the directory unless the nonparticipating
15 manufacturer or its United States importer that undertakes joint and several
16 liability for the nonparticipating manufacturer's performance under § 26-57-
17 1307 has posted a bond in accordance with this section.

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

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

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

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

35 (A) The manufacturer did not knowingly or recklessly make
36 an underpayment, and the manufacturer promptly cured the underpayment within

1 one hundred eighty (180) days of receiving the notice of the underpayment; or
2 (B) The underpayment or lack of payment is the subject of
3 a good faith dispute as documented to the satisfaction of the Attorney
4 General, and the underpayment is cured within one hundred eighty (180) days
5 of entry of a final order establishing the amount of the required escrow
6 payment;

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

12 (3) A state has litigation pending against, or an unsatisfied
13 judgment against, the manufacturer or any affiliate of the manufacturer for
14 escrow, penalties, costs, or attorney fees related to noncompliance with
15 state escrow laws.

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

21
22 *SECTION 19.* Arkansas Code Title 26, Chapter 57, is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 14 – Tobacco Products Reporting Act

25
26 26-57-1401. Title.

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

28
29 26-57-1402. Legislative findings and intent.

30 (a) The General Assembly finds that:

31 (1) In 2009, the Office of the Inspector General of the United
32 States Department of Justice concluded that tobacco diversion costs the
33 federal and state governments approximately five billion dollars
34 (\$5,000,000,000) in revenue from unpaid taxes annually;

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

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

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

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

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

14
15 26-57-1403. Cumulative effect.

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

20
21 26-57-1404. Definitions.

22 As used in this subchapter:

23 (1) A term that is defined in §§ 26-57-203, 26-57-260, or 26-57-
24 1302 the same as defined in §§ 26-57-203, 26-57-260, or 26-57-1302.

25 (2) "Federal returns" means all federal excise tax returns and
26 all monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau
27 Form 5210.5, and all adjustments, changes, and amendments to the federal
28 excise tax returns and monthly operational reports on Alcohol and Tobacco Tax
29 and Trade Bureau Form 5210.5.

30
31 26-57-1405. Report of cigarettes not on state directory.

32 (a) Within fifteen (15) days following the end of the month in which
33 cigarettes were acquired, sold, possessed, transferred, or transported, a
34 person that acquires, purchases, sells, possesses, transfers, transports, or
35 causes to be transported in or into the state cigarettes of a manufacturer or
36 brand family that are not on the directory of cigarettes approved for

1 stamping and sale maintained by the Attorney General under § 26-57-1303
2 shall:

3 (1) File a report on the form prescribed by the Attorney
4 General; and

5 (2) Certify to the state that the report is complete and
6 accurate.

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

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

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

12 (i) The manufacturer of the cigarettes;

13 (ii) The brand family of the cigarettes;

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

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

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

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

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

25 (a) The brand family of the cigarettes;

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

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

28 (d) The number of stamps of each state other
29 than Arkansas that the person affixed to the package containing the
30 cigarettes;

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

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

1 (g) Within fifteen (15) days following the end
2 of the month in which the sale or transfer was made, a certification that the
3 person reported each sale or transfer to the taxing authority of each state
4 other than Arkansas, including a copy of the reports attached to the
5 certification.

6 (B) If the subsequent sale or transfer of the cigarettes
7 is from Arkansas into another state in a package not bearing a stamp of the
8 other state, the report described in this section shall also contain the
9 information required under § 26-57-1405(b)(3); and

10 (3) Any further information that the Attorney General may
11 require to assist the state in enforcing this subchapter, the Arkansas
12 Tobacco Products Tax Act of 1977, § 26-57-201 et seq., §§ 26-57-260 and 26-
13 57-261, and §§ 26-57-1301 – 26-57-1308.

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

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

21
22 26-57-1406. Manufacturer and importer reports.

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

25 (1) File a report on the form prescribed by the Attorney
26 General; and

27 (2) Certify to the state that the report is complete and
28 accurate.

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

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

34 (A) The manufacturer of the cigarettes;

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

36 (C) The purchaser of the cigarettes.

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

4 (c) If a manufacturer or importer timely submits to the Attorney
5 General the required reports with respect to cigarettes under 15 U.S.C. §
6 376, as it existed on January 1, 2011, and certifies to the state that the
7 reports are complete and accurate, then the requirements of subsection (a) of
8 this section are satisfied and no further report is required under this
9 section with respect to cigarettes.

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

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

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

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

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

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

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

31
32 26-57-1407. Out-of-state sales reports.

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

35 (1) File a report on the form prescribed by the Attorney
36 General; and

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

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

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

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

9 (i) The manufacturer of the cigarettes;

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

11 (iii) The name and address of each recipient of the
12 cigarettes;

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

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

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

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

23 (A)(i) The total number of cigarettes contained in each
24 package.

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

27 (a) The manufacturer of the cigarettes;

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

29 (c) The name and address of each recipient of
30 the cigarettes;

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

33 (C) The amount of excise tax, use tax, or similar tax
34 imposed on the cigarettes and paid by the person to the state on the
35 cigarettes.

36 (2) A manufacturer or importer shall include the information

1 described in subdivisions (c)(1)(B) and (C) of this section only as to
2 cigarettes not sold to a person authorized by the law of the other state to
3 affix the stamp required by the other state.

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

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

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

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

18
19 26-57-1408. Violations.

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

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

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

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

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

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

1 and

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

3

4 26-57-1409. Rules.

5 The Attorney General shall promulgate rules necessary to implement this
6 subchapter.

7

8 SECTION 20. EFFECTIVE DATE. Sections 7 and 8(i), (j), and (k) of this
9 act are effective on and after January 1, 2012.

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11 */s/J. Edwards*

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