

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1619

5 By: Representative Baine
6

For An Act To Be Entitled

8 AN ACT CONCERNING THE REGULATION OF TOBACCO PRODUCTS;
9 TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT OF
10 1977; TO MAKE TECHNICAL CHANGES; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14 CONCERNING THE REGULATION OF TOBACCO
15 PRODUCTS; TO AMEND THE ARKANSAS TOBACCO
16 PRODUCTS TAX ACT OF 1977; AND TO MAKE
17 TECHNICAL CHANGES.
18
19
20

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

23 SECTION 1. Arkansas Code § 4-75-708 is amended to read as follows:

24 4-75-708. Sales at less than cost, rebates, concessions, etc. -
25 Penalty.

26 (a) It ~~shall be~~ is unlawful for ~~any a~~ a wholesaler, retailer, or
27 salesperson ~~with intent to injure competitors or destroy or substantially~~
28 ~~lessen competition~~ to advertise, offer to sell, or sell, at retail or
29 wholesale, cigarettes at less than cost to the wholesaler or retailer, as the
30 case may be.

31 (b) It ~~shall be~~ is unlawful for ~~any a~~ a wholesaler, retailer, or
32 salesperson to offer a rebate in price, to give a rebate in price, to offer a
33 concession of any kind, or to give a concession of any kind or nature
34 ~~whatsoever~~ in connection with the sale of cigarettes ~~with intent to injure~~
35 ~~competitors or destroy or substantially lessen competition.~~

36 (c) It ~~shall be~~ is unlawful for ~~any a~~ a retail dealer to induce or



1 attempt to induce or to procure or attempt to procure:

2 (1) The purchase of cigarettes at a price less than cost to the
3 wholesaler; or

4 (2) ~~Any~~ A rebate or concession of any kind in connection with
5 the purchase of cigarettes.

6 (d) ~~Any~~ A wholesaler, retailer, or salesperson who violates this
7 section shall be guilty of a violation and upon conviction ~~shall be~~ is
8 subject to a fine of not more than five hundred dollars (\$500).

9 (e) The following shall be prima facie evidence of ~~intent to injure~~
10 ~~competitors and destroy or substantially limit competition~~ a violation of
11 this section:

12 (1) The advertisement, offer for sale, or sale of cigarettes by
13 ~~any~~ a wholesaler, retailer, or salesperson at less than cost to him or her;

14 (2) ~~Any~~ An offer of a rebate in price or the giving of a rebate
15 in price or an offer of a concession or the giving of a concession of any
16 kind in connection with the sale of cigarettes; or

17 (3) Inducing or attempting to induce or procuring or attempting
18 to procure the purchase of cigarettes at a price less than cost to the
19 wholesaler or the retailer.

20
21 SECTION 2. Arkansas Code § 4-75-714(a), concerning the enforcement
22 agents for the Unfair Cigarette Sales Act, is amended to read as follows:

23 (a) ~~The~~ Arkansas Tobacco Control ~~Board~~ is designated as a law
24 enforcement agency.

25
26 SECTION 3. Arkansas Code § 20-27-2105(a), concerning certification and
27 product change under the Arkansas Cigarette Fire Safety Standard Act, is
28 amended to read as follows:

29 (a) A manufacturer shall submit to the Director of Arkansas Tobacco
30 Control a written certification attesting that each cigarette listed in the
31 certification:

32 (1) Has been tested within the last twelve (12) months in
33 accordance with § 20-27-2104; and

34 (2) Meets the performance standard under § 20-27-2104.

35
36 SECTION 4. Arkansas Code § 20-27-2404 is amended to read as follows:

1 20-27-2404. Rules – Enforcement.

2 (a) The Arkansas Tobacco Control Board ~~shall~~ may adopt rules to
 3 implement this ~~chapter~~ subchapter.

4 (b)(1) The board, Arkansas Tobacco Control, and ~~its~~ their authorized
 5 agents may enforce compliance with this ~~chapter~~ subchapter and any rules
 6 adopted under this section by the board.

7 (2) ~~The board~~ Arkansas Tobacco Control and its authorized agents
 8 may enter ~~upon~~ and inspect the premises of ~~any~~ a public place at ~~any~~ a
 9 reasonable time and in a reasonable manner.

10
 11 SECTION 5. Arkansas Code § 26-57-203 (15) and (16), concerning the
 12 definitions to be used under the Arkansas Tobacco Products Tax Act of 1977,
 13 are amended to read as follows:

14 (15) “Licensed” means that the person has received a license or
 15 permit from the Director of Arkansas Tobacco Control and is otherwise
 16 qualified to do business in this state, ~~except that “licensed” does not mean~~
 17 ~~that a person is registered as a manufacturer;~~

18 (16)(A) “Manufacturer” means a person that produces a tobacco
 19 product for sale, including without limitation federally licensed importers
 20 and distributors that deal in tobacco products as manufacturers and that are
 21 required under this subchapter to sell only to licensed wholesalers or
 22 licensed retailers located in the state.

23 (B) “Manufacturer” includes a sales entity affiliate of
 24 the manufacturer;

25
 26 SECTION 6. Arkansas Code § 26-57-203 (30), concerning the definitions
 27 to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to
 28 read as follows:

29 (30) “Tobacco products vending machine” means a ~~coin-operated~~
 30 vending machine from which tobacco products are sold;

31
 32 SECTION 7. Arkansas Code § 26-57-203 (33), concerning the definitions
 33 to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to
 34 read as follows:

35 (33)~~(A)~~ “Wholesaler” means a person other than a manufacturer or
 36 a person owned or operated by a manufacturer that:

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

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

7 ~~(B) However, if an Arkansas city is separated from a city~~
 8 ~~in another state only by a state line, a person that is a resident of the~~
 9 ~~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.~~

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

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

16
 17 SECTION 8. Arkansas Code § 26-57-203, concerning the definitions to be
 18 used under the Arkansas Tobacco Products Tax Act of 1977, is amended to add
 19 an additional subdivision to read as follows:

20 (34) "Dealer's License" means a license for an entity that:

21 (A) Represents cigarette or tobacco manufacturers for the
 22 purpose of promoting the manufacturers' products in the State of Arkansas;
 23 and

24 (B) May have manufacturer representative permits issued to
 25 its sales representatives.

26
 27 SECTION 9. Arkansas Code §§ 26-57-205 and 26-57-206 are amended to
 28 read as follows:

29 26-57-205. Enforcement of subchapter.

30 It is the duty of all state, county, and city officers to ~~enforce the~~
 31 ~~provisions of~~ assist Arkansas Tobacco Control in enforcing this subchapter.

32
 33 26-57-206. Rules.

34 The Director of the Department of Finance and Administration ~~and,~~ the
 35 Director of Arkansas Tobacco Control, and the Arkansas Tobacco Control Board
 36 ~~are empowered to~~ may promulgate rules for the proper enforcement of their

1 powers and duties as specifically prescribed by this subchapter, ~~except the~~
 2 ~~Director of Arkansas Tobacco Control shall have no authority to promulgate~~
 3 ~~rules regarding manufacturers.~~

4
 5 SECTION 10. Arkansas Code § 26-57-212(d)-(f), concerning reports,
 6 payment of tax, and records of wholesalers and warehousemen, is amended to
 7 read as follows:

8 (d)(1)~~(A)~~ Every wholesaler and warehouse shall permit personnel of the
 9 Department of Finance and Administration and auditors or agents of the
 10 Arkansas Tobacco Control ~~Board~~ to enter into and to inspect their stock of
 11 tobacco products and all books, invoices, and any documents and records
 12 relating to receipts and disbursements of tobacco products.

13 ~~(B)~~ (2) Auditors and agents shall not release to the ~~board~~
 14 Arkansas Tobacco Control Board or to the public any information identifying
 15 customers of the manufacturer, wholesaler, or warehouse except when necessary
 16 to notify the board of alleged violations of this subchapter.

17 ~~(2)~~ ~~However, the board shall have no authority under this~~
 18 ~~subchapter or any other act, to require any manufacturer or other person to~~
 19 ~~disclose any confidential, competitive commercial information furnished by a~~
 20 ~~manufacturer, without that manufacturer's written permission.~~

21 ~~(e)(1)(A)~~ ~~Every tobacco product wholesaler doing business in this~~
 22 ~~state and whose main warehouse or headquarters is in another state, shall~~
 23 ~~keep a record of all purchases and sales transactions involving cigarettes,~~
 24 ~~cigars, cigarette papers, snuff, and other tobacco products.~~

25 ~~(B)~~ ~~The record shall be maintained at a facility located~~
 26 ~~in Arkansas.~~

27 ~~(C)~~ ~~The record shall be accumulated on or before the~~
 28 ~~twentieth day of each month covering the previous calendar month.~~

29 ~~(2)~~ ~~Any person who fails to maintain records required by this~~
 30 ~~section shall be subject to a fine of:~~

31 ~~(A)~~ ~~One hundred dollars (\$100) for the first offense;~~

32 ~~(B)~~ ~~Two hundred fifty dollars (\$250) for the second~~
 33 ~~offense;~~

34 ~~(C)~~ ~~Five hundred dollars (\$500) and a ninety-day~~
 35 ~~suspension of license for the third offense; and~~

36 ~~(D)~~ ~~One thousand dollars (\$1000) and permanent revocation~~

1 ~~of license for the fourth and subsequent offenses.~~

2 ~~(f)~~ (e)(1)(A) All purchases of cigars, cigarettes, cigarette papers,
 3 smoking tobacco, and other tobacco products for distribution within the State
 4 of Arkansas by ~~any~~ a nonresident tobacco products wholesaler shall be
 5 evidenced by a separate invoice from the seller correctly showing the date of
 6 purchase and the quantity of each of the articles purchased by the wholesaler
 7 for distribution within Arkansas.

8 (B) Such stock purchased for distribution within Arkansas
 9 shall be kept in an entirely separate part of the building, separate and
 10 apart from stock purchased for sale or distribution in another state.

11 (2) At the time of shipping or delivering any cigars,
 12 cigarettes, cigarette papers, smoking tobaccos, or other tobacco into the
 13 State of Arkansas, ~~every~~ a nonresident tobacco product wholesaler shall make
 14 a true duplicate invoice of the transaction ~~which shall show~~ that shows full
 15 and complete details of the sale or delivery of those articles and shall
 16 retain the duplicate invoice, subject to use and inspection by the department
 17 and ~~the board~~ Arkansas Tobacco Control for a period of three (3) years.

18 (3) Nonresident tobacco wholesalers shall also keep a record of
 19 all cigarettes, cigarette papers, cigars, smoking tobaccos, and other tobacco
 20 products purchased by them for distribution within the State of Arkansas, and
 21 all books, records, and memoranda pertaining to the purchase and sale of such
 22 products shall be subject to inspection by the department and ~~the board~~
 23 Arkansas Tobacco Control.

24
 25 SECTION 11. Arkansas Code § 26-57-213 is amended to read as follows:
 26 26-57-213. Invoices.

27 (a) The tax shall be set out and identified on each invoice or
 28 statement as the "Arkansas Cigarette or Tobacco Products Excise Tax" as a
 29 separate billing or item.

30 (b) Copies of all invoices for the purchase or sale of any tobacco
 31 products shall be retained by each manufacturer, wholesaler, vendor, and
 32 retailer for a period of three (3) years, subject to examination by the
 33 Director of the Department of Finance and Administration and the Director of
 34 Arkansas Tobacco Control or their authorized agents upon demand at any time
 35 during regular business hours, ~~except that only the Director of the~~
 36 ~~Department of Finance and Administration may examine the invoices of~~

1 manufacturers.

2 (c) Retailers shall:

3 (1) Maintain or produce copies of at least the last ninety (90)
 4 days of tobacco product invoices; and

5 (2) Make the invoices available upon demand during normal
 6 business hours in the retail store.

7 (d) Wholesalers, dealers, and manufacturers shall maintain three (3)
 8 years of tobacco product invoices that are available upon demand during
 9 normal business hours in the permitted location.

10
 11 SECTION 12. Arkansas Code § 26-57-214(a), concerning the registration
 12 and licensing required before doing business under the Arkansas Tobacco
 13 Products Tax Act of 1977, is amended to read as follows:

14 (a) ~~No~~ A person shall not deal with, deliver, or cause to be delivered
 15 to ~~any~~ a retailer or consumer, or otherwise do business in tobacco products
 16 in this state without having first registered with the Director of Arkansas
 17 Tobacco Control and obtained a permit or license for that purpose, except
 18 that a ~~manufacturer need only to register in accordance with § 26-57-~~
 19 215(b)(1) person purchasing an existing permitted retail location may operate
 20 under the selling owner's permit for a period not to exceed thirty (30) days
 21 from the date of sale to allow the purchasing owner time to secure a permit.

22
 23 SECTION 13. Arkansas Code § 26-57-214(c), concerning the registration
 24 and licensing required before doing business under the Arkansas Tobacco
 25 Products Tax Act of 1977, is amended to read as follows:

26 (c) A manufacturer, wholesaler, retailer, general tobacco products
 27 vendor, or restricted tobacco products vendor who intends to sell tobacco
 28 products at or from one (1) or more places of business owned, rented, or
 29 leased by it shall ~~be required to~~ obtain a separate license for each such
 30 place of business.

31
 32 SECTION 14. Arkansas Code § 26-57-215(a), concerning permits and
 33 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to
 34 read as follows:

35 (a)(1) ~~Every~~ Each person, ~~except manufacturers,~~ listed in this
 36 section, before commencing business, or if already in business, before

1 continuing, shall pay an annual privilege fee and secure a permit or license
 2 from the Director of Arkansas Tobacco Control.

3 (2) However, a person purchasing an existing permitted retail
 4 location may operate under the selling owner's permit for a period not to
 5 exceed thirty (30) days from the date of sale to allow the purchasing owner
 6 time to secure a permit.

7
 8 SECTION 15. Arkansas Code § 26-57-215(b)(1), concerning permits and
 9 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to
 10 read as follows:

11 (b)(1) ~~Every~~ In addition to securing a permit or license under
 12 subsection (a) of this section, a manufacturer whose products are sold in
 13 this state shall register with the Director of the Department of Finance and
 14 Administration. A manufacturer so registered is not licensed for purposes of
 15 this subchapter.

16
 17 SECTION 16. Arkansas Code § 26-57-215(b)(5), concerning permits and
 18 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to
 19 read as follows:

20 (5) ~~Every~~ A person engaged in the business of selling, leasing,
 21 renting, or otherwise disposing of or dealing with ~~any~~ a tobacco product
 22 vending machine in this state shall secure a ~~dealer's license~~ General Tobacco
 23 Products Vending Permit.

24
 25 SECTION 17. Arkansas Code § 26-57-215, concerning permits and licenses
 26 under the Arkansas Tobacco Products Tax Act of 1977, is amended to add three
 27 additional subsections to read as follows:

28 (c) Permits and licenses are issued as follows:

29 (1) A permit for a sole proprietor is issued in the sole
 30 proprietor's name and in the sole proprietor's fictitious business name, if
 31 any;

32 (2)(A) A permit for a partnership or limited liability company
 33 is issued in the name of:

34 (i) The managing partner or managing member; and

35 (ii) The partnership or limited liability company.

36 (B) The managing partner or managing member of a limited

1 liability company may not be a partnership, limited liability company, or
2 corporation;

3 (3) A permit for a publicly traded or nonpublicly traded
4 corporation is issued in the name of the president or chief executive officer
5 of the corporation and in the name of the corporation;

6 (4) It is a violation for a permitted entity not to provide
7 written notification to the Director of Arkansas Tobacco Control within
8 thirty (30) days of a change in the following:

9 (A) The managing partner, limited liability company
10 managing member, or president or chief executive officer of a corporation; or

11 (B) The stockholders effecting twenty-five percent (25%)
12 or more of the total voting shares of a nonpublicly traded corporation.

13 (d)(1) When an entity transfers a business permitted under this
14 subchapter, the entity to which the business is transferred shall apply for
15 and may be issued a new permit under this subchapter and may operate under
16 the selling owner's permit only for a period not to exceed thirty (30) days
17 from the date of transfer to allow the purchasing owner time to secure a
18 permit.

19 (2)(A) When a partnership or limited liability company permitted
20 under this subchapter changes, removes, or replaces the managing partner or
21 managing member, the existing permit issued under this subchapter is void,
22 and the partnership or limited liability company shall apply for and may be
23 issued a new permit under this subchapter.

24 (B) However, the partnership or limited liability company
25 may operate under the prior managing partner's or managing member's permit
26 for a period not to exceed thirty (30) days from the date of transfer to
27 allow the purchasing owner time to secure a permit.

28 (3)(A) When a nonpublicly traded corporation permitted under
29 this subchapter changes, removes, or replaces the president or chief
30 executive officer named on the permit or changes, removes, or replaces a
31 stockholder who owns fifty percent (50%) or more of the total voting shares
32 of the nonpublicly traded corporation's stock, the permit issued under this
33 subchapter is void, and the nonpublicly traded corporation shall apply for
34 and may be issued a new permit under this subchapter.

35 (B) However, the nonpublicly traded corporation may
36 operate under the prior permit for a period not to exceed thirty (30) days

1 from the date of removal or change to allow the nonpublicly traded
 2 corporation time to secure a new permit.

3 (4)(A) When a publicly traded corporation permitted under this
 4 subchapter changes, removes, or replaces the president or chief executive
 5 officer named on the permit or changes, removes, or replaces a stockholder
 6 who owns fifty percent (50%) or more of the total voting shares of the
 7 publicly traded corporation's stock, the permit issued under this subchapter
 8 is void, and the publicly traded corporation shall apply for and may be
 9 issued a new permit under this subchapter.

10 (B) However, the publicly traded corporation may operate
 11 under the prior permit for a period of not more than thirty (30) days from
 12 the date of removal or change to allow the publicly traded corporation time
 13 to secure a new permit.

14 (e) An entity may apply for and be issued a permit or license under
 15 this subchapter in advance of the effective date of the permit or license to
 16 facilitate continuity of business operations.

17
 18 SECTION 18. Arkansas Code § 26-57-216 is amended to read as follows:

19 26-57-216. Permits and licenses – Number and location – Background
 20 check required.

21 (a) The Arkansas Tobacco Control Board ~~is empowered to~~ may determine
 22 in its reasonable discretion and in accordance with ~~the provisions of~~ this
 23 subchapter:

24 (1) The number of licenses to be granted in the state;

25 (2)(A) The locations thereof.

26 (B) However, a retail, wholesale, or manufacturer license
 27 or permit shall not be issued to a residential address or for an address not
 28 zoned for the business seeking to secure the permit; ~~and~~

29 (3)(A) The persons to whom they are to be granted.

30 (B) However, a license or permit shall not be issued to:

31 (i) A person who has pleaded guilty or nolo
 32 contendere to or been found guilty of a felony; or

33 (ii) A business owned or operated, in whole or in
 34 part, by a person who has pleaded guilty or nolo contendere to or been found
 35 guilty of a felony; and

36 (b) Arkansas Tobacco Control shall conduct a criminal background check

1 on each permit applicant.

2

3 SECTION 19. Arkansas Code §§ 26-57-219 – 26-57-221 are amended to read
4 as follows:

5 26-57-219. Permits and licenses – Annual privilege tax.

6 (a) The annual privilege tax or fee for each permit or license
7 authorized by § 26-57-215 is established as follows:

8 (1) Wholesale Cigarette Permit \$ 500.00

9 (2) Wholesale Tobacco Permit 500.00

10 (3) General Tobacco Products Vending Permit (vendor)
11 100.00

12 (4) Tobacco Products Vending Machine License, per machine . .
13 . . . 10.00

14 (5)(A) Retail Cigarette/Tobacco Permit for retailers whose
15 weekly gross cigarette and tobacco sales are less than \$5,000
16 20.00

17 (B) Retail Cigarette/Tobacco Permit for retailers whose
18 weekly gross cigarette and tobacco sales are between \$5,000 and \$15,000 . .
19 . . . 30.00

20 (C) Retail Cigarette/Tobacco Permit for retailers whose
21 weekly gross cigarette and tobacco sales are in excess of \$15,000
22 50.00

23 (6) Wholesale Salesperson’s License 25.00

24 (7) Dealer’s License 25.00

25 (8) Manufacturer’s Representative Fee 25.00

26 (9) Manufacturer Cigarette Permit 500.00

27 (10) Manufacturer Tobacco Permit 500.00

28 (b)(1) All permits and licenses issued under this ~~section shall~~
29 subchapter expire on June 30 ~~of the year~~ following the effective date of
30 issuance.

31 (2)(A) Upon the failure to timely ~~pay the annual privilege fee~~
32 renew a license or permit issued under this subchapter, a late fee of two (2)
33 times the amount of ~~any~~ the license or permit fee in question ~~will~~ shall be
34 owed in addition to the annual privilege fee for the permit or license.

35 (B) An expired permit or license that is not renewed
36 before September 1 following the expiration of the permit or license shall

1 not be renewed, and the holder of the expired permit or license shall submit
 2 an application for a new permit or license.

3 (3) ~~No~~ A permit or license shall not be issued to the applicant
 4 until the late fee and the license or permit fee ~~has~~ have been paid.

5 (c) ~~No~~ A permit or license issued under this ~~section~~ subchapter shall
 6 not be renewed for a permit or license holder who is delinquent more than
 7 ninety (90) days on ~~any~~ a privilege fee, tax relating to the sale or
 8 dispensation of cigarettes or tobacco products, or any other state and local
 9 tax due the Director of the Department of Finance and Administration.

10 (d) A person who is delinquent more than ninety (90) days on ~~any~~ a
 11 state or local tax may not renew or obtain a permit or license issued under
 12 this ~~section~~ subchapter except upon certification that the permit or license
 13 holder has entered into a repayment agreement with the Department of Finance
 14 and Administration and ~~that the person~~ is current on the payments.

15
 16 26-57-220. Permits and licenses – Duration.

17 All permits and licenses issued under this subchapter shall expire on
 18 June 30 ~~of the year~~ following the effective date of issuance.

19
 20 26-57-221. Permits and licenses – Not transferable.

21 ~~No~~ A license or permit is not transferable, ~~and the location of any~~
 22 ~~place of business for which any license is issued may not be changed without~~
 23 ~~permission of the Director of Arkansas Tobacco Control.;~~

24 (1)(A) Transferable to a subsequent owner or operator.

25 (B) However, a person purchasing an existing permitted
 26 retail location may operate under the selling owner’s permit for a period not
 27 to exceed thirty (30) days from the date of sale to allow the purchasing
 28 owner time to secure a permit; or

29 (2) Transferable to a different physical location unless the
 30 permit holder obtains permission from the Director of Arkansas Tobacco
 31 Control.

32
 33 SECTION 20. Arkansas Code § 26-57-228(a), concerning the prohibition
 34 on purchases from unregistered or unlicensed dealers, is amended to read as
 35 follows:

36 (a) It is unlawful for ~~any~~ a retailer of tobacco products to purchase

1 tobacco products from ~~any~~ a person other than a ~~registered~~ licensed
 2 manufacturer, licensed wholesaler, or other licensed retailer.

3
 4 SECTION 21. Arkansas Code § 26-57-229(d), concerning persons who are
 5 licensed as a wholesaler and a retailer, is amended to read as follows:

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

9
 10 SECTION 22. Arkansas Code §§ 26-57-230 and 26-57-231 are amended to
 11 read as follows:

12 26-57-230. Common carriers.

13 (a) Common carriers transporting tobacco products may be required by
 14 the Director of the Department of Finance and Administration or the Director
 15 of Arkansas Tobacco Control Board to give a statement of all consignments of
 16 tobacco products showing date, point of origin, point of delivery, and to
 17 whom delivered.

18 (b) All common carriers shall permit their records relating to
 19 shipment or receipt of tobacco products to be examined by the Director of the
 20 Department of Finance and Administration or the board, the Director of
 21 Arkansas Tobacco Control, or their agents.

22 (c) ~~Any~~ A person who fails or refuses to give ~~to the department or the~~
 23 ~~board~~ the statement, reports, or invoices required by this section or who
 24 refuses to permit the department or the board to examine the person's records
 25 is guilty of a Class C misdemeanor.

26
 27 26-57-231. Failure to allow inspection unlawful.

28 ~~Any~~ A person required to pay taxes under ~~the provisions of~~ this
 29 subchapter who fails or refuses to permit the Department of Finance and
 30 Administration or ~~the~~ Arkansas Tobacco Control ~~Board~~ to examine or inspect
 31 the person's taxable stock of tobacco products, invoice books, papers, and
 32 memoranda considered necessary to secure information directly relating to the
 33 enforcement of this subchapter is guilty of a:

- 34 (1) Violation for the first and second offense; and
- 35 (2) Class C misdemeanor for each additional offense.

36

1 SECTION 23. Arkansas Code § 26-57-232(a)(1), concerning the
2 restrictions placed on wholesalers under the Arkansas Tobacco Products Tax
3 Act of 1977, is amended to read as follows:

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

6
7 SECTION 24. Arkansas Code § 26-57-233(4)(B), concerning the
8 restrictions placed on salespersons under the Arkansas Tobacco Products Tax
9 Act of 1977, is amended to read as follows:

10 (B) The wholesaler shall retain ~~this~~ the information
11 required under subdivision (4)(A) of this section in a designated place
12 within this state for three (3) years subject to inspection by the Department
13 of Finance and Administration and ~~the~~ Arkansas Tobacco Control ~~Board~~.

14
15 SECTION 25. Arkansas Code § 26-57-234(a)(4)-(6), concerning the
16 restrictions placed on retailers and vendors under the Arkansas Tobacco
17 Products Tax Act of 1977, is amended to read as follows:

18 (4)(A) The retailer shall keep records showing the description
19 and date of the receipt of each lot of tobacco products, from whom purchased,
20 and when received on the premises, or any other requirements prescribed by
21 the Director of the Department of Finance and Administration.

22 (B) ~~These~~ The records ~~shall be~~ required under subdivision
23 (a)(4)(A) of this section are subject to inspection by the Department of
24 Finance and Administration and ~~the~~ Arkansas Tobacco Control ~~Board~~;

25 (5) The Director of the Department of Finance and Administration
26 may require retailer reports covering receipts and sales of tobacco products
27 monthly or for any other period;

28 (6) The retailer shall permit the department and ~~the board~~
29 Arkansas Tobacco Control or any peace officer acting under their direction to
30 inspect the retailer's stock of merchandise and premises, including any room
31 or building used in connection with the retailer's business.

32
33 SECTION 26. Arkansas Code § 26-57-245(b)(2), concerning the purchase,
34 sale, or receipt of unstamped products or products with unpaid taxes, is
35 amended to read as follows:

36 (2) Each purchase, sale, or offer to sell cigarettes or other

1 tobacco products in violation of subsection (a) of this section constitutes a
2 separate violation.

3
4 SECTION 27. Arkansas Code § 26-57-248, concerning fines for the
5 possession or sale of products with unpaid taxes, is amended to add an
6 additional subsection to read as follows:

7 (c) A fine assessed under this section shall be deposited into the
8 tobacco control fund established under § 26-57-247(p).

9
10 SECTION 28. Arkansas Code § 26-57-252 is amended to read as follows:
11 26-57-252. No bond for costs required.

12 ~~No~~ A bond for costs ~~shall be~~ is not required of the Department of
13 Finance and Administration ~~or, Arkansas Tobacco Control, or~~ the Arkansas
14 Tobacco Control Board in any court in this state for the prosecution of ~~any a~~
15 violation of this subchapter.

16
17 SECTION 29. Arkansas Code § 26-57-255(d), concerning the Arkansas
18 Tobacco Control Board, is amended to read as follows:

19 (d)(1) The board shall ~~have:~~

20 (A) Act as a rulemaking and adjudicatory body for Arkansas
21 Tobacco Control; and

22 (B) Have responsibility for the issuance, suspension, and
23 revocation of the licenses and permits enumerated in § 26-57-219.

24 (2) All action by the board shall be by a majority vote of the
25 ~~full membership of the board~~ members present at the regular or special
26 meeting, and the board may take no official action in connection with ~~any a~~
27 matter except at a regular or special meeting. In the event of a tie vote of
28 the members of the board, the Director of Arkansas Tobacco Control may cast
29 the deciding vote.

30 ~~(3) The board shall have no jurisdiction over manufacturers of~~
31 ~~tobacco products.~~

32
33 SECTION 30. Arkansas Code § 26-57-256(a)(1), concerning the powers of
34 the Arkansas Tobacco Control Board, is amended to read as follows:

35 (1) Promulgate rules for the proper enforcement and
36 implementation of this subchapter and the Unfair Cigarette Sales Act, § 4-75-

1 701 et seq., ~~subject to the restrictions in § 26-57-212(d);~~

2
3 SECTION 31. Arkansas Code § 26-57-257(c), concerning the Director of
4 Arkansas Tobacco Control, is amended to read as follows:

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

8
9 SECTION 32. Arkansas Code § 26-57-257(l), concerning the Director of
10 Arkansas Tobacco Control, is amended to read as follows:

11 (l) The Director of Arkansas Tobacco Control may inspect or cause to
12 be inspected any premises where tobacco products are manufactured, imported,
13 distributed, stored, or sold.

14
15 SECTION 33. Arkansas Code § 26-57-257(p), concerning the Director of
16 Arkansas Tobacco Control, is amended to read as follows:

17 (p) The Director of Arkansas Tobacco Control shall have other powers,
18 functions, and duties pertaining to the issuance, suspension, and revocation
19 of the permits and licenses enumerated in § 26-57-219, ~~which that previously~~
20 were granted to the Director of the Department of Finance and Administration,
21 except ~~the authority to regulate manufacturers, and which those that are~~
22 specifically delegated to the Department of Finance and Administration by
23 this subchapter.

24
25 SECTION 34. Arkansas Code § 26-57-259(c), concerning nonpreemption
26 under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as
27 follows:

28 (c) Nothing in this act nor any rule or regulation of the board shall
29 be construed or interpreted so as to require any state, county, municipal, or
30 other local authority to exhaust any administrative remedies through the
31 board, ~~including, but not limited to,~~ without limitation the right to seize
32 and forward to the board the state license of any vendor or retailer found to
33 have illegally sold tobacco products to a person less than eighteen (18)
34 years of age, provided that the vendor or retailer shall be given a hearing
35 before the board ~~within five (5) business days of the seizure~~ at the board's
36 next regularly scheduled meeting.