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2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/12/13

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

23 *SECTION 1.* Arkansas Code § 4-75-714(a), concerning the enforcement
24 agents for the Unfair Cigarette Sales Act, is amended to read as follows:

25 (a) ~~The~~ Arkansas Tobacco Control ~~Board~~ is designated as a law
26 enforcement agency.
27

28 *SECTION 2.* Arkansas Code § 20-27-2105(a), concerning certification and
29 product change under the Arkansas Cigarette Fire Safety Standard Act, is
30 amended to read as follows:

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

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

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



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SECTION 3. Arkansas Code § 20-27-2404 is amended to read as follows:
20-27-2404. Rules – Enforcement.

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

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

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

SECTION 4. Arkansas Code § 26-57-203 (15) and (16), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, are amended to read as follows:

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

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

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

SECTION 5. Arkansas Code § 26-57-203 (30), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

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

SECTION 6. Arkansas Code § 26-57-203 (33), concerning the definitions to be used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

1 (33)~~(A)~~ "Wholesaler" means a person other than a manufacturer or
2 a person owned or operated by a manufacturer that:

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

7 ~~(ii)~~ (B) Sells to properly licensed cigarette
8 vendors or retailers.

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

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

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

18
19 *SECTION 7.* Arkansas Code § 26-57-203, concerning the definitions to be
20 used under the Arkansas Tobacco Products Tax Act of 1977, is amended to add
21 an additional subdivision to read as follows:

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

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

26 (B) May have manufacturer representative permits issued to
27 its sales representatives.

28
29 *SECTION 8.* Arkansas Code §§ 26-57-205 and 26-57-206 are amended to
30 read as follows:

31 26-57-205. Enforcement of subchapter.

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

34
35 26-57-206. Rules.

36 The Director of the Department of Finance and Administration ~~and,~~ the

1 Director of Arkansas Tobacco Control, and the Arkansas Tobacco Control Board
2 ~~are empowered to~~ may promulgate rules for the proper enforcement of their
3 powers and duties as specifically prescribed by this subchapter, ~~except the~~
4 ~~Director of Arkansas Tobacco Control shall have no authority to promulgate~~
5 ~~rules regarding manufacturers.~~

6
7 *SECTION 9.* Arkansas Code § 26-57-212(d)-(f), concerning reports,
8 payment of tax, and records of wholesalers and warehousemen, is amended to
9 read as follows:

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

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

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

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

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

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

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

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

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

36 ~~(C)~~ ~~Five hundred dollars (\$500) and a ninety day~~

1 ~~suspension of license for the third offense; and~~

2 ~~(D) One thousand dollars (\$1000) and permanent revocation~~
3 ~~of license for the fourth and subsequent offenses.~~

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

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

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

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

26
27 *SECTION 10.* Arkansas Code § 26-57-213 is amended to read as follows:
28 26-57-213. Invoices.

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

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

1 during regular business hours, ~~except that only the Director of the~~
2 ~~Department of Finance and Administration may examine the invoices of~~
3 ~~manufacturers.~~

4 (c) Retailers shall:

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

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

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

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

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

24
25 *SECTION 12.* Arkansas Code § 26-57-214(c), concerning the registration
26 and licensing required before doing business under the Arkansas Tobacco
27 Products Tax Act of 1977, is amended to read as follows:

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

33
34 *SECTION 13.* Arkansas Code § 26-57-215(a), concerning permits and
35 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to
36 read as follows:

1 (a)(1) ~~Every~~ Each person, ~~except manufacturers,~~ listed in this
2 section, before commencing business, or if already in business, before
3 continuing, shall pay an annual privilege fee and secure a permit or license
4 from the Director of Arkansas Tobacco Control.

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

9
10 *SECTION 14.* Arkansas Code § 26-57-215(b)(1), concerning permits and
11 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to
12 read as follows:

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

18
19 *SECTION 15.* Arkansas Code § 26-57-215(b)(5), concerning permits and
20 licenses under the Arkansas Tobacco Products Tax Act of 1977, is amended to
21 read as follows:

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

26
27 *SECTION 16.* Arkansas Code § 26-57-215, concerning permits and licenses
28 under the Arkansas Tobacco Products Tax Act of 1977, is amended to add three
29 additional subsections to read as follows:

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

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

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

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

1 (ii) The partnership or limited liability company.
2 (B) The managing partner or managing member of a limited
3 liability company may not be a partnership, limited liability company, or
4 corporation;
5 (3) A permit for a publicly traded or nonpublicly traded
6 corporation is issued in the name of the president or chief executive officer
7 of the corporation and in the name of the corporation;
8 (4) It is a violation for a permitted entity not to provide
9 written notification to the Director of Arkansas Tobacco Control within
10 thirty (30) days of a change in the following:
11 (A) The managing partner, limited liability company
12 managing member, or president or chief executive officer of a corporation; or
13 (B) The stockholders effecting twenty-five percent (25%)
14 or more of the total voting shares of a nonpublicly traded corporation.
15 (d)(1) When an entity transfers a business permitted under this
16 subchapter, the entity to which the business is transferred shall apply for
17 and may be issued a new permit under this subchapter and may operate under
18 the selling owner's permit only for a period not to exceed thirty (30) days
19 from the date of transfer to allow the purchasing owner time to secure a
20 permit.
21 (2)(A) When a partnership or limited liability company permitted
22 under this subchapter changes, removes, or replaces the managing partner or
23 managing member, the existing permit issued under this subchapter is void,
24 and the partnership or limited liability company shall apply for and may be
25 issued a new permit under this subchapter.
26 (B) However, the partnership or limited liability company
27 may operate under the prior managing partner's or managing member's permit
28 for a period not to exceed thirty (30) days from the date of transfer to
29 allow the purchasing owner time to secure a permit.
30 (3)(A) When a nonpublicly traded corporation permitted under
31 this subchapter changes, removes, or replaces the president or chief
32 executive officer named on the permit or changes, removes, or replaces a
33 stockholder who owns fifty percent (50%) or more of the total voting shares
34 of the nonpublicly traded corporation's stock, the permit issued under this
35 subchapter is void, and the nonpublicly traded corporation shall apply for
36 and may be issued a new permit under this subchapter.

1 (B) However, the nonpublicly traded corporation may
2 operate under the prior permit for a period not to exceed thirty (30) days
3 from the date of removal or change to allow the nonpublicly traded
4 corporation time to secure a new permit.

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

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

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

19
20 SECTION 17. Arkansas Code § 26-57-216 is amended to read as follows:

21 26-57-216. Permits and licenses – Number and location – Background
22 check required.

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

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

27 (2)(A) The locations thereof.

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

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

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

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

35 (ii) A business owned or operated, in whole or in
36 part, by a person who has pleaded guilty or nolo contendere to or been found

1 guilty of a felony; and

2 (b) Arkansas Tobacco Control shall conduct a criminal background check
3 on each permit applicant.

4
5 SECTION 18. Arkansas Code §§ 26-57-219 – 26-57-221 are amended to read
6 as follows:

7 26-57-219. Permits and licenses – Annual privilege tax.

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

10 (1) Wholesale Cigarette Permit \$ 500.00

11 (2) Wholesale Tobacco Permit 500.00

12 (3) General Tobacco Products Vending Permit (vendor)
13 100.00

14 (4) Tobacco Products Vending Machine License, per machine . .
15 . . . 10.00

16 (5)(A) Retail Cigarette/Tobacco Permit for retailers whose
17 weekly gross cigarette and tobacco sales are less than \$5,000
18 20.00

19 (B) Retail Cigarette/Tobacco Permit for retailers whose
20 weekly gross cigarette and tobacco sales are between \$5,000 and \$15,000 . .
21 . . . 30.00

22 (C) Retail Cigarette/Tobacco Permit for retailers whose
23 weekly gross cigarette and tobacco sales are in excess of \$15,000
24 50.00

25 (6) Wholesale Salesperson’s License 25.00

26 (7) Dealer’s License 25.00

27 (8) Manufacturer’s Representative Fee 25.00

28 (9) Manufacturer Cigarette Permit 500.00

29 (10) Manufacturer Tobacco Permit 500.00

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

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

1 (B) An expired permit or license that is not renewed
 2 before September 1 following the expiration of the permit or license shall
 3 not be renewed, and the holder of the expired permit or license shall submit
 4 an application for a new permit or license.

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

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

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

17
 18 26-57-220. Permits and licenses – Duration.

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

21
 22 26-57-221. Permits and licenses – Not transferable.

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

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

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

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

34
 35 *SECTION 19.* Arkansas Code § 26-57-228(a), concerning the prohibition
 36 on purchases from unregistered or unlicensed dealers, is amended to read as

1 follows:

2 (a) It is unlawful for ~~any~~ a retailer of tobacco products to purchase
3 tobacco products from ~~any~~ a person other than a ~~registered~~ licensed
4 manufacturer, licensed wholesaler, or other licensed retailer.

5

6 *SECTION 20.* Arkansas Code § 26-57-229(d), concerning persons who are
7 licensed as a wholesaler and a retailer, is amended to read as follows:

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

11

12 *SECTION 21.* Arkansas Code §§ 26-57-230 and 26-57-231 are amended to
13 read as follows:

14 26-57-230. Common carriers.

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

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

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

28

29 26-57-231. Failure to allow inspection unlawful.

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

36 (1) Violation for the first and second offense; and

1 (2) Class C misdemeanor for each additional offense.

2

3 *SECTION 22.* Arkansas Code § 26-57-232(a)(1), concerning the
4 restrictions placed on wholesalers under the Arkansas Tobacco Products Tax
5 Act of 1977, is amended to read as follows:

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

8

9 *SECTION 23.* Arkansas Code § 26-57-233(4)(B), concerning the
10 restrictions placed on salespersons under the Arkansas Tobacco Products Tax
11 Act of 1977, is amended to read as follows:

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

16

17 *SECTION 24.* Arkansas Code § 26-57-234(a)(4)-(6), concerning the
18 restrictions placed on retailers and vendors under the Arkansas Tobacco
19 Products Tax Act of 1977, is amended to read as follows:

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

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

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

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

34

35 *SECTION 25.* Arkansas Code § 26-57-245(b)(2), concerning the purchase,
36 sale, or receipt of unstamped products or products with unpaid taxes, is

1 amended to read as follows:

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

5

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

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

11

12 *SECTION 27.* Arkansas Code § 26-57-252 is amended to read as follows:
13 26-57-252. No bond for costs required.

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

18

19 *SECTION 28.* Arkansas Code § 26-57-255(d), concerning the Arkansas
20 Tobacco Control Board, is amended to read as follows:

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

22 (A) Act as a rulemaking and adjudicatory body for Arkansas
23 Tobacco Control; and

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

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

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

34

35 *SECTION 29.* Arkansas Code § 26-57-256(a)(1), concerning the powers of
36 the Arkansas Tobacco Control Board, is amended to read as follows:

1 (1) Promulgate rules for the proper enforcement and
2 implementation of this subchapter and the Unfair Cigarette Sales Act, § 4-75-
3 701 et seq., ~~subject to the restrictions in § 26-57-212(d);~~
4

5 *SECTION 30.* Arkansas Code § 26-57-257(c), concerning the Director of
6 Arkansas Tobacco Control, is amended to read as follows:

7 (c) The Director of Arkansas Tobacco Control may employ ~~such~~ other
8 personnel as he or she deems necessary, ~~subject to the approval of the board~~
9 and as authorized by the General Assembly.
10

11 *SECTION 31.* Arkansas Code § 26-57-257(1), concerning the Director of
12 Arkansas Tobacco Control, is amended to read as follows:

13 (1) The Director of Arkansas Tobacco Control may inspect or cause to
14 be inspected any premises where tobacco products are manufactured, imported,
15 distributed, stored, or sold.
16

17 *SECTION 32.* Arkansas Code § 26-57-257(p), concerning the Director of
18 Arkansas Tobacco Control, is amended to read as follows:

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

27 *SECTION 33.* Arkansas Code § 26-57-259(c), concerning nonpreemption
28 under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as
29 follows:

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

1 before the board ~~within five (5) business days of the seizure~~ at the board's
2 next regularly scheduled meeting.

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/s/Baine