

1 State of Arkansas
2 92nd General Assembly
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4

A Bill

HOUSE BILL 1565

5 By: Representative A. Davis
6 By: Senator J. Dismang
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE FUNDING FOR A NATIONAL CANCER
10 INSTITUTE-DESIGNATED CANCER CENTER IN THE STATE
11 THROUGH CHANGES IN THE LAWS RELATING TO THE SALE AND
12 TAXATION OF CERTAIN PRODUCTS; TO REGULATE THE SALE
13 AND TAXATION OF TOBACCO PRODUCTS, CIGARETTE PAPER,
14 AND E-CIGARETTES; TO AMEND THE UNFAIR CIGARETTE SALES
15 ACT; TO AMEND THE AGE AT WHICH A PERSON MAY PURCHASE
16 TOBACCO PRODUCTS, CIGARETTE PAPER, ALTERNATIVE
17 NICOTINE PRODUCTS, AND E-CIGARETTES; TO AMEND THE
18 ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977; TO CREATE
19 AN ADDITIONAL TAX ON CIGARETTE PAPER; TO CREATE A TAX
20 ON E-CIGARETTES; TO DEDICATE THE ADDITIONAL TAX
21 REVENUE TO THE UNIVERSITY OF ARKANSAS FOR MEDICAL
22 SCIENCES NATIONAL CANCER INSTITUTE DESIGNATION TRUST
23 FUND TO ASSIST THE UNIVERSITY OF ARKANSAS FOR MEDICAL
24 SCIENCES IN OBTAINING STATUS AS A NATIONAL CANCER
25 INSTITUTE-DESIGNATED CANCER CENTER; AND FOR OTHER
26 PURPOSES.

Subtitle

27
28
29 TO PROVIDE FUNDING FOR A NATIONAL CANCER
30 INSTITUTE-DESIGNATED CANCER CENTER IN THE
31 STATE THROUGH CHANGES IN THE LAWS
32 RELATING TO THE SALE AND TAXATION OF
33 TOBACCO PRODUCTS, CIGARETTE PAPER, AND E-
34 CIGARETTES.
35
36



1
 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

3
 4 SECTION 1. Arkansas Code § 4-75-702(4)(B), concerning the definition
 5 of "cost to retailer" used under the Unfair Cigarette Sales Act, is amended
 6 to read as follows:

7 (B) In the absence of the filing with the Arkansas Tobacco
 8 Control Board of proof satisfactory to the board of a lesser or higher cost
 9 of doing business by the retailer making the sale, the cost of doing business
 10 by the retailer shall be presumed to be ~~seven and one-half percent (7½%)~~ nine
 11 and five-tenths percent (9.5%) of the basic cost of cigarettes to the
 12 retailer.

13
 14 SECTION 2. Arkansas Code § 5-27-227(b)(1)(B), concerning the
 15 prohibition of minors purchasing, using, or possessing tobacco products,
 16 vapor products, alternative nicotine products, e-liquid products, and
 17 cigarette papers, is amended to read as follows:

18 (B) For the purpose of obtaining or attempting to obtain
 19 tobacco in any form, a vapor product, alternative nicotine product, e-liquid
 20 product, any component of a vapor product, alternative nicotine product, or
 21 e-liquid product, or cigarette papers, falsely represent himself or herself
 22 ~~to be eighteen (18) years of age or older~~ not to be a minor by displaying
 23 proof of age that is false, fraudulent, or not actually proof of the minor's
 24 age.

25
 26 SECTION 3. Arkansas Code § 5-27-227, concerning the prohibition of
 27 minors purchasing, using, or possessing tobacco products, vapor products,
 28 alternative nicotine products, e-liquid products, and cigarette papers, is
 29 amended to add an additional subsection to read as follows:

30 (m)(1) As used in this section, "minor" means a person who is under
 31 twenty-one (21) years of age.

32 (2) "Minor" does not include a person who:

33 (A) Is under twenty-one (21) years of age if the person
 34 presents a military identification card establishing that he or she is a
 35 member of the United States Armed Forces; or

36 (B) Has attained nineteen (19) years of age as of December

1 31, 2019.

2
3 SECTION 4. Arkansas Code § 5-78-102 is amended to read as follows:

4 5-78-102. Possession of cigarette or tobacco product, vapor product,
5 alternative nicotine product, or e-liquid product by minor – Confiscation –
6 Additional punishment – Definition.

7 (a)(1) As used in this section, "minor" means a person who is under
8 twenty-one (21) years of age.

9 (2) "Minor" does not include a person who:

10 (A) Is under twenty-one (21) years of age if the person
11 presents a military identification card establishing that he or she is a
12 member of the United States Armed Forces; or

13 (B) Has attained nineteen (19) years of age as of December
14 31, 2019.

15 (b) A cigarette or tobacco product, vapor product, alternative
16 nicotine product, or e-liquid product found in the possession of a ~~person~~
17 ~~under eighteen (18) years of age~~ minor may be confiscated by a certified law
18 enforcement officer or a school official and immediately destroyed.

19 ~~(b)(c)~~ (c) If a minor who is found by a court to be in violation of ~~any a~~
20 criminal statute is also found to have been in possession of a cigarette or
21 tobacco product, vapor product, alternative nicotine product, or e-liquid
22 product at the time of the violation of the criminal statute, the court may
23 order the minor to perform up to three (3) hours of community service and to
24 enroll in a tobacco education program, in addition to any other punishment
25 imposed by the court for the violation of the criminal statute.

26 ~~(e)(1)(d)(1)~~ (d)(1) Any additional punishment ordered by the court under
27 subsection ~~(b)~~ (c) of this section is not a criminal offense and shall not be
28 recorded as a criminal offense in the records of this state.

29 (2) All records of a proceeding under this section shall be
30 permanently expunged from any record created or maintained by any agency,
31 department, county, or municipality.

32
33 SECTION 5. Arkansas Code § 19-5-202(b)(2)(B)(iii), concerning
34 distributions from the General Revenue Fund Account, is amended to read as
35 follows:

36 (iii)(a) Next, the Director of the Department of

1 Finance and Administration shall certify the amount distributed to the
 2 General Revenue Fund Account of the State Apportionment Fund from the sales
 3 tax and the special privilege tax on medical marijuana under § 17(c) of the
 4 Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Arkansas
 5 Constitution, Amendment 98, for the month.

6 (b) The Treasurer of State shall then deduct
 7 an amount equal to the amount certified under subdivision (b)(2)(B)(iii)(a)
 8 of this section from the General Revenue Fund Account of the State
 9 Apportionment Fund and transfer the amount to the University of Arkansas for
 10 Medical Sciences National Cancer Institute Designation Trust Fund; and

11 (iv) The remaining revenue, known as general
 12 revenues available for distribution, in the General Revenue Fund Account of
 13 the State Apportionment Fund shall be distributed as provided by this chapter
 14 to the various funds and fund accounts as created and established in § 19-5-
 15 301 et seq. and to any other fund or fund account as may be authorized by
 16 law. The Treasurer of State, after distributing the general revenues
 17 available for distribution due each fund or fund account, shall deduct the
 18 amount of any advance transfers made during the month from the distribution
 19 to each applicable fund or fund account.

20
 21 SECTION 6. Arkansas Code § 26-57-256(f)-(h), concerning the powers of
 22 the Arkansas Tobacco Control Board, are amended to read as follows:

23 (f) The board may consider the following factors when reviewing a
 24 possible violation:

25 (1) The business has adopted and enforced a written policy
 26 against selling cigarettes, tobacco products, vapor products, alternative
 27 nicotine products, or e-liquid products to ~~persons less than eighteen (18)~~
 28 ~~years of age~~ minors;

29 (2) The business has informed its employees of the applicable
 30 laws regarding the sale of cigarettes, tobacco products, vapor products,
 31 alternative nicotine products, or e-liquid products to ~~persons less than~~
 32 ~~eighteen (18) years of age~~ minors;

33 (3) The business required employees to verify the age of
 34 cigarette, tobacco product, vapor product, alternative nicotine product, e-
 35 liquid product, or e-liquid customers by way of photographic identification;

36 (4) The business has established and imposed disciplinary

1 sanctions for noncompliance; and

2 (5) The appearance of the purchaser of the tobacco in any form,
3 vapor products, alternative nicotine product, or cigarette papers was such
4 that an ordinary prudent person would believe him or her to be of legal age
5 to make the purchase.

6 (g)(1) A penalty under subsection (d) of this section for a violation
7 of § 5-27-227 shall not be imposed upon a retailer or agent or employee of a
8 retailer who can establish an affirmative defense that before the date of the
9 violation the retailer or agent or employee of the retailer furnishing the
10 tobacco in any form, vapor products, alternative nicotine products, e-liquid
11 products, or cigarette papers reasonably relied upon proof of age that
12 identified the person receiving the tobacco in any form, vapor products,
13 alternative nicotine products, e-liquid products, or cigarette papers as
14 ~~being eighteen (18) years of age or older~~ not being a minor.

15 (2) As used in this section, "proof of age" means any document
16 issued by a governmental agency containing a description of the person or the
17 person's photograph, or both, and giving the person's date of birth and
18 includes without limitation a passport, military identification card, or
19 driver's license.

20 (h) Any cigarettes, tobacco products, vapor products, alternative
21 nicotine products, or e-liquid products found in the possession of a ~~person~~
22 ~~less than eighteen (18) years of age~~ minor may be confiscated.

23
24 SECTION 7. Arkansas Code § 26-57-256, concerning the powers of the
25 Arkansas Tobacco Control Board, is amended to add an additional subsection to
26 read as follows:

27 (1)(1) As used in this section, "minor" means a person who is under
28 twenty-one (21) years of age.

29 (2) "Minor" does not include a person who:

30 (A) Is under twenty-one (21) years of age if the person
31 presents a military identification card establishing that he or she is a
32 member of the United States Armed Forces; or

33 (B) Has attained nineteen (19) years of age as of December
34 31, 2019.

35
36 SECTION 8. Arkansas Code § 26-57-259(a), concerning nonpreemption

1 under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as
 2 follows:

3 (a)(1) This ~~act~~ subchapter and the rules and other actions of the
 4 Arkansas Tobacco Control Board shall not be construed or interpreted so as to
 5 preempt or in any other manner qualify or limit the enactment and enforcement
 6 of any federal, or state, ~~county, municipal, or other local~~ regulation of the
 7 manufacture, sale, storage, or distribution of tobacco products that is more
 8 restrictive than this ~~act~~ subchapter or the rules and regulations promulgated
 9 by the board.

10 (2)(A) This subchapter and the rules and other actions of the
 11 board shall preempt the enactment and enforcement of any county, municipal,
 12 or other local regulation of the manufacture, sale, storage, or distribution
 13 of tobacco products that is more restrictive than this subchapter or the
 14 rules promulgated by the board.

15 (B) A county, municipal, or other local regulation of the
 16 manufacture, sale, storage, or distribution of tobacco products that is more
 17 restrictive than this subchapter or the rules promulgated by the board and
 18 that has been enacted as of the effective date of this act is not preempted
 19 under this subdivision (a)(2).

20
 21 SECTION 9. Arkansas Code § 26-57-259(c), concerning nonpreemption of
 22 the Arkansas Tobacco Control Board, is amended to read as follows:

23 (c) ~~Nothing in this act nor any rule~~ This subchapter and the rules of
 24 the board shall not be construed or interpreted so as to require ~~any~~ a state,
 25 county, municipal, or other local authority to exhaust any administrative
 26 remedies through the board, including without limitation the right to seize
 27 and forward to the board the state license of ~~any~~ a vendor or retailer found
 28 to have illegally sold tobacco products, vapor products, alternative nicotine
 29 products, or e-liquid products to a ~~person less than eighteen (18) years of~~
 30 age minor, as defined in § 26-57-256, provided that the vendor or retailer
 31 shall be given a hearing before the board at the board's next regularly
 32 scheduled meeting.

33
 34 SECTION 10. Arkansas Code Title 26, Chapter 57, Subchapter 2, is
 35 amended to add an additional section to read as follows:

36 26-57-268. Modified risk tobacco products – Reduced rate of taxation.

1 Notwithstanding any other provision of the law to the contrary, a tax
 2 imposed under this chapter shall be reduced by the following amounts:

3 (1) Fifty percent (50%) for a product for which a modified risk
 4 tobacco product order has been issued by the United States Secretary of
 5 Health and Human Services under 21 U.S.C. § 387k(g)(1), as it existed on
 6 January 1, 2019; and

7 (2) Twenty-five percent (25%) for a product for which a modified
 8 risk tobacco product order has been issued by the United States Secretary of
 9 Health and Human Services under 21 U.S.C. § 387k(g)(2), as it existed on
 10 January 1, 2019.

11
 12 SECTION 11. Arkansas Code Title 26, Chapter 57, Subchapter 8, is
 13 amended to add an additional section to read as follows:

14 26-57-808. Additional tax on cigarette paper – Distribution of
 15 revenues.

16 (a) In addition to the excise tax levied under § 26-57-801, there is
 17 levied an additional tax of fifty cents (50¢) per package of thirty-two (32)
 18 sheets of cigarette paper sold in the state.

19 (b) The additional tax levied under this section shall be imposed,
 20 reported, remitted, and administered in the same manner and at the same time
 21 as other taxes levied on cigarette paper under this subchapter and the
 22 Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

23 (c) The revenues collected under this section shall be special
 24 revenues and shall be credited to the University of Arkansas for Medical
 25 Sciences National Cancer Institute Designation Trust Fund.

26
 27 SECTION 12. Arkansas Code Title 26, Chapter 57, is amended to add an
 28 additional subchapter to read as follows:

29 Subchapter 16 – E-Liquid Excise Tax Act

30
 31 26-57-1601. Title.

32 This subchapter shall be known and may be cited as the "E-Liquid Excise
 33 Tax Act".

34
 35 26-57-1602. Definition.

36 As used in this subchapter, "e-liquid" means the same as defined in §

1 26-57-203.

2
3 26-57-1603. Excise tax.

4 There is levied an excise tax on e-liquid sold in this state in the
5 amount of ten cents (10¢) per one milliliter (1 mL) of e-liquid sold.

6
7 26-57-1604. Imposition, reporting, remittance, and administration of
8 privilege tax.

9 Except as otherwise provided in this subchapter, the excise tax levied
10 under § 26-57-1603 shall be imposed, reported, remitted, and administered in
11 the same manner and at the same time as taxes on tobacco products under the
12 Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.

13
14 26-57-1605. Invoices.

15 The excise tax levied under § 26-57-1603 shall be separately stated and
16 identified on each invoice or statement as the "E-Liquid Excise Tax".

17
18 26-57-1606. Distribution of revenues.

19 The revenues collected under this subchapter shall be credited to the
20 University of Arkansas for Medical Sciences National Cancer Institute
21 Designation Trust Fund.

22
23 26-57-1607. Applicability.

24 The excise tax levied under § 26-57-1603 applies to inventory and
25 stocks of e-liquid held by a wholesaler or retailer on and after the
26 effective date of this subchapter.

27
28 26-57-1608. Rules.

29 The Director of the Department of Finance and Administration, the
30 Director of Arkansas Tobacco Control, and the Arkansas Tobacco Control Board
31 shall adopt rules necessary to implement and allow for the enforcement of
32 this subchapter.

33
34 SECTION 13. DO NOT CODIFY. Rules.

35 (a) When adopting the initial rules required under this act, the
36 Director of the Department of Finance and Administration, the Director of

1 Arkansas Tobacco Control, and the Arkansas Tobacco Control Board shall file
 2 the final rules with the Secretary of State for adoption under § 25-15-
 3 204(f):

4 (1) On or before September 1, 2019; or

5 (2) If approval under § 10-3-309 has not occurred by September
 6 1, 2019, as soon as practicable after approval under § 10-3-309.

7 (b) The Director of the Department of Finance and Administration, the
 8 Director of Arkansas Tobacco Control, and the Arkansas Tobacco Control Board
 9 shall file the proposed rules with the Legislative Council under § 10-3-
 10 309(c) sufficiently in advance of September 1, 2019, so that the Legislative
 11 Council may consider the rules for approval before September 1, 2019.

12
 13 SECTION 14. EFFECTIVE DATE. Sections 2-12 of this act are effective
 14 on the first day of the second calendar month following the effective date of
 15 this act.