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2 92nd General Assembly
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4

As Engrossed: H4/5/19
A Bill

HOUSE BILL 1980

5 By: Representative A. Davis
6 By: Senator Rapert
7

For An Act To Be Entitled

9 AN ACT CONCERNING ARKANSAS TOBACCO CONTROL AND THE
10 REGULATION OF TOBACCO PRODUCTS, VAPOR PRODUCTS,
11 ALTERNATIVE NICOTINE PRODUCTS, E-LIQUID PRODUCTS, AND
12 CIGARETTE PAPERS; TO AMEND THE UNFAIR CIGARETTE SALES
13 ACT; TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT
14 OF 1977; TO DECLARE AN EMERGENCY; AND FOR OTHER
15 PURPOSES.
16
17

Subtitle

18
19 TO AMEND THE UNFAIR CIGARETTE SALES ACT;
20 TO AMEND THE ARKANSAS TOBACCO PRODUCTS
21 TAX ACT OF 1977; AND TO DECLARE AN
22 EMERGENCY.
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 4-75-703 is amended to read as follows:
28 4-75-703. Sales excepted from subchapter.

29 (a) ~~The provisions of this~~ This subchapter ~~shall~~ does not apply to a
30 sale at wholesale or a sale at retail made:

31 (1) In an isolated transaction and not in the usual course of
32 business;

33 (2) Where cigarettes are advertised, offered for sale, or sold
34 in a bona fide clearance sale for the purpose of discontinuing trade in ~~such~~
35 the cigarettes, and the advertising, offer to sell, or sale shall state the
36 reason ~~therefor~~ for the sale and the quantity of ~~such~~ the cigarettes



1 advertised, offered for sale, or to be sold;

2 (3) Where cigarettes are advertised, offered for sale, or sold
3 as imperfect or damaged, and the advertising, offer to sell, or sale shall
4 state the reason ~~therefor~~ for the sale and the quantity of the cigarettes
5 advertised, offered for sale, or to be sold;

6 (4) Where cigarettes are sold upon the final liquidation of a
7 business; or

8 (5) Where cigarettes are advertised, offered for sale, or sold
9 by any fiduciary or other officer acting under the order or direction of any
10 court.

11 (b) For sales that are exempt under subsection (a) of this section,
12 the seller shall:

13 (1) Notify Arkansas Tobacco Control of the sale at least one (1)
14 business day before the sale occurs; and

15 (2) For sales that are below cost, submit the information
16 required by the Director of Arkansas Tobacco Control on the form prescribed
17 by the director.

18

19 SECTION 2. Arkansas Code §§ 4-75-706 and 4-75-707 are amended to read
20 as follows:

21 4-75-706. Director of Arkansas Tobacco Control – Powers and duties.

22 (a)(1) The Director of Arkansas Tobacco Control ~~shall~~ may prescribe,
23 adopt, and enforce rules relating to the administration and enforcement of
24 this subchapter.

25 (2)(A) The director ~~is empowered to and~~ may from time to time
26 undertake and make or cause to be made one (1) or more cost surveys for the
27 state or ~~such a~~ a trading area as he or she shall define, and when the cost
28 survey ~~shall have been~~ is made by or approved by the director, it ~~shall be~~ is
29 permissible to use the cost survey as provided in § 4-75-711(b).

30 (B) The director ~~is~~ may also ~~empowered to~~ investigate
31 price fixing.

32 (3) The director may revoke or suspend the ~~license~~ permit issued
33 under ~~the provisions of~~ this subchapter of any person who refuses or neglects
34 to comply with ~~any provisions of~~ this subchapter or any rule of the director
35 prescribed under this subchapter.

36 (b) Whenever any person fails to comply with ~~any provision of~~ this

1 subchapter or any rule of the director promulgated under this subchapter, the
2 ~~director~~ Arkansas Tobacco Control Board, upon a hearing, after giving the
3 person ten (10) days' notice in writing specifying the time and place of the
4 hearing and requiring the person to show cause why his or her ~~license~~ permit
5 should not be revoked, may revoke or suspend the ~~license~~ permit held by the
6 person.

7 (c) Any ruling, order, or decision of the ~~director~~ board shall be
8 subject to review, as provided by law, in Pulaski County Circuit Court or any
9 court of competent jurisdiction in the county in which the person affected
10 resides or does business.

11
12 4-75-707. License Permit requirement.

13 (a) ~~No~~ A person shall not engage in or conduct the business of
14 purchasing for resale or selling cigarettes without having first obtained the
15 appropriate ~~license~~ permit for that purpose.

16 (b) All ~~such licenses~~ permits for the purchasing for resale or the
17 sale of cigarettes shall be issued by the Director of Arkansas Tobacco
18 Control ~~or his or her designated agent~~, who shall make rules respecting
19 applications ~~therefor~~ for and issuance ~~thereof~~ of permits under this section.

20 (c) A wholesaler or retailer who sells or intends to sell cigarettes
21 at one (1) or more places of business shall be required to obtain a separate
22 ~~license~~ permit for each place of business.

23 (d) ~~Any~~ A person ~~licensed~~ permitted only as a wholesaler shall not
24 operate as a retailer unless the appropriate ~~license therefor~~ permit is first
25 secured, and ~~any~~ a person ~~licensed~~ permitted only as a retailer shall not
26 operate as a wholesaler unless the appropriate ~~license therefor~~ permit is
27 first secured.

28
29 SECTION 3. Arkansas Code § 26-36-303(1)(A), concerning the definition
30 of "claimant agency" for purposes of setoffs against state tax refunds, is
31 amended to add an additional subdivision to read as follows:

32 (xviii) Arkansas Tobacco Control and the Arkansas
33 Tobacco Control Board.

34
35 SECTION 4. Arkansas Code § 26-57-202 is amended to read as follows:
36 26-57-202. Legislative findings and purpose.

1 (a) It is recognized, found, and determined by the General Assembly
2 that:

3 (1) The Surgeon General has determined that the smoking of
4 cigarettes is detrimental to the health of the smoker;

5 (2) The General Assembly had already recognized this hazard many
6 years ago when it enacted § 5-27-227 regulating ~~the sale of tobacco~~ sales to
7 minors, §§ 20-27-704 – 20-27-709 regulating pricing, establishing a policy
8 for public smoking, and this subchapter, to provide for close supervision and
9 control of the sale of ~~cigarettes, other~~ tobacco products, vapor products,
10 alternative nicotine products, and e-liquid products;

11 (3) The state has a very valid governmental interest in
12 preserving and promoting the public health and welfare of its citizens; and

13 (4) It is the responsibility of the General Assembly to enact
14 legislation to protect and further this essential governmental interest.

15 (b) It is therefore the intent of this subchapter to:

16 (1) Provide for the close supervision and control of the
17 ~~licensing~~ permitting of persons to sell ~~cigarettes, other~~ tobacco products,
18 vapor products, alternative nicotine products, and e-liquid products in this
19 state in order to assure that when these products are distributed in the
20 state, they are fresh, not contaminated, and are properly taxed, stamped,
21 stored, and distributed only to persons authorized to receive these products;
22 and

23 (2) Impose ~~licenses~~ permits, fees, taxes, and restrictions on
24 the privilege of dealing in or otherwise doing business in tobacco products,
25 vapor products, alternative nicotine products, and e-liquid products in order
26 to promote the public health and welfare of the citizens of this state and to
27 protect the revenue collection procedures incorporated within this
28 subchapter.

29
30 SECTION 5. Arkansas Code § 26-57-203(1), concerning the definitions
31 used under the Arkansas Tobacco Products Tax Act of 1977, is amended to read
32 as follows:

33 (1) “Alternative nicotine product” means:

34 (A) A product that consists of or contains nicotine that
35 can be ingested into the body by chewing, smoking, absorbing, dissolving,
36 inhaling, snorting, sniffing, or by any other means; and

1 (B) "Alternative nicotine product" does not include a:
 2 (i) ~~Cigarette~~;
 3 ~~(ii)~~ Tobacco product;
 4 ~~(iii)~~(ii) Vapor product;
 5 ~~(iv)~~(iii) Product that is a drug under 21 U.S.C. §
 6 321(g)(1);
 7 ~~(v)~~(iv) Product that is a device under 21 U.S.C. §
 8 321(h); or
 9 ~~(vi)~~(v) Product that constitutes a combination drug,
 10 device, or biological product as described in 21 U.S.C. § 353(g);
 11

12 SECTION 6. Arkansas Code § 26-57-203(11)-(40), concerning the
 13 definitions used under the Arkansas Tobacco Products Tax Act of 1977, are
 14 amended to read as follows:

15 ~~(11) "Dealer's License" means a license for an entity that:~~

16 ~~(A) Represents cigarette, tobacco, vapor product,~~
 17 ~~alternative nicotine product, or e-liquid product manufacturers for the~~
 18 ~~purpose of promoting the manufacturers' products in the State of Arkansas;~~
 19 ~~and~~

20 ~~(B) May have manufacturer representative permits issued to~~
 21 ~~its sales representatives;~~

22 ~~(12)~~(11) "Directory" means:

23 (A) The directory compiled by the Attorney General under §
 24 26-57-1303, if the reference is to the directory used in Arkansas; or

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

27 ~~(13)~~(12) "E-liquid" and "e-liquid product" means a liquid
 28 product, which may or may not contain nicotine, that is ~~vaporized and~~ inhaled
 29 when using a vapor product, and that may or may not include without
 30 limitation propylene glycol, vegetable glycerin, nicotine from any source,
 31 and flavorings;

32 ~~(14)~~(13) "First sale" means:

33 (A) The first sale within this state of tobacco products
 34 made by a manufacturer or any other person to a ~~licensed~~ permitted
 35 wholesaler, a ~~licensed~~ permitted vendor, or a ~~licensed~~ permitted retailer;
 36 and

1 (B) The first possession of a tobacco product within this
2 state that was purchased outside of this state and subsequently brought into
3 this state by any person for the purpose of selling the tobacco product at
4 retail to consumers in this state;

5 ~~(15)(A) "General tobacco products, vapor products, and~~
6 ~~alternative nicotine products vendor" means a person that:~~

7 ~~(i) Operates a vending machine or uses another~~
8 ~~mechanical device from which cigarettes, other tobacco products, or vapor~~
9 ~~products, alternative nicotine products, and e-liquid products are delivered~~
10 ~~to the consumer by inserting coins into the machine or device; and~~

11 ~~(ii) Purchases tobacco products or vapor products,~~
12 ~~alternative nicotine products, and e-liquid products only from licensed~~
13 ~~wholesalers or licensed retailers.~~

14 ~~(B) A general tobacco products, vapor products, and~~
15 ~~alternative nicotine products vendor may operate licensed vending machines on~~
16 ~~the general tobacco products, vapor products, and alternative nicotine~~
17 ~~products vendor's own premises and on the premises of others as a principal~~
18 ~~business;~~

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

22 ~~(17)(A)~~ (14)(A) "Importer" means a person that:

23 (i) Is the first person in the United States to
24 which non-tax-paid ~~cigarettes,~~ tobacco products, ~~or~~ vapor products,
25 alternative nicotine products, ~~and~~ or e-liquid products manufactured in a
26 foreign country are shipped or consigned; or

27 (ii) Removes ~~cigarettes,~~ tobacco products, ~~or~~ vapor
28 products, alternative nicotine products, ~~and~~ or e-liquid products for sale or
29 consumption in the United States from a customs-bonded manufacturing
30 warehouse.

31 (B) "Importer" includes a sales entity affiliate of the
32 importer;

33 (15) "Invoice" means documentation that is:

34 (A) Made contemporaneously with a sale or purchase of
35 tobacco products, vapor products, alternative nicotine products, or e-liquid
36 products; and

1 (B) Sufficient to show an itemized list of the specific
2 merchandise or inventory shipped, purchased, or sold, including without
3 limitation the quantity and prices charged;

4 ~~(18)(A)~~(16)(A) “Invoice price” means the price that a wholesaler
5 or retailer of tobacco products, vapor products, alternative nicotine
6 products, or e-liquid products pays to a manufacturer, importer, distributor,
7 or any other seller to acquire tobacco products, vapor products, alternative
8 nicotine products, ~~and~~ or e-liquid products that the purchaser subsequently
9 sells in the state.

10 (B) In the absence of proof by the person possessing the
11 tobacco products, vapor products, alternative nicotine products, or e-liquid
12 products of the price at which the tobacco products, vapor products,
13 alternative nicotine products, or e-liquid products were purchased, “invoice
14 price” shall be the highest price, in the normal course of business and
15 before any discount, at which the manufacturer of the tobacco products, vapor
16 products, alternative nicotine products, or e-liquid products sells the
17 tobacco products, vapor products, alternative nicotine products, or e-liquid
18 products in question;

19 ~~(19)~~(17) “Knowing” means, with respect to a violation or
20 failure, a violation or failure in which the person knowingly engages in
21 conduct without a good faith belief that the conduct is consistent with this
22 subchapter;

23 ~~(20)~~ “Licensed” means that the person has received a license or
24 permit from the Director of Arkansas Tobacco Control and is otherwise
25 qualified to do business in this state;

26 ~~(21)(A)~~(18)(A) “Manufacturer” means a person that manufactures,
27 fabricates, assembles, or processes a tobacco product or manufactures or
28 fabricates a vapor product, alternative nicotine product, or e-liquid
29 product, including without limitation federally licensed importers and
30 federally licensed distributors that deal in tobacco products, vapor
31 products, alternative nicotine products, or e-liquid products.

32 (B) “Manufacturer” includes a sales entity affiliate of
33 the manufacturer or any other entity representing the manufacturer with
34 regard to the sale of tobacco products, vapor products, alternative nicotine
35 products, or e-liquid products produced by the manufacturer to wholesalers or
36 ~~licensed~~ permitted retailers.

1 (C) "Manufacturer" specifically includes a person that
2 mixes, compounds, repackages, or resizes ~~e-liquids~~ e-liquid products or vapor
3 products;

4 (19)(A) "Minor" means a person who is under twenty-one (21)
5 years of age.

6 (B) "Minor" does not include a person who:

7 (i) Is under twenty-one (21) years of age if the
8 person presents a military identification card establishing that he or she is
9 a member of the United States Armed Forces; or

10 (ii) Has attained nineteen (19) years of age as of
11 December 31, 2019;

12 ~~(22)(20)~~ "Nonparticipating manufacturer" means the same as
13 defined in § 26-57-1302;

14 ~~(23)(A)(21)(A)~~ "Package" means a pack or other container on
15 which a stamp could be applied consistent with and as required by this
16 subchapter that contains one (1) or more individual cigarettes for sale.

17 (B) "Package" does not include a container of multiple
18 packages or a carton;

19 ~~(24)(22)~~ "Participating manufacturer" means the same as defined
20 in § 26-57-1302;

21 (23) "Permitted" means that a person has received a permit from
22 the Director of Arkansas Tobacco Control and is otherwise qualified to do
23 business in this state;

24 ~~(25)(24)~~ "Person" means an individual, retailer, wholesaler,
25 manufacturer, firm, association, company, partnership, limited liability
26 company, corporation, joint-stock company, club, agency, syndicate, the State
27 of Arkansas, county, municipal corporation or other political subdivision of
28 the state, receiver, trustee, fiduciary, or trade association;

29 ~~(26)(25)~~ "Place of business" means the ~~place where~~ physical
30 location:

31 (A) Where orders are taken or received or where tobacco
32 products, vapor products, alternative nicotine products, or e-liquid products
33 are sold; and

34 (B) That is on file with Arkansas Tobacco Control;

35 ~~(27)(26)~~ "Purchase" means an acquisition in any manner or by any
36 means for any consideration, including without limitation transporting or

1 receiving product in connection with a purchase;

2 ~~(28)~~ “Restricted tobacco products vendor” means a person that is
3 licensed to operate vending machines owned by the person only on the person’s
4 own premises and is otherwise subject to all other restrictions imposed on a
5 general tobacco products vendor;

6 ~~(29)~~ “Retail exclusive vapor product and alternative nicotine
7 product store” means a retail store that generates ninety percent (90%) or
8 more of its gross revenue from the sale and service of vapor products,
9 alternative nicotine products, or e-liquid products;

10 ~~(30)~~(27) “Retailer” means a person that purchases tobacco
11 products, vapor products, alternative nicotine products, or e-liquid products
12 from ~~licensed~~ permitted wholesalers for the purpose of selling the tobacco
13 products, vapor products, alternative nicotine products, or e-liquid products
14 in person and over the counter at retail to consumers;

15 ~~(31)~~(A)~~(28)~~(A) “Sale” or “sell” means a transfer, exchange, or
16 barter in any manner or by any means for any consideration, including
17 distributing or shipping product in connection with a sale.

18 (B) A sale “in” or “into” a state refers to the state in
19 which the destination point of the product is located in the sale without
20 regard to where title was transferred.

21 (C) A sale “from” a state refers to the sale of ~~cigarettes~~
22 that are a product that is located in that state to the destination in
23 question without regard to where title was transferred;

24 ~~(32)~~(A)~~(29)~~(A) “Sales entity affiliate” means an entity that:

25 (i) Sells ~~cigarettes or other~~ tobacco products,
26 vapor products, alternative nicotine products, or e-liquid products that the
27 entity acquires directly from a manufacturer or importer; and

28 (ii) Is affiliated with the manufacturer or importer
29 from which the entity acquires the ~~cigarettes or other~~ tobacco products,
30 vapor products, alternative nicotine products, or e-liquid products.

31 (B) “Sales entity affiliate” includes entities in a
32 relationship in which one (1) entity directly or indirectly through one (1)
33 or more intermediaries controls, is controlled by, or is under common control
34 with the other entity;

35 ~~(33)~~(30) “Salesperson” means the agent or employee of a
36 wholesaler or a manufacturer that sells or offers for sale to ~~licensed~~

1 permitted wholesalers or ~~licensed~~ permitted retailers or that solicits for
2 sale, takes orders for, or in any manner promotes the sale or use of tobacco
3 products, vapor products, alternative nicotine products, or e-liquid
4 products;

5 ~~(34)(A)(31)~~ “Stamps” means the Arkansas cigarette stamps
6 denoting the tax on cigarettes,

7 ~~(B) When~~ which when affixed to a container of cigarettes,
8 ~~the stamps~~ indicate that the tax has been paid;

9 ~~(35)(32)~~ “Tobacco products” means all products containing
10 tobacco for consumption, including without limitation cigarettes, cigars,
11 little cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking
12 tobacco, including pipe tobacco, and smoking tobacco substitutes;

13 ~~(36) “Tobacco products, vapor products, alternative nicotine~~
14 ~~products, or e-liquid products vending machine” means a vending machine from~~
15 ~~which tobacco products, vapor products, alternative nicotine products, or e-~~
16 ~~liquid products are sold;~~

17 ~~(37)(33)~~ “Unstamped cigarettes” means cigarettes that are not
18 contained in a package bearing a stamp permitted under this chapter;

19 ~~(38)(34)~~ “Vapor product” means an electronic oral device of any
20 size or shape that contains a vapor of nicotine, e-liquid, or any ~~another~~
21 other substance that when used or inhaled simulates smoking, regardless of
22 whether a visible vapor is produced, including without limitation a device
23 that:

24 (A) Is composed of a heating element, battery, electronic
25 circuit, chemical process, mechanical device, or a combination of heating
26 element, battery, electronic circuit, chemical process, or mechanical device;

27 (B) Works in combination with a cartridge, other
28 container, or liquid delivery device containing nicotine, e-liquid, or any
29 other substance and manufactured for use with vapor products;

30 (C) Is manufactured, distributed, marketed, or sold as any
31 type or derivation of a vapor product, e-cigarette, e-cigar, e-pipe, or any
32 other product name or descriptor; and

33 (D) Does not include a product regulated as a drug or
34 device by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.,
35 as it existed on January 1, 2015;

36 (35) "Vendor" means a person that:

1 (A) Operates a vending machine or uses another mechanical
 2 device from which tobacco products, vapor products, alternative nicotine
 3 products, or e-liquid products are delivered to the consumer by inserting
 4 coins into the vending machine or other mechanical device; and

5 (B) Purchases tobacco products, vapor products,
 6 alternative nicotine products, or e-liquid products only from a permitted
 7 wholesaler or permitted retailer;

8 ~~(39)~~(36) “Warehouse” means a place where tobacco products, vapor
 9 products, alternative nicotine products, or e-liquid products are stored for
 10 another person and to or from which place the tobacco products, vapor
 11 products, alternative nicotine products, or e-liquid products are shipped or
 12 delivered upon order by the owner of the tobacco products, vapor products,
 13 alternative nicotine products, or e-liquid products, to the warehouse; and

14 ~~(40)~~(37) “Wholesaler” means a person other than a manufacturer
 15 or a person owned or operated by a manufacturer that:

16 (A) Does business within the state;

17 (B) Purchases ~~cigarettes, other~~ tobacco products, vapor
 18 products, alternative nicotine products, or e-liquid products from any
 19 source;

20 (C) Distributes or sells the ~~cigarettes, other~~ tobacco
 21 products, vapor products, alternative nicotine products, or e-liquid products
 22 to other wholesalers, vendors, or retailers; and

23 (D) Does not distribute or sell the ~~cigarettes, other~~
 24 tobacco products, vapor products, alternative nicotine products, or e-liquid
 25 products at retail to consumers.

26
 27 SECTION 7. Arkansas Code § 26-57-204 is amended to read as follows:
 28 26-57-204. Violations.

29 ~~Any~~ A person who violates any of the sections of this subchapter: ~~for~~

30 (1) For which a specific penalty is not provided upon conviction
 31 is guilty of a criminal violation; and

32 (2) Is subject to administrative civil penalties under this
 33 subchapter.

34
 35 SECTION 8. Arkansas Code §§ 26-57-206 and 26-57-207 are amended to
 36 read as follows:

1 26-57-206. Rules.

2 The Director of the Department of Finance and Administration, and the
3 Director of Arkansas Tobacco Control, ~~and the Arkansas Tobacco Control Board~~
4 may promulgate rules for the proper enforcement of their powers and duties as
5 specifically prescribed by this subchapter.

6
7 26-57-207. Privilege to do business.

8 The business of handling, receiving, possessing, storing, distributing,
9 taking orders for, soliciting orders of, selling, offering for sale, and
10 dealing in, through sale, barter, or exchange, ~~any cigarettes, other~~ tobacco
11 products, vapor products, alternative nicotine products, or e-liquid products
12 is declared to be a privilege under the Arkansas Constitution and laws of the
13 State of Arkansas.

14
15 SECTION 9. Arkansas Code § 26-57-208(3) and (4), concerning the levy
16 of tax under the Arkansas Tobacco Products Tax Act of 1977, are repealed.

17 ~~(3)(A)(i) The taxes levied by this section shall be reported and~~
18 ~~paid by wholesalers that shall be licensed under § 26-57-214.~~

19 ~~(ii) However, unless a retailer has confirmed and~~
20 ~~establishes by clear and convincing evidence that the tax levied under this~~
21 ~~section has been paid previously on the tobacco products, the retailer is~~
22 ~~liable for reporting and paying these taxes when the retailer obtains tobacco~~
23 ~~products from a person other than a wholesaler licensed under § 26-57-214.~~

24 ~~(B)(i) A taxpayer that fails to report and remit the~~
25 ~~tobacco tax due on tobacco products obtained from any person other than a~~
26 ~~wholesaler that is licensed under § 26-57-214 is subject to the following~~
27 ~~penalties:~~

28 ~~(a) Five percent (5%) of the total tobacco tax~~
29 ~~due for the first offense;~~

30 ~~(b) Twenty percent (20%) of the total tobacco~~
31 ~~tax due for the second offense; and~~

32 ~~(c) Twenty five percent (25%) of the total~~
33 ~~tobacco tax due for the third and any subsequent offenses.~~

34 ~~(ii) In addition, the taxpayer's retail~~
35 ~~cigarette/tobacco permit shall be revoked for a period of ninety (90) days~~
36 ~~for the third and any subsequent offenses.~~

1 ~~(C) This subdivision (3) does not affect § 26-57-228; and~~
2 ~~(4) As provided in § 26-57-244, the director shall have the~~
3 ~~authority to make a direct assessment of excise tax against any person in~~
4 ~~possession of an untaxed tobacco product or unstamped cigarettes.~~

5
6 SECTION 10. Arkansas Code § 26-57-209 is amended to read as follows:

7 26-57-209. Exemption from tax.

8 (a) The following are not subject to the taxes imposed under § 26-57-
9 208:

10 (1) Tobacco products sold to military departments of the United
11 States or the state for resale on military bases within the state;

12 (2) Tobacco products sold and delivered to authorized purchasers
13 outside the state for resale; and

14 (3) Cigarettes sold and delivered to other wholesalers ~~licensed~~
15 permitted under this subchapter.

16 (b) A person ~~licensed~~ permitted under this chapter that sells
17 cigarettes to military departments of the United States or the state for
18 resale on military bases under this section shall affix a tax-exempt stamp on
19 the package, carton, or other container of cigarettes before transfer,
20 shipment, or delivery.

21
22 SECTION 11. Arkansas Code § 26-57-211(a), concerning the payment of
23 taxes, reports, and remittance of taxes by wholesalers under the Arkansas
24 Tobacco Products Tax Act of 1977, is amended to read as follows:

25 (a)(1)(A) The taxes levied by this subchapter shall be reported and
26 paid by wholesalers ~~licensed~~ permitted under § 26-57-214.

27 (B) However, retailers shall be liable for reporting and
28 paying these taxes when a retailer purchases tobacco products directly from a
29 manufacturer or from a wholesaler or distributor not ~~licensed~~ permitted under
30 § 26-57-214.

31 (2)(A) A taxpayer who fails to report and remit the tobacco tax
32 due on tobacco products purchased from manufacturers, distributors, or
33 wholesalers who are not ~~licensed~~ permitted under § 26-57-214 shall be subject
34 to the following penalties:

35 (i) Five percent (5%) of the total tobacco tax due
36 for the first offense;

1 (ii) Twenty percent (20%) of the total tobacco tax
2 due for the second offense; and

3 (iii) Twenty-five percent (25%) of the total tobacco
4 tax due for the third and any subsequent offenses.

5 (B) In addition, the taxpayer's retail ~~cigarette permit or~~
6 ~~retail tobacco permit or both~~ shall be revoked for a period of ninety (90)
7 days for the third and any subsequent offenses.

8 (3) This subsection does not affect § 26-57-228.

9 (4) As provided in § 26-57-244, the Director of the Department
10 of Finance and Administration may make a direct assessment of excise tax
11 against a person in possession of an untaxed tobacco product or unstamped
12 cigarettes.

13
14 SECTION 12. Arkansas Code §§ 26-57-212 – 26-57-216 are amended to read
15 as follows:

16 26-57-212. Wholesalers, ~~warehousemen~~ and warehouses – Reports, payment
17 of tax, and records.

18 (a)~~(1)~~ Every ~~licensed~~ permitted wholesaler and warehouse that handles,
19 receives, stores, sells, and disposes of tobacco products, vapor products,
20 alternative nicotine products, or e-liquid products in any manner in this
21 state shall file a report with the Director of the Department of Finance and
22 Administration on or before the fifteenth day of each month.

23 ~~(2) Retailers shall be liable for reporting and paying these~~
24 ~~taxes when a retailer purchases tobacco products directly from a manufacturer~~
25 ~~or from a wholesaler or distributor not licensed pursuant to § 26-57-214.~~

26 ~~(3)(A) Any taxpayer who fails to report and remit the tobacco~~
27 ~~tax due on tobacco products purchased from manufacturers, distributors, or~~
28 ~~wholesalers who are not licensed under § 26-57-214 shall be subject to the~~
29 ~~following penalties:~~

30 ~~(i) Five percent (5%) of the total tobacco tax due~~
31 ~~for the first offense;~~

32 ~~(ii) Twenty percent (20%) of the total tobacco tax~~
33 ~~due for the second offense; and~~

34 ~~(iii) Twenty five percent (25%) of the total tobacco~~
35 ~~tax due for the third and any subsequent offenses.~~

36 ~~(B) In addition, the taxpayer's retail cigarette permit,~~

1 ~~or retail tobacco permit, or both, shall be revoked for a period of ninety~~
2 ~~(90) days for the third and any subsequent offenses.~~

3 ~~(4) The provisions of this subsection shall not affect the~~
4 ~~provisions of § 26-57-228.~~

5 (b) The report required under subsection (a) of this section shall
6 include:

7 (1) A statement of the tobacco products, vapor products,
8 alternative nicotine products, and e-liquid products on hand at the beginning
9 of the preceding month;

10 (2) The receipts and disbursements of tobacco products, vapor
11 products, alternative nicotine products, and e-liquid products handled during
12 the preceding month; and

13 (3) Any other information about the purchases and sales as may
14 be prescribed by the director.

15 (c) All taxes due for the preceding month shall be remitted to the
16 director at the time the report required under subsection (a) of this section
17 is filed.

18 (d)(1) Every wholesaler and warehouse shall permit personnel of the
19 Department of Finance and Administration and auditors or agents of Arkansas
20 Tobacco Control to enter into and to inspect their stock of tobacco products,
21 vapor products, alternative nicotine products, and e-liquid products and all
22 books, invoices, and any documents and records relating to receipts and
23 disbursements of tobacco products, vapor products, alternative nicotine
24 products, and e-liquid products.

25 (2) Auditors and agents shall not release to the Arkansas
26 Tobacco Control Board or to the public any information identifying customers
27 of the manufacturer, wholesaler, or warehouse except when necessary to notify
28 the board of alleged violations of this subchapter.

29 (e)(1)(A) All purchases of ~~cigars, cigarettes, cigarette papers,~~
30 ~~smoking tobacco, and other tobacco products,~~ vapor products, alternative
31 nicotine products, e-liquid products, and cigarette papers for distribution
32 within the State of Arkansas by a nonresident ~~tobacco products~~ wholesaler
33 shall be evidenced by a separate invoice from the seller correctly showing
34 the date of purchase and the quantity of each of the articles purchased by
35 the wholesaler for distribution within Arkansas.

36 (B) Such stock purchased for distribution within Arkansas

1 shall be kept in an entirely separate part of the building, separate and
2 apart from stock purchased for sale or distribution in another state.

3 (2) At the time of shipping or delivering ~~any cigars,~~
4 ~~cigarettes, cigarette papers, smoking tobaccos, or other~~ tobacco products,
5 vapor products, alternative nicotine products, e-liquid products, or
6 cigarette papers into the State of Arkansas, a nonresident ~~tobacco products~~
7 wholesaler shall make a true duplicate invoice of the transaction that shows
8 full and complete details of the sale or delivery of those articles and shall
9 retain the duplicate invoice subject to use and inspection by the department
10 and Arkansas Tobacco Control for a period of three (3) years.

11 (3) Nonresident ~~tobacco~~ wholesalers shall also keep a record of
12 all ~~cigarettes, cigarette papers, cigars, smoking tobaccos, and other~~ tobacco
13 products, vapor products, alternative nicotine products, e-liquid products,
14 and cigarette papers purchased by them for distribution within the State of
15 Arkansas, and all books, records, and memoranda pertaining to the purchase
16 and sale of the tobacco products, vapor products, alternative nicotine
17 products, e-liquid products, and cigarette papers shall be subject to
18 inspection by the department and ~~the board~~ Arkansas Tobacco Control.

19
20 26-57-213. Invoices and other required forms.

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

24 (b) Copies of all invoices for the purchase or sale of any tobacco
25 products, vapor products, alternative nicotine products, or e-liquid products
26 shall be retained by each manufacturer, wholesaler, vendor, and retailer for
27 a period of at least three (3) years subject to examination by the Director
28 of the Department of Finance and Administration and the Director of Arkansas
29 Tobacco Control or their authorized agents upon demand at any time during
30 regular business hours.

31 (c) Retailers shall:

32 (1) Maintain ~~or produce~~ copies of at least the last ~~thirty (30)~~
33 ninety (90) days of tobacco product, vapor product, alternative nicotine
34 product, or e-liquid product invoices, which the retailer shall provide
35 immediately upon demand; and

36 (2)(A) Make the invoices that are older than ninety (90) days

1 available upon demand at any time during normal business hours in the retail
2 store.

3 (B) Except as provided in subdivision (c)(2)(C) of this
4 section, an agent of Arkansas Tobacco Control may determine a reasonable time
5 frame for which invoices are to be provided under subdivision (c)(2)(A) of
6 this section.

7 (C) An invoice that is provided seventy-two (72) hours or
8 more after the demand shall not be considered for purposes of determining a
9 violation of this subsection;

10 (3) Retain invoices for all tobacco products, vapor products,
11 alternative nicotine products, and e-liquid products in the retail store even
12 if the invoice for the tobacco products, vapor products, alternative nicotine
13 products, or e-liquid products is older than three (3) years;

14 (4) Maintain a copy of the signed server awareness forms for
15 each employee of the retailer who engages in the sale of tobacco products,
16 vapor products, alternative nicotine products, or e-liquid products, which
17 the retailer shall provide immediately upon demand;

18 (5)(A) Maintain a copy of any complete transfer forms showing:

19 (i) The tobacco products, vapor products,
20 alternative nicotine products, or e-liquid products that were transferred;

21 (ii) The permitted location from which the tobacco
22 products, vapor products, alternative nicotine products, or e-liquid products
23 were transferred; and

24 (iii) When the transfer occurred.

25 (B) A transfer form shall be completed contemporaneously
26 with the transfer and shall be provided immediately by the retailer upon
27 demand; and

28 (6) If any inventory was submitted with a permit application,
29 maintain a copy of the submitted inventory form, which the retailer shall
30 provide immediately upon demand.

31 (d) Wholesalers, ~~dealers,~~ and manufacturers shall maintain three (3)
32 years of tobacco product, vapor product, alternative nicotine product, ~~or~~ and
33 e-liquid product invoices that are available upon demand during normal
34 business hours in the permitted location.

35 (e) An invoice from a wholesaler to a retailer shall contain the name
36 or other identifying information of the wholesaler and the retailer.

1
2 26-57-214. Registration and ~~licensing~~ permitting required ~~prior to~~
3 before doing business.

4 (a) A person shall not deal with, deliver or cause to be delivered to
5 a retailer or consumer, or otherwise do business in tobacco products, vapor
6 products, alternative nicotine products, or e-liquid products in this state
7 without ~~having first registered~~ registering with the Director of Arkansas
8 Tobacco Control and ~~obtained~~ obtaining a permit ~~or license~~ for that purpose,
9 ~~except that a person purchasing an existing permitted retail location may~~
10 ~~operate under the selling owner's permit for a period not to exceed thirty~~
11 ~~(30) days from the date of sale to allow the purchasing owner time to secure~~
12 ~~a permit.~~

13 (b) All permits ~~and licenses~~ shall be issued by the director.

14 (c) A manufacturer, wholesaler, vendor, or ~~retailer, or general~~
15 ~~tobacco products, vapor products, or alternative nicotine products~~ vendor who
16 intends to sell tobacco products, vapor products, alternative nicotine
17 products, or e-liquid products at or from one (1) or more places of business
18 owned, rented, or leased by it shall obtain a separate license permit for
19 each ~~such~~ place of business.

20 (d)(1) ~~Any~~ A person ~~licensed~~ permitted as a wholesaler shall not
21 operate as a retailer unless a retailer's license permit is first secured.

22 (2) ~~Any~~ A person ~~licensed~~ permitted as a retailer shall not
23 operate as a wholesaler unless a wholesaler's license permit is first
24 secured.

25 ~~(e) Any person who pleads guilty or nolo contendere to or is found~~
26 ~~guilty of buying, selling, or otherwise doing business in cigarettes, tobacco~~
27 ~~products, vapor products, alternative nicotine products, or e-liquid products~~
28 ~~in this state without first obtaining the appropriate license or permit is~~
29 ~~guilty of a Class A misdemeanor.~~

30
31 26-57-215. Permits ~~and licenses~~ - Types.

32 (a)~~(1)~~ Each person listed in this section, before commencing business,
33 or if already in business, before continuing, shall pay an annual privilege
34 fee and secure a permit ~~or license~~ from the Director of Arkansas Tobacco
35 Control.

36 ~~(2) However, a person purchasing an existing permitted retail~~

1 ~~location may operate under the selling owner's permit for a period not to~~
2 ~~exceed thirty (30) days from the date of sale to allow the purchasing owner~~
3 ~~time to secure a permit.~~

4 (b)(1) In addition to securing a permit ~~or license~~ under subsection
5 (a) of this section, a manufacturer whose products are sold in this state
6 shall register with the Director of the Department of Finance and
7 Administration. ~~A manufacturer whose products are sold in this state is not~~
8 ~~required to obtain a dealer's license for an employee operating as the~~
9 ~~manufacturer's sales representative if the manufacturer holds a license or~~
10 ~~permit under subsection (a) of this section.~~

11 (2)(A) ~~Every wholesaler of cigarettes who operates a place of~~
12 ~~business shall secure a wholesale cigarette permit and every wholesaler of~~
13 ~~any vapor products, alternative nicotine products, e-liquid products, or~~
14 ~~other tobacco products except cigarettes who operates a place of business~~
15 ~~shall secure a wholesale tobacco, vapor product, and alternative nicotine~~
16 ~~product permit. A wholesaler of tobacco products, vapor products,~~
17 ~~alternative nicotine products, or e-liquid products shall secure the proper~~
18 ~~wholesale permit.~~

19 (B) ~~A wholesaler doing business in both cigarettes and~~
20 ~~vapor products, alternative nicotine products, e-liquid products, or other~~
21 ~~tobacco products shall secure both a wholesale cigarette permit and a~~
22 ~~wholesale tobacco, vapor product, and alternative nicotine product permit.~~

23 (3)(A) Every wholesaler's or manufacturer's salesperson of any
24 tobacco ~~product~~ products, vapor product, alternative nicotine product, or e-
25 liquid product who contacts a retailer in this state for the purpose of
26 soliciting, ~~or taking,~~ and or processing orders for the sale of tobacco
27 products, vapor products, alternative nicotine products, or e-liquid products
28 or who through contact delivers or causes delivery of any tobacco ~~product~~
29 products, vapor product, alternative nicotine product, or e-liquid product to
30 a retailer in this state, shall first secure a salesperson's license permit.

31 (B) Application shall be made by the wholesaler or ~~general~~
32 ~~tobacco products vendor~~ manufacturer who is the salesperson's employer.

33 (C) A salesperson's license permit is not transferable to
34 another employer and must be surrendered to the Director of Arkansas Tobacco
35 Control by the employer upon termination of the salesperson's employment.

36 (4)(A) Every retailer of ~~cigarettes, other~~ tobacco products,

1 vapor products, alternative nicotine products, or e-liquid products that
2 operates a place of business shall secure a the proper retail ~~cigarette,~~
3 ~~tobacco, vapor products, alternative nicotine products, or e-liquid products~~
4 ~~permit, and every exclusive retailer of vapor products, alternative nicotine~~
5 ~~products, or e-liquid products that operates a place of business shall secure~~
6 ~~a retail exclusive vapor product and alternative nicotine product store~~
7 ~~permit.~~

8 ~~(B)(5)~~ Retail permit holders and dealer license holders A
9 current permit holder may secure temporary permits to operate at picnics,
10 fairs, carnivals, circuses, or any other temporary public gathering for
11 periods not to exceed ten (10) days for a fee of five dollars (\$5.00).

12 ~~(5)~~ A person engaged in the business of selling, leasing,
13 ~~renting, or otherwise disposing of or dealing with a vending machine~~
14 ~~containing tobacco products, vapor products, alternative nicotine products,~~
15 ~~or e-liquid products in this state shall secure a general tobacco products,~~
16 ~~vapor products, and alternative nicotine products vending permit.~~

17 (6)(A)(i) Every ~~general tobacco products, vapor products, and~~
18 ~~alternative nicotine products~~ vendor shall obtain a proper license vending
19 machine permit from the Director of Arkansas Tobacco Control. However,
20 municipal corporations may license and tax the privilege of doing business as
21 a ~~general tobacco products, vapor products, and alternative nicotine products~~
22 vendor in cities where the vendors maintain an established place of business,
23 provided that the machine license tax imposed may not exceed fifty percent
24 (50%) of the amounts levied on the vendors' ~~licenses~~ permits under this
25 subchapter.

26 (ii) If a municipality by ordinance licenses or
27 taxes the privilege of doing business as a ~~general tobacco products, vapor~~
28 ~~products, and alternative nicotine products~~ vendor, proof that the license is
29 in good standing ~~shall be~~ is a mandatory condition for the issuance of a
30 state ~~license~~ permit required under this section.

31 (B)(i)(a) In addition, every ~~general tobacco products,~~
32 ~~vapor products, and alternative nicotine products~~ vendor shall obtain a
33 permit stamp for each machine of any type placed in operation in this state
34 for the purpose of vending any tobacco products, vapor products, alternative
35 nicotine products, or e-liquid products.

36 (b) This stamp shall be affixed to the machine

1 in a conspicuous location together with a decal or card reciting the name,
2 address, and ~~license~~ permit number of the vendor operating the machine.

3 (ii) ~~No A stamp will~~ shall not be issued for ~~any a~~
4 machine upon which the state gross receipts or state compensating tax has not
5 been paid, and the Director of Arkansas Tobacco Control shall require proof
6 of payment before the initial issue of a stamp for any vending machine
7 containing tobacco products, vapor products, alternative nicotine products,
8 or e-liquid products.

9 (c)(1) ~~Permits and licenses~~ are issued as follows:

10 (A) A permit for a sole ~~proprietor~~ proprietorship is
11 issued in the ~~sole proprietor's~~ owner's name and in the ~~sole proprietor's~~
12 fictitious business name, if any;

13 (B)(i) A permit for a partnership or limited liability
14 company is issued in the name of:

15 (a) The managing partner or managing member;
16 and

17 (b) The partnership or limited liability
18 company.

19 (ii) If the managing partner or managing member of a
20 limited liability company is a partnership, limited liability company, or
21 corporation, then the permit shall be issued in the name of:

22 (a) The president or chief executive officer;
23 and

24 (b) The partnership or limited liability
25 company; and

26 (C) A permit for a publicly traded or nonpublicly traded
27 corporation is issued in the name of the president or chief executive officer
28 of the corporation and in the name of the corporation.

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

32 (A) The managing partner, limited liability company
33 managing member, or president or chief executive officer of a corporation,
34 partnership, or limited liability company; or

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

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

7 (2)~~(A)~~ When a partnership or limited liability company permitted
8 under this subchapter changes, removes, or replaces the managing partner,
9 managing member, president, or chief executive officer, the existing permit
10 issued under this subchapter is void, and the partnership or limited
11 liability company shall apply for and may be issued a new permit under this
12 subchapter.

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

17 (3)~~(A)~~ When a nonpublicly traded corporation permitted under
18 this subchapter changes, removes, or replaces the president or chief
19 executive officer named on the permit or changes, removes, or replaces a
20 stockholder who owns fifty percent (50%) or more of the total voting shares
21 of the nonpublicly traded corporation's stock, the permit issued under this
22 subchapter is void, and the nonpublicly traded corporation shall apply for
23 and may be issued a new permit under this subchapter.

24 ~~(B) However, the nonpublicly traded corporation may~~
25 ~~operate under the prior permit for a period not to exceed thirty (30) days~~
26 ~~from the date of removal or change to allow the nonpublicly traded~~
27 ~~corporation time to secure a new permit.~~

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

35 ~~(B) However, the publicly traded corporation may operate~~
36 ~~under the prior permit for a period of not more than thirty (30) days from~~

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

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

6

7 26-57-216. Permits ~~and licenses~~ – Number and location – Background
 8 check required.

9 The Director of Arkansas Tobacco Control and the Arkansas Tobacco
 10 Control Board may determine ~~in its reasonable discretion and~~ the following in
 11 accordance with this subchapter:

12 (1) The number of ~~licenses~~ permits to be granted in the state;

13 (2)(A) The locations thereof.

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

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

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

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

21 (ii) A business owned or operated, in whole or in
 22 part, by a person who has pleaded guilty or nolo contendere to or been found
 23 guilty of a felony.

24 (C) Arkansas Tobacco Control shall conduct a criminal
 25 justice background check on each permit applicant and application, utilizing
 26 its Arkansas Crime Information Center access as a law enforcement agency, in
 27 accordance with §§ 12-12-1008 – 12-12-1011.

28

29 SECTION 13. Arkansas Code §§ 26-57-219 – 26-57-223 are amended to read
 30 as follows:

31 26-57-219. Permits ~~and licenses~~ – Annual privilege ~~tax fees~~.

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

34 (1) Wholesale ~~Cigarette~~ Permit (Tobacco Products, Vapor
 35 Products, Alternative Nicotine Products, or E-liquid Products) \$
 36 ~~500.00~~ \$1,000

1 (2) ~~Wholesale Tobacco, Vapor Product, and Alternative Nicotine~~
2 ~~Product Permit~~ 500.00

3 ~~(3) General Tobacco Products, Vapor Products, and Alternative~~
4 ~~Nicotine Products Vending Vendor Permit (vendor)~~ 100.00 \$100

5 ~~(4)(3) Tobacco Products, Vapor Products, and Alternative~~
6 ~~Nicotine Products Vending Machine License, per machine Permit (per machine)~~
7 \$10.00

8 ~~(5)(4) Retail Cigarette, Tobacco, Vapor Product, and Alternative~~
9 ~~Nicotine Product Permit (Tobacco Products, Vapor Products, Alternative~~
10 ~~Nicotine Products, or E-liquid Products)~~ 50.00 \$100

11 ~~(6)(5) Retail Exclusive Vapor Product and Alternative Nicotine~~
12 ~~E-liquid Product Only Permit~~ 100.00 \$50.00

13 ~~(7)(6) Wholesale Salesperson's License Wholesaler's Salesperson~~
14 ~~Permit~~ \$25.00

15 ~~(8) Dealer's License~~ 25.00

16 ~~(9)(7) Manufacturer's Representative Fee Salesperson Permit~~
17 \$25.00

18 ~~(10)(8) Manufacturer Cigarette Only Permit~~ 500.00 \$500

19 ~~(11)(A)(9)(A) Manufacturer Tobacco, Vapor Product, Products and~~
20 ~~Alternative Nicotine Product Products Only Permit~~ 500.00 \$500

21 (B) Notwithstanding subdivision ~~(a)(11)(A)~~ (a)(9)(A) of
22 this section, ~~tobacco~~ manufacturers or importers who deal solely in cigars
23 may submit a copy of their current federal tobacco import license or federal
24 tobacco manufacturers' license to Arkansas Tobacco Control when applying for
25 a Manufacturer Tobacco, ~~Vapor Product, Products~~ and Alternative Nicotine
26 ~~Product Products Only Permit~~ to receive the permit at no cost.

27 (10) Manufacturer Vapor Product and E-liquid Product Only Permit
28 \$500

29 (11) Vapor Product and E-liquid Product Exclusive Permit
30 (Manufacturer, Wholesaler, and Retailer) \$1,000

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

33 (2)(A) Upon the failure to timely renew a permit ~~or license~~
34 issued under this subchapter, a late fee of two (2) times the amount of the
35 permit ~~or license~~ fee in question shall be owed in addition to the annual
36 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) A permit ~~or license~~ shall not be issued to the applicant
6 until the late fee and the ~~license or~~ permit fee have been paid.

7 (c) A permit ~~or license~~ issued under this subchapter shall not be
8 renewed for a permit ~~or license~~ holder who is delinquent more than ninety
9 (90) days on a privilege fee, tax relating to the sale or dispensing of
10 ~~cigarettes or~~ tobacco products, vapor products, alternative nicotine
11 products, or e-liquid products, or any other state and local tax due the
12 Director of the Department of Finance and Administration.

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

18 (e) A ~~permittee or licensee~~ permit holder who has unpaid ~~finer fees,~~
19 civil penalties, or an unserved permit ~~or license~~ suspension may not
20 transfer, sell, or give ~~cigarette,~~ tobacco product, vapor product,
21 alternative nicotine product, or e-liquid product inventory of the business
22 associated with the permit ~~or license~~ to a third party until all ~~finer fees~~
23 and civil penalties are paid in full and all suspensions are completed
24 successfully, nor shall any third party be issued a new permit ~~or license~~ for
25 the business location.

26 ~~(f) A person that has not obtained a permit under this section as of~~
27 ~~May 1, 2015, but that is required to obtain a permit under this section to do~~
28 ~~business in vapor products, alternative nicotine products, or e-liquids,~~
29 ~~shall have until July 1, 2015, to obtain the required permit under this~~
30 ~~section.~~

31
32 ~~26-57-220. Permits and licenses - Duration.~~

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

35
36 26-57-221. Permits ~~and licenses~~ - Not transferable.

1 A permit ~~or license~~ is not:

2 (1)~~(A)~~ Transferable to a subsequent owner or operator;

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

7 (2) Transferable to a different physical location unless the
8 permit holder obtains permission from the Director of Arkansas Tobacco
9 Control.

10
11 26-57-222. Permits ~~and licenses~~ - Duplicates.

12 When a permit ~~or license~~ is lost by a permit holder, a duplicate permit
13 ~~or license~~ may be issued upon application and for a fee of five dollars
14 (\$5.00) when sufficient proof has been given the Director of Arkansas Tobacco
15 Control.

16
17 26-57-223. Permits ~~and licenses~~ - Suspension or revocation.

18 (a) All permits ~~and licenses~~ issued under this subchapter may be
19 suspended or revoked by the Director of Arkansas Tobacco Control for any
20 violation of this subchapter or the rules pertaining to this subchapter,
21 subject to ~~an appeal a hearing at the next regularly scheduled~~ before the
22 Arkansas Tobacco Control Board at the next regularly scheduled board meeting.

23 (b) The director may revoke all permits ~~or licenses~~ to deal in tobacco
24 products, vapor products, alternative nicotine products, or e-liquid products
25 associated with any person who is convicted of or pleads guilty or nolo
26 contendere to criminally violating this subchapter, ~~with the revocation being~~
27 subject to an appeal to the board subject to a hearing before the board at
28 the next regularly scheduled board meeting.

29
30 SECTION 14. Arkansas Code § 26-57-225 is repealed.

31 ~~26-57-225. Failure to secure permit unlawful.~~

32 ~~Any person required to pay taxes under the provisions of this~~
33 ~~subchapter who fails to secure a permit is guilty of a violation for the~~
34 ~~first and second offense and is guilty of a Class C misdemeanor for each~~
35 ~~additional offense.~~

36

1 SECTION 15. Arkansas Code §§ 26-57-226 – 26-57-231 are amended to read
2 as follows:

3 26-57-226. Penalties.

4 ~~Any~~ (a) A person within the jurisdiction of this state who is not
5 ~~licensed~~ permitted to sell, deliver, or cause to be delivered tobacco
6 products, vapor products, alternative nicotine products, or e-liquid products
7 to retailers or consumers and who sells, takes orders from, delivers, or
8 causes to be delivered immediately or in the future any tobacco products,
9 vapor products, alternative nicotine products, or e-liquid products to
10 retailers or consumers, is guilty of a Class A misdemeanor.

11 (b) A person engaged in buying, selling, or otherwise doing business
12 in tobacco products, vapor products, alternative nicotine products, or e-
13 liquid products in this state without first obtaining the proper permit upon
14 conviction is guilty of a Class A misdemeanor.

15
16 26-57-227. Operation of vending machine on vendor's premises –
17 Operation of a vending machine without ~~license~~ permit a public nuisance –
18 Seizure and sale – Redemption.

19 (a)(1) ~~Any~~ A person who engages in the business of owning, operating,
20 or leasing any vending machines containing tobacco products, vapor products,
21 alternative nicotine products, or e-liquid products without first obtaining
22 the ~~license~~ permit described in this subchapter is declared to be maintaining
23 a public nuisance.

24 ~~(b)(2)~~ ~~Any~~ A vending machine ~~se~~ operated without a permit may be
25 seized and sold by the Director of Arkansas Tobacco Control at public auction
26 upon the order of the Pulaski County Circuit Court.

27 ~~(c)(3)~~ These Vending machines that are seized under this
28 subsection may be redeemed ~~prior to~~ before sale by the owner upon the payment
29 of all taxes or fees due on the vending machine and all costs and expenses
30 incurred in enforcing this section if the offender pays all taxes, fees, and
31 costs within ten (10) days after seizure of the vending machines by the
32 director.

33 (b) A vendor may operate a permitted vending machine on the vendor's
34 premises or on the premises of another if the proper permits are obtained
35 under this subchapter and if the requirements of § 5-27-227 are met.

36

1 26-57-228. Purchases from unregistered, ~~unlicensed~~ unpermitted dealers
2 unlawful.

3 (a) It is unlawful for a retailer of tobacco products, vapor products,
4 alternative nicotine products, or e-liquid products to purchase tobacco
5 products, vapor products, alternative nicotine products, or e-liquid products
6 from a person other than a ~~licensed~~ permitted manufacturer, ~~licensed~~
7 permitted wholesaler, or other ~~licensed~~ permitted retailer.

8 (b) Any retailer violating ~~the provisions of~~ this subchapter upon
9 conviction is guilty of a Class B A misdemeanor for each purchase defined in
10 subsection (a) of this section.

11
12 26-57-229. ~~Licensee~~ Permit holder as wholesaler and retailer.

13 (a)(1) A person who is ~~licensed~~ permitted as a wholesaler and as a
14 retailer shall maintain separate wholesale and retail ~~stocks in separate~~
15 ~~buildings. However, this subsection shall not apply if stamps denoting~~
16 ~~payment of the tax on the wholesale stocks and the retail stocks of~~
17 ~~cigarettes are properly affixed~~ inventories and records.

18 (2) Separate inventories are not required under subdivision
19 (a)(1) of this section if:

20 (A) Stamps denoting payment of the excise tax on the
21 wholesale and retail inventory of cigarettes are properly affixed to the
22 cigarettes; or

23 (B) Records clearly show that the excise tax has been paid
24 on all other inventory of tobacco products.

25 (b)(1) Every wholesaler who maintains a business as a retailer shall
26 keep a record of his or her wholesale operations showing the ~~amount~~ number of
27 stamps purchased, if any, and all purchases from whatever source, and all
28 sales whether to himself or herself as retailer or to another.

29 (2) This record shall be is subject to inspection by the
30 Department of Finance and Administration and the Arkansas Tobacco Control
31 Board.

32 (c) Records shall be kept on forms prescribed by the Director of the
33 Department of Finance and Administration.

34 (d) If a wholesaler refuses to keep the records required by or to
35 comply with this section, the Director of Arkansas Tobacco Control may revoke
36 all permits that have been issued to the wholesaler.

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26-57-230. Common carriers.

(a) ~~Common~~ Upon written request by the Director of the Department of Finance and Administration or the Director of Arkansas Tobacco Control, ~~common~~ carriers transporting tobacco products, vapor products, alternative nicotine products, or e-liquid products ~~may be required by the Director of the Department of Finance and Administration or the Director of Arkansas Tobacco Control to~~ shall give a statement of all consignments of tobacco products, vapor products, alternative nicotine products, or e-liquid products showing date, point of origin, point of delivery, and to whom delivered for a period going back three (3) years.

(b) All common carriers shall ~~permit~~ allow their records relating to shipment or receipt of tobacco products, vapor products, alternative nicotine products, or e-liquid products to be examined by the Director of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, or their agents.

(c) A person who fails or refuses to give the statement, ~~reports~~ records, or invoices required by this section or who refuses to ~~permit~~ allow the Director of the Department of Finance and Administration or the Director of Arkansas Tobacco Control to examine the person's records upon conviction is guilty of a Class C misdemeanor.

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

A person required to pay taxes or obtain a permit under this subchapter who fails or refuses to ~~permit~~ allow the Department of Finance and Administration or Arkansas Tobacco Control to examine or inspect the person's ~~stock~~ inventory of tobacco products, vapor products, alternative nicotine products, e-liquid products, invoice books, papers, and memoranda considered necessary to secure information directly relating to the enforcement of this subchapter upon conviction is guilty of a Class A misdemeanor and may have his or her permit immediately suspended by the Director of Arkansas Tobacco Control, subject to a hearing before the Arkansas Tobacco Control Board at the next regularly scheduled board meeting.

SECTION 16. Arkansas Code § 26-57-232(a), concerning restrictions on wholesalers under the Arkansas Tobacco Products Tax Act of 1977, is amended

1 to read as follows:

2 (a) A wholesaler shall conduct the wholesaler's business subject to
3 the following restrictions:

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

6 (2) Except as otherwise provided ~~herein~~ in this subchapter, ~~the~~
7 a wholesaler may sell tobacco products, vapor products, alternative nicotine
8 products, or e-liquid products only to persons properly ~~licensed~~ permitted
9 under this subchapter;

10 (3)(A) ~~The wholesaler before~~ Before selling, delivering, or
11 otherwise disposing of cigarettes to retailers in this state, the wholesaler
12 shall affix stamps of the proper denominations to show that the tax has been
13 paid.

14 (B) The stamp shall be affixed in the manner prescribed by
15 the Director of the Department of Finance and Administration; and

16 (4)(A) The wholesaler with each sale of cigarettes shall supply
17 the retailer with an invoice showing the quantity, kind, and price of
18 cigarettes sold, and shall supply the stamps required to show that the tax
19 has been paid.

20 (B) The wholesaler shall retain a copy of this information
21 in the wholesaler's files for three (3) years subject to the inspection by
22 the Department of Finance and Administration and ~~the~~ Arkansas Tobacco Control
23 ~~Board~~.

24
25 SECTION 17. Arkansas Code §§ 26-57-233 and 26-57-234 are amended to
26 read as follows:

27 26-57-233. Salesperson – Restrictions – Violations.

28 ~~Every~~ A salesperson who sells, offers for sale, takes orders, and
29 solicits for sale any tobacco products, vapor products, alternative nicotine
30 products, or e-liquid products for immediate or future delivery to
31 wholesalers or retailers of tobacco products, vapor products, alternative
32 nicotine products, or e-liquid products in this state may do so only under
33 the following restrictions:

34 (1) The salesperson shall secure a permit from the Director of
35 Arkansas Tobacco Control;

36 (2) The salesperson may sell to or take orders for tobacco

1 products, vapor products, alternative nicotine products, or e-liquid products
2 from ~~licensed~~ permitted wholesalers, provided that the tobacco products,
3 vapor products, alternative nicotine products, or e-liquid products are
4 consigned or delivered only to ~~licensed~~ permitted manufacturers or ~~licensed~~
5 permitted wholesalers; and

6 (3) The salesperson may sell to or take orders for tobacco
7 products, vapor products, alternative nicotine products, or e-liquid products
8 from ~~licensed~~ permitted retailers, provided that the tobacco products, vapor
9 products, alternative nicotine products, or e-liquid products shall be
10 delivered to the retailer only by a ~~licensed~~ permitted wholesaler; ~~and~~

11 ~~(4)(A) The wholesaler shall keep complete records of all sales~~
12 ~~or orders taken for dealers in tobacco products, vapor products, alternative~~
13 ~~nicotine products, or e-liquid products in this state, copies of all~~
14 ~~invoices, orders taken, and other instruments as evidence of sales or~~
15 ~~disposition of tobacco products, vapor products, alternative nicotine~~
16 ~~products, or e-liquid products.~~

17 ~~(B) The wholesaler shall retain the information required~~
18 ~~under subdivision (4)(A) of this section in a designated place for three (3)~~
19 ~~years subject to inspection by the Department of Finance and Administration~~
20 ~~and Arkansas Tobacco Control.~~

21
22 26-57-234. Retailers and vendors – Restrictions – Violations.

23 (a) Retailers and vendors shall conduct their businesses subject to
24 the following restrictions:

25 (1) Retailers and vendors shall not possess, place in their
26 stock, have on their premises, sell, or otherwise dispose of any cigarettes
27 to which stamps denoting the tax due ~~thereon~~ on the cigarettes have not been
28 affixed;

29 (2) Retailers and vendors shall require that properly cancelled
30 stamps are affixed to all cigarettes purchased or otherwise received or
31 accepted by them before they purchase or otherwise become the owner or
32 possessor of the cigarettes;

33 (3) Retailers and vendors shall require from the wholesaler at
34 the time of each purchase or receipt of cigarettes an invoice showing the
35 quantity, kind, and price of the cigarettes and the stamps required to show
36 that the tax has been paid, ~~and~~ the date of sale or delivery;

1 (4)(A) The retailer shall keep records showing the description
2 and date of the receipt of each lot of tobacco products, vapor products,
3 alternative nicotine products, or e-liquid products, from whom purchased, ~~and~~
4 when received on the premises, ~~or~~ and any other requirements prescribed by
5 the Director of the Department of Finance and Administration or the Director
6 of Arkansas Tobacco Control.

7 (B) The records required under subdivision (a)(4)(A) of
8 this section are subject to inspection by the Department of Finance and
9 Administration and Arkansas Tobacco Control;

10 (5) The Director of the Department of Finance and Administration
11 or the Director of Arkansas Tobacco Control may require retailer reports
12 covering receipts and sales of tobacco products, vapor products, alternative
13 nicotine products, and e-liquid products monthly or for any other period; and

14 (6) The retailer shall permit the department and Arkansas
15 Tobacco Control or any peace officer acting under their direction to inspect
16 the retailer's ~~stock~~ inventory of merchandise, documents, records, and
17 premises, including any room or building used in connection with the
18 retailer's business.

19 (b) Upon a retailer's failure to comply with any part of this section,
20 the Director of Arkansas Tobacco Control may suspend or revoke the retailer's
21 permit, subject to a hearing before the Arkansas Tobacco Control Board at the
22 next regularly scheduled board meeting.

23 (c) A retailer or vendor who fails or refuses to retain in his or her
24 files invoices of tobacco products, vapor products, alternative nicotine
25 products, or e-liquid products, and stamps, or who fails or refuses to
26 furnish the statements and information or make the reports concerning
27 receipts and sales of tobacco products, vapor products, alternative nicotine
28 products, or e-liquid products, as required by this subchapter or prescribed
29 by the Director of the Department of Finance and Administration or the
30 Director of Arkansas Tobacco Control, or who violates any of the requirements
31 of this section, upon conviction is guilty of a ~~violation~~ Class A
32 misdemeanor.

33
34 SECTION 18. Arkansas Code §§ 26-57-241 – 26-57-243 are amended to read
35 as follows:

36 26-57-241. Reuse of containers unlawful – Penalty.

1 ~~Any~~ A person who reuses or refills with ~~cigarettes~~ untaxed tobacco
2 products any box, package, or container from which ~~tax-paid~~ tax-paid tobacco
3 products have been removed upon conviction is guilty of a Class D felony.

4
5 26-57-242. Wholesaler – Transporting cigarettes with stamps affixed
6 outside state for reentry.

7 (a) Every wholesaler ~~of tobacco products~~ doing business at or from an
8 established place of business located within this state and authorized to
9 purchase untaxed tobacco products on an open account directly from
10 manufacturers who have general distribution of tobacco products in Arkansas,
11 and who sell to ~~licensed~~ permitted retailers, are prohibited from
12 transporting cigarettes to which stamps have been affixed outside the
13 boundaries of the State of Arkansas for warehousing or reentry into this
14 state, or both, for either sale or resale.

15 (b) ~~The prohibition contained in this section does not apply to any~~
16 ~~wholesaler of tobacco products who was actually engaged in and had an~~
17 ~~established distribution practice of transporting cigarettes upon which the~~
18 ~~Arkansas stamp had been affixed outside the boundaries of the State of~~
19 ~~Arkansas for warehousing or reentry into the State of Arkansas, or both, for~~
20 ~~sale or resale on or before January 1, 1972.~~

21 ~~(c)~~ Upon violation of this section by a wholesaler, the Director of
22 Arkansas Tobacco Control shall revoke the wholesaler's permit.

23
24 26-57-243. Unstamped and untaxed products – Personal possession
25 limits.

26 (a) The possession limit of tobacco products by any person, upon his
27 or her person or in his or her personal luggage for his or her personal use,
28 not taxed or stamped in accordance with the provisions of this subchapter, is
29 as follows:

30 (1) ~~(A)~~ One (1) carton of ten (10) ~~packages~~ packs plus one (1)
31 ~~package~~ pack of twenty (20) cigarettes.

32 (B) A person purchasing cigarettes from a United States
33 military base or installation may have in his or her possession three (3)
34 cartons of ten (10) ~~packages~~ packs;

35 (2) ~~One (1) box of fifty (50)~~ Two hundred (200) sticks of
36 cigars, small cigars, or cigarillos; or

1 (3) Three pounds (3 lbs.) of smoking tobacco.

2 (b) This section applies only to the personal use of tobacco products
3 by an unpermitted person.

4
5 SECTION 19. Arkansas Code § 26-57-244(a), concerning the possession of
6 untaxed, unstamped tobacco products, is amended to read as follows:

7 (a) ~~It~~ Except as provided under § 26-57-243, it is unlawful for a
8 person to receive or have in the person's possession for sale, consumption,
9 or any other purpose, any untaxed tobacco products or unstamped cigarettes
10 unless the tax prescribed by this subchapter has been paid directly to the
11 Director of the Department of Finance and Administration by the person in
12 possession of the untaxed tobacco products or unstamped cigarettes.

13
14 SECTION 20. Arkansas Code § 26-57-244(d)-(f), concerning the
15 possession of untaxed, unstamped tobacco products, are amended to read as
16 follows:

17 (d) This section does not relieve any retail ~~cigarette and tobacco~~
18 permit holder from the obligations placed on ~~them~~ it by § 26-57-228.

19 (e) A retail ~~cigarette or tobacco~~ permit holder shall not have in his
20 or her possession any unstamped cigarettes or any tobacco products on which
21 the tax prescribed by this subchapter has not been paid.

22 (f)(1) ~~An~~ Except to the extent the tobacco products are exempt under §
23 26-57-243, an Arkansas consumer who purchases any untaxed tobacco products or
24 unstamped cigarettes shall be liable for reporting and remitting all excise
25 tax due on the tobacco products ~~or cigarettes~~ as levied under this
26 subchapter.

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

30 (3) The report shall provide the information prescribed by the
31 director.

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

34
35 SECTION 21. Arkansas Code § 26-57-245 is amended to read as follows:

36 26-57-245. Unstamped products or products with unpaid taxes – Criminal

1 offense – Deceptive trade practice.

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

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

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

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

16 (2) Each purchase, sale, or offer to sell unstamped cigarettes
17 or ~~other~~ untaxed tobacco products in violation of subsection (a) of this
18 section constitutes a separate violation.

19

20 SECTION 22. Arkansas Code § 26-57-247(b)-(d), concerning the seizure,
21 forfeiture, and disposition of tobacco products and other property, are
22 amended to read as follows:

23 (b) The Director of Arkansas Tobacco Control may seize and hold for
24 disposition of the courts or the Arkansas Tobacco Control Board all tobacco
25 products, vapor products, alternative nicotine products, or e-liquid products
26 found in the possession of a person dealing in, or a consumer of, tobacco
27 products, vapor products, alternative nicotine products, or e-liquid products
28 if:

29 (1) Prima facie evidence exists that the full amount of excise
30 tax due on the tobacco products has not been paid to the Director of the
31 Department of Finance and Administration;

32 (2) Tobacco products, vapor products, alternative nicotine
33 products, or e-liquid products are in the possession of a wholesaler who does
34 not possess a current Arkansas wholesale ~~cigarette or tobacco product, vapor~~
35 ~~product, and alternative nicotine product~~ permit;

36 (3) A retail establishment does not possess a current Arkansas

1 ~~retail cigarette, tobacco, vapor product, and alternative nicotine product~~
2 ~~permit or retail exclusive vapor product and alternative nicotine product~~
3 ~~store permit; or~~

4 (4) The tobacco products, vapor products, alternative nicotine
5 products, or e-liquid products have been offered for sale to the public at
6 another location without a current Arkansas retail ~~cigarette, tobacco, vapor~~
7 ~~product, and alternative nicotine product permit or retail exclusive vapor~~
8 ~~product and alternative nicotine product store permit.~~

9 (c) Property, including money, used to facilitate a ~~criminal~~ violation
10 of this subchapter or the Unfair Cigarette Sales Act, § 4-75-701 et seq., may
11 be seized and forfeited to the state.

12 (d)(1) A prosecuting attorney may institute a civil action against a
13 person who is convicted of a criminal violation under this subchapter or the
14 Unfair Cigarette Sales Act, § 4-75-701 et seq., to obtain a judgment for:

15 (A) Damages in an amount equal to the value of the
16 property, funds, or a monetary instrument involved in the violation;

17 (B) The proceeds acquired by a person involved in the
18 enterprise or by reason of conduct in furtherance of the violation; and

19 (C) Costs incurred by ~~the board~~ Arkansas Tobacco Control
20 in the investigation, and prosecution, and adjudication of both criminal, and
21 civil, and administrative proceedings.

22 (2) The standard of proof in an action brought under subdivision
23 (d)(1) of this section is preponderance of the evidence.

24
25 SECTION 23. Arkansas Code § 26-57-248 and 26-57-249 are amended to
26 read as follows:

27 26-57-248. Possession or sale of products with unpaid taxes –
28 Supplemental ~~finer~~ penalties.

29 (a) ~~Any~~ A person who places in his or her stock or who has in his or
30 her possession or on his or her premises, or who sells or offers for sale,
31 any tobacco products on which the tax prescribed by law has not been paid in
32 addition to the other fines and forfeitures may be subject to a ~~fine~~ penalty
33 of:

34 (1) Twenty-five dollars (\$25.00) for each package of cigarettes,
35 little cigars, and cigarillos up to twenty (20) packages and fifty dollars
36 (\$50.00) for each package in excess of twenty (20) packages, ~~so~~ held, sold,

1 or offered for sale; and

2 (2) Fifty dollars (\$50.00) for each box of cigars and twenty-
3 five dollars (\$25.00) for each unit of ~~other~~ tobacco products ~~se~~ other than
4 cigarettes held, sold, or offered for sale.

5 (b) The penalty shall be held to be in the nature of a civil penalty
6 and may be collected by civil or administrative action and may be levied by
7 the Arkansas Tobacco Control Board or any circuit court of this state.

8 (c) A ~~fine~~ penalty assessed under this section shall be deposited into
9 the tobacco control fund of Arkansas Tobacco Control established under § 26-
10 57-247(p).

11

12 26-57-249. Destruction of ~~tobacco~~ products upon conviction -
13 Procedure.

14 (a) Upon a criminal conviction of ~~any a~~ a person charged with a
15 violation of ~~any a~~ tobacco product, vapor product, alternative nicotine
16 product, or e-liquid product law or rule ~~which~~ where the investigation
17 resulted in the seizure of tobacco products, vapor products, alternative
18 nicotine products, or e-liquid products, the court shall issue an order to
19 destroy the tobacco products, vapor products, alternative nicotine products,
20 or e-liquid products confiscated by ~~the Director of~~ Arkansas Tobacco Control
21 or by any state, county, or municipal officer in this state.

22 (b) Upon ~~a~~ an administrative finding of guilty of any person charged
23 with a violation of a state tobacco product, vapor product, alternative
24 nicotine product, or e-liquid product law or rule in a proceeding before the
25 Arkansas Tobacco Control Board ~~that~~ where the investigation resulted in the
26 seizure of tobacco products, vapor products, alternative nicotine products,
27 or e-liquid products, the board shall issue an order to destroy the tobacco
28 products, vapor products, alternative nicotine products, or e-liquid products
29 confiscated by ~~the director~~ Arkansas Tobacco Control or by any state, county,
30 or municipal officer in this state.

31 (c) Every court of record in this state shall notify the ~~director~~
32 Director of Arkansas Tobacco Control of the disposition made of each case in
33 the court as to whether the defendant was convicted or acquitted.

34 (d) Upon application of the director, the board or the court issuing a
35 destruction order may instead release the tobacco products, vapor products,
36 alternative nicotine products, or e-liquid products to the use and benefit of

1 Arkansas Tobacco Control for suitable law enforcement or training purposes.

2 (e)(1) If a court or the board issues a destruction order, the person
3 charged with the violation is responsible for any destruction fees incurred
4 by Arkansas Tobacco Control.

5 (2) Destruction fees may vary but shall be determined by the
6 current industry standard for the destruction of tobacco products, vapor
7 products, alternative nicotine products, and e-liquid products.

8
9 SECTION 24. Arkansas Code § 26-57-255 is amended to read as follows:

10 26-57-255. Arkansas Tobacco Control Board – Creation.

11 (a) There is ~~hereby~~ created the Arkansas Tobacco Control Board to
12 consist of the following eight (8) members appointed by the Governor. ~~The~~
13 ~~board shall be constituted as follows:~~

14 (1) Two (2) members of the board shall be wholesalers of tobacco
15 products, vapor products, alternative nicotine products, or e-liquid
16 products;

17 (2) Two (2) members of the board shall be retailers of tobacco
18 products, vapor products, alternative nicotine products, or e-liquid
19 products; and

20 (3) Four (4) members of the board shall be members of the public
21 at large who are not public employees or officials, at least one (1) of whom
22 shall be an African-American, and two (2) of whom shall be appointed by the
23 Governor after consulting the Arkansas Medical Society, Inc. and subject to
24 confirmation by the Senate.

25 (b) The Governor shall designate which member of the board shall act
26 as chair and that person shall serve as chair for two (2) years unless his or
27 her membership on the board ceases prior to the end of the two-year period.

28 (c)(1) All members of the board ~~must~~ shall be residents of the State
29 of Arkansas and confirmed by the Senate.

30 (2) The term of office shall be five (5) years, ~~except that the~~
31 ~~initial board shall be appointed to staggered terms in that the term of one~~
32 ~~(1) member expires each year.~~

33 (d)(1) ~~The board shall:~~

34 ~~(A) Act as a rulemaking and adjudicatory body for Arkansas~~
35 ~~Tobacco Control; and~~

36 ~~(B) Have responsibility for the issuance, suspension, and~~

1 ~~revocation of the licenses and permits enumerated in § 26-57-219.~~

2 ~~(2)(A)~~ A minimum of five (5) members is required for a quorum.

3 ~~(B)(2)(A)~~ All action by the board shall be by a majority
4 vote of the board members present at the regular or special meeting, and the
5 board may take no official action in connection with a matter except at a
6 regular or special meeting.

7 (B) In the event of a tie vote of the members of the
8 board, the Director of Arkansas Tobacco Control may cast the deciding vote.

9 (e) ~~No~~ A person who is not a citizen of the United States and who has
10 not resided in the State of Arkansas for at least two (2) consecutive years
11 immediately preceding the date of appointment ~~may~~ shall not be appointed to
12 the board ~~nor employed by the board.~~

13 (f) Each member of the board and the director shall take and subscribe
14 to an oath that he or she will support and enforce ~~the provisions of this~~
15 subchapter, the tobacco control laws of this state, the Arkansas
16 Constitution, and the United States Constitution.

17 (g) The board shall:

18 (1) Act as the adjudicatory body for Arkansas Tobacco Control;

19 (2) Have responsibility for approving the issuance, suspension,
20 and revocation of the permits enumerated in § 26-57-219;

21 (3)(A) Conduct public hearings when appropriate regarding a
22 permit authorized under this subchapter or in violation of this subchapter,
23 the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227, or any other
24 federal, state, or local statute, ordinance, rule, or regulation concerning
25 the sale of tobacco products, vapor products, alternative nicotine products,
26 or e-liquid products to minors or the rules promulgated by Arkansas Tobacco
27 Control.

28 (B) After notice and hearing held in accordance with the
29 Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board
30 finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-
31 701 et seq., or the rules promulgated by Arkansas Tobacco Control, the board
32 may suspend or revoke any or all permits issued by the director to any
33 person.

34 (C) The board may levy a civil penalty in an amount not to
35 exceed five thousand dollars (\$5,000) for each violation against a person
36 found to be in violation of this subchapter, the Unfair Cigarette Sales Act,

1 § 4-75-701 et seq., or the rules promulgated by Arkansas Tobacco Control.

2 (D) Each day of a violation is a separate violation.

3 (E) A civil penalty under subdivision (g)(3)(C) of this
4 section is in addition to any penalties levied by the board under § 26-57-
5 248.

6 (F) In conducting a hearing under this subdivision (g)(3),
7 the board may examine or cause to be examined under oath any witness and the
8 books and records of a permitted person or other person;

9 (4) When requested by the written petition of at least three (3)
10 interested parties, conduct public hearings to receive testimony regarding
11 the facts relevant to the issuance of a permit under this subchapter; and

12 (5)(A) Not have authority in criminal prosecutions or the
13 assessment or collection of any taxes.

14 (B) However, the board shall refuse to approve the
15 issuance or renewal of a permit issued by the director for the failure to pay
16 taxes or fees imposed on tobacco products or any permit fees imposed under
17 this subchapter or any other state or local taxes.

18 (h)(1) The board may assess penalties for a violation of § 5-27-227
19 according to the following schedule:

20 (A) For a first violation within a forty-eight-month
21 period, a civil penalty not to exceed two hundred fifty dollars (\$250);

22 (B) For a second violation within a forty-eight-month
23 period, a civil penalty not to exceed five hundred dollars (\$500) and
24 suspension of the permit enumerated in § 26-57-219 for a period not to exceed
25 two (2) days;

26 (C) For a third violation within a forty-eight-month
27 period, a civil penalty not to exceed one thousand dollars (\$1,000) and
28 suspension of the permit enumerated in § 26-57-219 for a period not to exceed
29 seven (7) days;

30 (D) For a fourth or subsequent violation within a forty-
31 eight-month period, a civil penalty not to exceed two thousand dollars
32 (\$2,000) and suspension of the permit enumerated in § 26-57-219 for a period
33 not to exceed fourteen (14) days; and

34 (E) For a fifth or subsequent violation within a forty-
35 eight-month period, in addition to the other penalties provided under this
36 subsection, the permit enumerated in § 26-57-219 may be revoked.

1 (2)(A) A penalty under this subsection shall not be imposed on a
2 retailer or an agent or employee of a retailer who can establish an
3 affirmative defense that before the date of the violation the retailer or
4 agent or employee of the retailer furnishing the tobacco products, vapor
5 products, alternative nicotine products, e-liquid products, or cigarette
6 papers reasonably relied on proof of age that identified the person receiving
7 the tobacco products, vapor products, alternative nicotine products, e-liquid
8 products, or cigarette papers as not being a minor.

9 (B) As used in this subsection, "proof of age" means valid
10 documentation issued by a governmental agency containing the person's
11 photograph, date of birth, and an expiration date.

12 (3)(A) For a corporation or business with more than one (1)
13 retail location, to determine the number of accumulated violations for
14 purposes of the penalty schedule stated in this subsection, violations of §
15 5-27-227 by one (1) retail location shall not be accumulated against other
16 retail locations of that same corporation or business.

17 (B) For a retail location, for purposes of the penalty
18 schedule stated in this subsection, violations accumulated and assessed
19 against a prior owner of the retail location shall not be accumulated against
20 a new owner of the same retail location unless approved by the board.

21
22 SECTION 25. Arkansas Code § 26-57-256, as amended by Acts 2019, No.
23 580, §§ 8 and 9, is amended to read as follows:

24 26-57-256. Arkansas Tobacco Control ~~Board~~ – Powers – Definition.

25 (a) ~~The~~ Arkansas Tobacco Control ~~Board~~ shall:

26 (1) Promulgate rules for the proper enforcement and
27 implementation of this subchapter and the Unfair Cigarette Sales Act, § 4-75-
28 701 et seq.;

29 (2)(A) Receive applications for and issue, refuse, suspend, and
30 revoke ~~licenses and~~ permits listed in § 26-57-219.

31 (B) Arkansas Tobacco Control shall refuse to issue or
32 renew any permits issued by the Director of Arkansas Tobacco Control for the
33 failure to pay taxes or fees imposed on tobacco products, permit fees imposed
34 under this subchapter, or any other state or local taxes;

35 (3) Prescribe forms of applications for permits ~~and licenses~~
36 under this subchapter;

1 (4)(A) Cooperate with the Revenue Division of the Department of
2 Finance and Administration in the enforcement of the tax laws affecting the
3 sale of tobacco products in this state and in the enforcement of all other
4 state and local tax laws.

5 (B) To facilitate efforts to cooperate with the division
6 concerning the enforcement of all other state and local tax laws, ~~the board~~
7 Arkansas Tobacco Control shall immediately require that the following
8 additional information be provided by all applicants for permit issuance or
9 renewal:

10 (i) Federal tax identification numbers issued by the
11 Internal Revenue Service;

12 (ii) Social Security numbers; and

13 (iii) State sales tax account numbers assigned by
14 the Department of Finance and Administration, if applicable.

15 (C)(i) Each year ~~the board~~ Arkansas Tobacco Control shall
16 provide a list of all applicants for the issuance or renewal of all tobacco
17 products, vapor product, alternative nicotine product, or e-liquid product
18 permits ~~and licenses~~ to the Director of the Department of Finance and
19 Administration.

20 (ii) This list shall contain the identifying
21 information required by subdivision (a)(4)(B) of this section as well as the
22 name of the permittee and the permittee's current business address;

23 ~~(5)(A) Conduct public hearings when appropriate regarding any~~
24 ~~permit and license authorized by this subchapter or in violation of this~~
25 ~~subchapter, the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227,~~
26 ~~or any other federal, state, or local statute, ordinance, rule, or regulation~~
27 ~~concerning the sale of tobacco products, vapor products, alternative nicotine~~
28 ~~products, or e-liquid products, to minors or the rules promulgated by the~~
29 ~~board.~~

30 ~~(B)(i) After a notice and hearing held in accordance with~~
31 ~~the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board~~
32 ~~finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-~~
33 ~~701 et seq., or the rules promulgated by the board, the board may suspend,~~
34 ~~revoke, or not renew any or all permits and licenses issued by the board to~~
35 ~~any person or entity.~~

36 ~~(ii) In addition, the board may levy a civil penalty~~

1 ~~in an amount not to exceed five thousand dollars (\$5,000) for each violation~~
2 ~~against any person or entity found to be in violation.~~

3 ~~(iii) Each day of the violation shall be deemed a~~
4 ~~separate violation.~~

5 ~~(C) In that regard, the board may examine or cause to be~~
6 ~~examined under oath any witness and the books and records of any licensee,~~
7 ~~person, or entity; and~~

8 ~~(6) When requested by the written petition of at least three (3)~~
9 ~~interested parties, conduct public hearings to receive testimony on the facts~~
10 ~~relevant to the issuance of any license or permit under this subchapter.~~

11 (5)(A) Collect civil penalties assessed by the Arkansas Tobacco
12 Control Board under § 26-57-255.

13 ~~(b)(B) Unless the civil penalty assessed under this~~
14 ~~section is paid within fifteen (15) days following the date for an appeal~~
15 ~~from the order, the Director of Arkansas Tobacco Control shall have the power~~
16 ~~to institute a civil action in the Pulaski County Circuit Court to recover~~
17 ~~the civil penalties assessed pursuant to the provisions of this subchapter;~~
18 and

19 ~~(c)(1) The board shall have no authority in criminal prosecutions or~~
20 ~~the assessment or collection of any taxes related to the taxing of tobacco~~
21 ~~products.~~

22 ~~(2) However, the board shall refuse to issue, suspend, revoke,~~
23 ~~or refuse renewal of any permit or license issued by the board for the~~
24 ~~failure to pay taxes or fees imposed on tobacco products or any permit or~~
25 ~~license fees imposed by this subchapter or any other state and local taxes.~~

26 ~~(d) The board may assess penalties for a violation of § 5-27-227~~
27 ~~according to the following schedule:~~

28 ~~(1) If the alleged violator has received a notice of an alleged~~
29 ~~violation from the board or other agency or official with the authority to~~
30 ~~assess penalties containing the information specified in this subchapter, a~~
31 ~~civil penalty not to exceed two hundred fifty dollars (\$250) for a first~~
32 ~~violation within a forty-eight month period;~~

33 ~~(2) A civil penalty not to exceed five hundred dollars (\$500)~~
34 ~~for a second violation within a forty-eight month period and suspension of~~
35 ~~the license or permit enumerated in § 26-57-219 for a period not to exceed~~
36 ~~two (2) days;~~

1 ~~(3) A civil penalty not to exceed one thousand dollars (\$1,000)~~
2 ~~for a third violation within a forty-eight month period and suspension of the~~
3 ~~license or permit enumerated in § 26-57-219 for a period not to exceed seven~~
4 ~~(7) days;~~

5 ~~(4) A civil penalty not to exceed two thousand dollars (\$2,000)~~
6 ~~for a fourth or subsequent violation within a forty-eight month period and~~
7 ~~suspension of the license or permit enumerated in § 26-57-219 for a period~~
8 ~~not to exceed fourteen (14) days; and~~

9 ~~(5) For a fifth or subsequent violation within a forty-eight-~~
10 ~~month period, in addition to any civil penalties authorized by this section,~~
11 ~~the license or permit under § 26-57-219 may be revoked.~~

12 ~~(e)(1)(6)(A) A notice Provide notice to the retail location of~~
13 ~~an alleged violation of § 5-27-227 shall be given to the holder of a retail~~
14 ~~permit or license within ten (10) days of the alleged violation.~~

15 ~~(2)(B) The notice required under subdivision (a)(6)(A) of~~
16 ~~this section shall contain the date and time of the alleged violation.~~

17 ~~(3)(A) The notice shall also include either the name of the~~
18 ~~person making the alleged unlawful sale or information reasonably necessary~~
19 ~~to determine the location in the store where the alleged unlawful sale was~~
20 ~~made.~~

21 ~~(B) Information under subdivision (e)(3)(A) of this~~
22 ~~section shall include when appropriate without limitation, the cash register~~
23 ~~number, physical location of the sale in the store, and, if possible, the~~
24 ~~lane or aisle number.~~

25 ~~(f) The board may consider the following factors when reviewing a~~
26 ~~possible violation:~~

27 ~~(1) The business has adopted and enforced a written policy~~
28 ~~against selling cigarettes, tobacco products, vapor products, alternative~~
29 ~~nicotine products, or e-liquid products to minors;~~

30 ~~(2) The business has informed its employees of the applicable~~
31 ~~laws regarding the sale of cigarettes, tobacco products, vapor products,~~
32 ~~alternative nicotine products, or e-liquid products to 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 not~~
14 ~~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)(b) Any e-cigarettes, tobacco products, vapor products, alternative~~
21 ~~nicotine products, or e-liquid products, or cigarette papers found in the~~
22 ~~possession of a minor may be confiscated and destroyed.~~

23 ~~(i) An employee of a permit holder who violates § 5-27-227 is subject~~
24 ~~to a civil penalty not to exceed one hundred dollars (\$100) per violation.~~

25 ~~(j)(1) For a corporation or business with more than one (1) retail~~
26 ~~location, to determine the number of accumulated violations for purposes of~~
27 ~~the penalty schedule set forth in subsection (d) of this section, violations~~
28 ~~of § 5-27-227 by one (1) retail location shall not be accumulated against~~
29 ~~other retail locations of that same corporation or business.~~

30 ~~(2) For a retail location, for purposes of the penalty schedule~~
31 ~~set forth in subsection (d) of this section, violations accumulated and~~
32 ~~assessed against a prior owner of the retail location shall not be~~
33 ~~accumulated against a new owner of the same retail location.~~

34 ~~(k)(c) All Except as otherwise provided by law, the penalties~~
35 ~~collected under this section shall be deposited into the State Treasury.~~

36 ~~(l)(1) As used in this section, "minor" means a person who is under~~

1 ~~twenty one (21) years of age.~~

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

3 ~~(A) Is under twenty one (21) years of age if the person~~
4 ~~presents a military identification card establishing that he or she is a~~
5 ~~member of the United States Armed Forces; or~~

6 ~~(B) Has attained nineteen (19) years of age as of December~~
7 ~~31, 2019.~~

8
9 SECTION 26. Arkansas Code § 26-57-257, as amended by Acts 2019, No.
10 315, § 3035, and Acts 2019, No. 580, § 10, is amended to read as follows:

11 26-57-257. Director of Arkansas Tobacco Control.

12 (a)(1) The Governor shall employ a person to serve as the Director of
13 Arkansas Tobacco Control.

14 (2) The Director of Arkansas Tobacco Control shall serve at the
15 pleasure of the Governor.

16 (b) The Director of Arkansas Tobacco Control or his designee shall
17 present all evidence tending to prove violations of law, rules, or
18 regulations at hearings held by the Arkansas Tobacco Control Board.

19 (c) The Director of Arkansas Tobacco Control, in consultation with the
20 Director of the Department of Finance and Administration, may employ other
21 personnel as he or she deems necessary and as authorized by the General
22 Assembly.

23 (d) Any personnel employed by the Director of Arkansas Tobacco Control
24 shall serve at his or her pleasure.

25 (e)(1) The Director of Arkansas Tobacco Control ~~and the board each~~ may
26 adopt, keep, and use a common seal.

27 (2) This seal ~~shall~~ may be used for authentication of the
28 records, process, and proceedings of the Director of Arkansas Tobacco Control
29 ~~and or~~ or the board, respectively.

30 (3) Judicial notice shall be taken of each use of this seal in
31 all of the courts of the state.

32 (f) Any process, notice, or other paper that the Director of Arkansas
33 Tobacco Control ~~may be~~ is authorized by law to issue shall be deemed
34 sufficient if signed by the Director of Arkansas Tobacco Control ~~and or~~
35 authenticated by the seal of the Director of Arkansas Tobacco Control.

36 (g) ~~Any process, notice, or other paper that the board may be~~

1 ~~authorized by law to issue shall be deemed sufficient if signed by the chair~~
2 ~~of the Arkansas Tobacco Control Board and authenticated by the seal of the~~
3 ~~board.~~

4 ~~(h)~~ All acts, orders, proceedings, rules, regulations, entries,
5 minutes, and other records of the Director of Arkansas Tobacco Control and
6 all reports and documents filed with the Director of Arkansas Tobacco Control
7 may be proved in any court of this state by a copy ~~thereof~~ certified ~~to~~ by
8 the Director of Arkansas Tobacco Control with his or her signature or the
9 ~~seal of the Director of Arkansas Tobacco Control~~ attached.

10 ~~(i)~~ All acts, orders, proceedings, rules, entries, minutes, and other
11 ~~records of the board and all reports and documents filed with the Director of~~
12 ~~Arkansas Tobacco Control may be proved in any court of this state by a copy~~
13 ~~thereof certified to by the chair with the seal of the board attached.~~

14 ~~(j)~~~~(l)~~(h)(1) The Director of Arkansas Tobacco Control shall maintain
15 records of all permits ~~and licenses~~ issued, suspended, denied, or revoked by
16 the board.

17 (2) The records shall ~~be in such form as to provide ready~~
18 contain the information as to the identity of the licensees permit holder,
19 including the names of ~~major stockholders and directors of corporations~~ all
20 officers and members of the business entities holding ~~licenses or~~ permits and
21 the location of the ~~licensed or~~ permitted premises.

22 ~~(k)~~(i) The Director of Arkansas Tobacco Control shall recognize the
23 Division of Aging, Adult, and Behavioral Health Services of the Department of
24 Human Services as the agency responsible for ensuring full compliance with
25 the Public Health Service Act, § 1926(b), 42 U.S.C. § 300x-26(b), and shall
26 call upon administrative departments of the state, county, and city
27 governments, sheriffs, city police departments, or other law enforcement
28 officers for such information and assistance as the Director of Arkansas
29 Tobacco Control may deem necessary in the performance of the duties imposed
30 upon him or her by this subchapter.

31 ~~(l)~~(j) The Director of Arkansas Tobacco Control may inspect or cause
32 to be inspected any premises where tobacco products, vapor products,
33 alternative nicotine products, or e-liquid products are manufactured,
34 imported, distributed, stored, or sold on the premises where the records of
35 the manufacture, importation, distribution, storage, or sale are stored.

36 ~~(m)~~(k) The Director of Arkansas Tobacco Control may:

1 (1) Examine or cause to be examined any person under oath and
2 examine or cause to be examined books and records of any ~~licensee~~ permit
3 holder;

4 (2) Hear testimony and take proof material to his or her
5 information and the discharge of his or her duties under this section;

6 (3) Administer oaths or cause oaths to be administered; and

7 (4)(A) Issue subpoenas to require the attendance of witnesses
8 and the production of books and records.

9 (B) Any circuit court by written order may require the
10 attendance of witnesses or the production of relevant books or other records
11 subpoenaed by the Director of Arkansas Tobacco Control, and the court may
12 compel obedience to its order by proceedings for contempt.

13 ~~(n)~~(l) All hearings and appeals from any hearing shall be conducted in
14 accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et
15 seq.

16 ~~(o)~~(m) The Director of Arkansas Tobacco Control shall exercise other
17 powers, functions, and duties as are or may be imposed or conferred upon him
18 or her by law or the board.

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

25 ~~(q)~~~~(1)~~~~(A)~~(o)(1)(A) The power and duty to collect taxes imposed on
26 ~~tobacco and~~ tobacco products is specifically exempted from the powers and
27 duties granted or assigned to the board or the ~~director~~ Director of Arkansas
28 Tobacco Control.

29 (B) However, a permit ~~or license~~ holder's failure to pay
30 taxes or fees imposed on tobacco products or any permit ~~or license~~ fees
31 imposed by this subchapter in a timely manner is grounds for the nonissuance,
32 suspension, revocation, or nonrenewal of any permits ~~or licenses~~ issued by
33 the ~~board~~ Director of Arkansas Tobacco Control.

34 (C) Failure to timely and fully pay any other state and
35 local taxes as reported by the Director of the Department of Finance and
36 Administration shall also constitute grounds for the nonissuance, suspension,

1 revocation, or nonrenewal of any permits ~~or licenses~~ issued by the ~~board~~
2 Director of Arkansas Tobacco Control.

3 (2)(A) Each year the Director of the Department of Finance and
4 Administration shall report to the Director of Arkansas Tobacco Control all
5 permit ~~and license~~ holders who are more than ninety (90) days delinquent on
6 any state ~~and~~ or local taxes.

7 (B) The Director of Arkansas Tobacco Control shall not
8 issue or renew any permit ~~or license~~ issued under this section for any permit
9 ~~or license~~ holder more than ninety (90) days delinquent on any privilege fee
10 or tax addressed in this section unless the ~~permittee or licensee~~ permit
11 holder demonstrates that he or she is current under a valid repayment
12 agreement for the delinquent tax.

13 ~~(3)(A) Each year the Director of Arkansas Tobacco Control shall~~
14 ~~send notices to all permit and license holders more than ninety (90) days~~
15 ~~delinquent on any state and local taxes.~~

16 ~~(B) This notice shall inform the permit or license holder~~
17 ~~that he or she is delinquent on payment of state and local taxes due the~~
18 ~~Director of the Department of Finance and Administration and that the permit~~
19 ~~or license holder will be unable to obtain or renew the permit or license~~
20 ~~that he or she holds until such time as the person becomes current in the~~
21 ~~payment of the tax due the Director of the Department of Finance and~~
22 ~~Administration, or until such time as the person enters into a valid~~
23 ~~repayment agreement with the department for the payment of the delinquent~~
24 ~~tax.~~

25 ~~(r)(p)~~ The enforcement of state laws relating to the prohibition of
26 the barter or sale of tobacco ~~in any form~~ products, vapor products,
27 alternative nicotine products, e-liquid products, or cigarette papers to a
28 minor, ~~as defined in § 26-57-256,~~ by multiple state agencies shall be
29 coordinated to avoid duplicative inspections of the same retailer by multiple
30 state agencies.

31 ~~(s)(l) Child safety being of paramount concern when dealing with~~
32 ~~alternative nicotine products and e-liquid products, the Director of Arkansas~~
33 ~~Tobacco Control may adopt safety and hygiene rules for persons that prepare~~
34 ~~or mix e-liquid products or alternative nicotine products that include~~
35 ~~without limitation.~~

36 ~~(A) Child resistant packaging effectiveness standards in~~

1 ~~accordance with § 26-57-254;~~

2 ~~(B) Regulation of the production of custom or “create your~~
3 ~~own” e-liquids, or alternative nicotine product mixes; and~~

4 ~~(C) Workplace safety rules for any location where e-~~
5 ~~liquids or alternative nicotine products are mixed or prepared, including~~
6 ~~without limitation;~~

7 ~~(i) The availability and requirement for use of hand~~
8 ~~washing sinks in the preparation area for employee use that have hot and cold~~
9 ~~water, soap, hand drying equipment, and a waste collection container;~~

10 ~~(ii) Cleanliness and maintenance of e-liquid~~
11 ~~preparation and mixing equipment;~~

12 ~~(iii) Employee use of protective gloves or other~~
13 ~~items when using e-liquid preparation and mixing equipment;~~

14 ~~(iv) Prohibition of food and drink consumption and~~
15 ~~vapor, cigarette, or tobacco use in any e-liquid preparation or mixing area;~~
16 ~~and~~

17 ~~(v) Prohibition of the presence of any animals in~~
18 ~~any e-liquid preparation or mixing area.~~

19 ~~(2) The rules promulgated under subdivision (s)(1) of this~~
20 ~~section shall not apply to an e-liquid in a cartridge that is sold, marketed,~~
21 ~~or intended for use in a vapor product if the cartridge is prefilled and~~
22 ~~sealed by the manufacturer and is not intended to be opened by the consumer.~~

23
24 SECTION 27. Arkansas Code § 26-57-258 is repealed.

25 ~~26-57-258. Continuation of actions of Department of Finance and~~
26 ~~Administration.~~

27 ~~All permits, licenses, certifications, determinations, regulations, and~~
28 ~~other actions of the Department of Finance and Administration under this~~
29 ~~subchapter in effect on June 30, 1997, shall continue in full force and~~
30 ~~effect until modified by the Arkansas Tobacco Control Board.~~

31
32 SECTION 28. Arkansas Code § 26-57-259, as amended by Acts 2019, No.
33 580, §§ 11 and 12, is amended to read as follows:

34 26-57-259. Nonpreemption.

35 (a)(1) This subchapter and the rules and other actions of the Arkansas
36 Tobacco Control Board or Arkansas Tobacco Control shall not be construed or

1 interpreted so as to preempt or in any other manner qualify or limit the
2 enactment and enforcement of any federal or state regulation of the
3 manufacture, sale, storage, or distribution of tobacco products that is more
4 restrictive than this subchapter or the rules and regulations promulgated by
5 ~~the board~~ Arkansas Tobacco Control.

6 (2)(A) This subchapter and the rules and other actions of the
7 board or Arkansas Tobacco Control shall preempt the enactment and enforcement
8 of any county, municipal, or other local regulation of the manufacture, sale,
9 storage, or distribution of tobacco products that is more restrictive than
10 this subchapter or the rules promulgated by ~~the board~~ Arkansas Tobacco
11 Control.

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

17 (b) This ~~act~~ subchapter and the rules and other actions of Arkansas
18 Tobacco Control or the board shall not be construed or interpreted so as to
19 preempt or otherwise limit any legal or equitable claims or causes of action
20 brought under the common law or any federal or state statutes.

21 (c) This subchapter and the rules of ~~the board~~ Arkansas Tobacco
22 Control shall be construed or interpreted so as to require a state, county,
23 municipal, or other local authority to exhaust any administrative remedies
24 through the board, including without limitation the right to seize and
25 forward to the board the state ~~license~~ permit of a vendor or retailer found
26 to have illegally sold tobacco products, vapor products, alternative nicotine
27 products, or e-liquid products to a minor, ~~as defined in § 26-57-256,~~
28 provided that the vendor or retailer shall be given a hearing before the
29 board at the board's next regularly scheduled meeting.

30
31 SECTION 29. Arkansas Code § 26-57-265(b), concerning reports by
32 wholesalers to Arkansas Tobacco Control, is amended to read as follows:

33 (b) The report required under subsection (a) of this section shall
34 contain the following information for the preceding calendar month's
35 deliveries:

36 (1) The name of each retailer or wholesaler;

1 (2) The address of each retailer or wholesaler to which the
2 wholesaler delivered ~~cigarettes, cigars, other~~ tobacco products, vapor
3 products, alternative nicotine products, or e-liquid products;

4 (3) The address of each retailer or wholesaler that obtained
5 ~~cigarettes, cigars, other~~ tobacco products, vapor products, alternative
6 nicotine products, or e-liquid products from the wholesaler at the
7 wholesaler's location;

8 (4) The Arkansas permit number of each retailer or wholesaler or
9 the equivalent permit number if the retailer or wholesaler resides outside of
10 the state; and

11 (5) The monthly net deliveries made to each retailer or
12 wholesaler, including without limitation:

13 (A) The quantity, units, and brand styles of the
14 cigarettes in stamped and unstamped packages that were delivered to each
15 retailer or wholesaler;

16 (B) The quantity, units, and brand styles of the ~~cigars~~
17 ~~and other~~ tobacco products delivered to the retailer or wholesaler; and

18 (C) The quantity, units, and brand styles of the vapor
19 products, alternative nicotine products, and e-liquid products delivered to
20 the retailer or wholesaler.

21
22 SECTION 30. Arkansas Code § 26-57-267 is amended to read as follows:

23 26-57-267. Preemption for vapor products, alternative nicotine
24 products, and e-liquid products.

25 This subchapter and the rules and other actions of Arkansas Tobacco
26 Control and the Arkansas Tobacco Control Board shall preempt the enactment
27 and enforcement of any county, municipal, or other local regulation of the
28 manufacture, sale, storage, or distribution of vapor products, ~~or~~ alternative
29 nicotine products, or e-liquid products that is more restrictive than this
30 act or the rules promulgated by ~~the board~~ Arkansas Tobacco Control.

31
32
33 /s/A. Davis
34
35
36