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90th General Assembly

A Bill

Regular Session, 2015

SENATE BILL 978

By: Senator E. Williams

For An Act To Be Entitled

AN ACT TO REGULATE VAPOR PRODUCTS, ALTERNATIVE
NICOTINE PRODUCTS, AND E-LIQUID PRODUCTS; TO AMEND
CERTAIN LAWS CONCERNING THE REGULATION OF TOBACCO
PRODUCTS; TO DECLARE AN EMERGENCY; AND FOR OTHER
PURPOSES.

Subtitle

TO REGULATE VAPOR PRODUCTS, ALTERNATIVE
NICOTINE PRODUCTS, AND E-LIQUID PRODUCTS;
TO AMEND CERTAIN LAWS CONCERNING THE
REGULATION OF TOBACCO PRODUCTS; AND TO
DECLARE AN EMERGENCY.

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

*SECTION 1. Arkansas Code § 26-57-202 is amended to read as follows:
26-57-202. Legislative findings and purpose.*

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

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

*(2) The General Assembly had already recognized this hazard many
years ago when it enacted § 5-27-227 regulating the sale of tobacco to
minors, ~~§§ 20-27-701—20-27-703 [repealed]~~ § 20-27-701 et seq. regulating
pricing, establishing a policy for public smoking, and this subchapter, to
provide for close supervision and control of the sale of cigarettes, ~~and~~
other tobacco products, vapor products, alternative nicotine products, and e-*



1 liquid products;

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

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

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

7 (1) Provide for the close supervision and control of the
8 licensing of persons to sell cigarettes, ~~and~~ other tobacco products, vapor
9 products, alternative nicotine products, and e-liquid products in this state
10 in order to assure that ~~cigarettes and other tobacco~~ when these products are
11 distributed in the state, they are fresh, not contaminated, and are properly
12 taxed, stamped, stored, and distributed only to persons authorized to receive
13 these products; and

14 (2) Impose licenses, fees, taxes, and restrictions on the
15 privilege of dealing in or otherwise doing business in tobacco products,
16 vapor products, alternative nicotine products, and e-liquid products in order
17 to promote the public health and welfare of the citizens of this state and to
18 protect the revenue collection procedures incorporated within this
19 subchapter.

20
21 SECTION 2. Arkansas Code § 26-57-203 is amended to read as follows:

22 26-57-203. Definitions.

23 As used in this subchapter:

24 (1) "Alternative nicotine product" means:

25 (A) A product that consists of or contains nicotine that
26 can be ingested into the body by chewing, smoking, absorbing, dissolving,
27 inhaling, snorting, sniffing, or by any other means.

28 (B) "Alternative nicotine product" does not include a:

29 (i) Cigarette;

30 (ii) Tobacco product;

31 (iii) Vapor product;

32 (iv) Product that is a drug under 21 U.S.C. §

33 321(g)(1);

34 (v) Product that is a device under 21 U.S.C. §

35 321(h); or

36 (vi) Product that constitutes a combination drug.

1 device, or biological product as described in 21 U.S.C. § 353(g);

2 (2) "Annual" or "annually" means the fiscal year from July 1
3 through the next June 30;

4 ~~(2)(3)~~ "Brand family" means the same as defined in § 26-57-1302;

5 (4)(A) "Child-resistant packaging" means packaging that is
6 designed or constructed to be:

7 (i) Significantly difficult for children under five
8 (5) years of age to:

9 (a) Open; or

10 (b) Obtain a toxic or harmful amount of the
11 substance contained therein within a reasonable time; and

12 (ii) Not difficult for an average adult to use
13 properly.

14 (B) "Child-resistant packaging" does not mean packaging
15 that children cannot open or obtain a toxic or harmful amount within a
16 reasonable time when tested in accordance with the method described in 16
17 C.F.R. § 1700.20, as it existed on January 1, 2015;

18 ~~(3)(5)~~ "Cigar" means any roll of tobacco wrapped in leaf tobacco
19 or in any substance containing tobacco, other than any roll of tobacco that
20 is a cigarette;

21 ~~(3)(6)~~ "Cigarette" means a cigarette as defined in § 26-57-260
22 that is subject to federal excise tax;

23 ~~(5)(7)~~ "Cigarette inputs" means machinery or other component
24 parts typically used in the manufacture of cigarettes, including without
25 limitation tobacco, whether processed or unprocessed, cigarette papers and
26 tubes, cigarette filters and component parts intended for use in the making
27 of cigarette filters, and machinery typically used in the making of
28 cigarettes;

29 ~~(6)(8)~~ "Cigarette rolling machine" means a machine, device, or
30 other type of equipment that is intended to be used or may be used to make
31 rolled tobacco, or a substitute for rolled tobacco, for smoking from other
32 tobacco products, including without limitation roll-your-own tobacco and pipe
33 tobacco;

34 ~~(7)(9)~~ "Consumer" means a member of the public at large;

35 ~~(8)(10)~~ "Days" means calendar days unless otherwise specified;

36 ~~(9)(11)~~ "Dealer's License" means a license for an entity that:

1 (A) Represents cigarette, ~~or~~ tobacco, vapor product,
2 alternative nicotine product, or e-liquid product manufacturers for the
3 purpose of promoting the manufacturers' products in the State of Arkansas;
4 and

5 (B) May have manufacturer representative permits issued to
6 its sales representatives;

7 ~~(10)~~(12) "Directory" means:

8 (A) The directory compiled by the Attorney General under §
9 26-57-1303, if the reference is to the directory used in Arkansas; or

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

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

17 ~~(11)~~(14) "First sale" means the sale of tobacco products made by
18 a manufacturer to licensed wholesalers and licensed vendors or a licensed
19 retailer;

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

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

26 (ii) Purchases tobacco products or vapor products,
27 alternative nicotine products, and e-liquid products only from licensed
28 wholesalers or licensed retailers.

29 (B) A general tobacco products, vapor products, and
30 alternative nicotine products vendor may operate licensed vending machines on
31 the general tobacco ~~product~~ products, vapor products, and alternative
32 nicotine products vendor's own premises and on the premises of others as a
33 principal business;

34 ~~(13)~~(16) "Gross sales" means the amount received for tobacco
35 products sold at retail, including both the federal and state taxes of the
36 tobacco products when purchased by a retailer;

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

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

(ii) ~~That removes~~ Removes cigarettes, tobacco products, or vapor products, alternative nicotine products, and e-liquid products for sale or consumption in the United States from a customs-bonded manufacturing warehouse; ~~or~~

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

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

~~(15)(18)~~(A) "Invoice price" means the price that a wholesaler or retailer of tobacco products, vapor products, alternative nicotine products, or e-liquid products pays to a manufacturer, importer, ~~or~~ distributor, or any other seller to acquire ~~for~~ tobacco products, vapor products, alternative nicotine products, and e-liquid products that the ~~wholesaler or retailer~~ purchaser subsequently sells in the state;.

(B) In the absence of proof by the person possessing the tobacco products, vapor products, alternative nicotine products, or e-liquid products of the price at which the tobacco products, vapor products, alternative nicotine products, or e-liquid products were purchased, "invoice price" shall be the highest price, in the normal course of business and before any discount, at which the manufacturer of the tobacco products, vapor products, alternative nicotine products, or e-liquid products sell the tobacco products, vapor products, alternative nicotine products, or e-liquid products in question;

~~(16)(19)~~ "Knowing" means, with respect to a violation or failure, a violation or failure in which the person knowingly engages in conduct without a good faith belief that the conduct is consistent with this subchapter;

~~(17)(20)~~ "Licensed" means that the person has received a license or permit from the Director of Arkansas Tobacco Control and is otherwise qualified to do business in this state;

~~(18)(A)~~(21)(A) "Manufacturer" means a person that ~~produces or~~

1 ~~offers manufactures, fabricates, assembles, or processes a tobacco product or~~
2 ~~manufactures or fabricates a vapor product, alternative nicotine product, or~~
3 ~~e-liquid product for sale, including without limitation federally licensed~~
4 ~~importers and distributors that deal in tobacco products, vapor products,~~
5 ~~alternative nicotine products, or e-liquid products as manufacturers and that~~
6 ~~are required under this subchapter to sell only to licensed wholesalers or~~
7 ~~licensed retailers located in the state.~~

8 (B) "Manufacturer" includes a sales entity affiliate of
9 the manufacturer or any other entity representing the manufacturer with
10 regard to the sale of tobacco products, vapor products, alternative nicotine
11 products, or e-liquid products produced by the manufacturer to wholesalers or
12 licensed retailers.

13 (C) "Manufacturer" specifically includes a person that
14 mixes, compounds, repackages, or resizes e-liquids or vapor products;

15 ~~(19)(22)~~ "Nonparticipating manufacturer" means the same as
16 defined in § 26-57-1302;

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

20 (B) "Package" does not include a container of multiple
21 packages;

22 ~~(21)(24)~~ "Participating manufacturer" means the same as defined
23 in § 26-57-1302;

24 ~~(22)(25)~~ "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 ~~(23)(26)~~ "Place of business" means the place where orders are
30 taken or received or where tobacco products, vapor products, alternative
31 nicotine products, or e-liquid products are sold;

32 ~~(24)(27)~~ "Purchase" means an acquisition in any manner or by any
33 means for any consideration, including without limitation transporting or
34 receiving product in connection with a purchase;

35 ~~(25)(28)~~ "Restricted tobacco products vendor" means a person
36 that is licensed to operate vending machines owned by the person only on the

1 person's own premises and is otherwise subject to all other restrictions
2 imposed on a general tobacco products vendor;

3 (29) "Retail exclusive vapor product and alternative nicotine
4 product store" means a retail store that generates ninety percent (90%) or
5 more of its gross revenue from the sale and service of vapor products,
6 alternative nicotine products, or e-liquid products;

7 ~~(26)~~(30) "Retailer" means a person that purchases tobacco
8 products, vapor products, alternative nicotine products, or e-liquid products
9 from licensed wholesalers for the purpose of selling the tobacco products,
10 vapor products, alternative nicotine products, or e-liquid products over the
11 counter at retail to consumers;

12 ~~(27)~~(A)(31)(A) "Sale" or "sell" means a transfer, exchange, or
13 barter in any manner or by any means for any consideration, including
14 distributing or shipping product in connection with a sale.

15 (B) A sale "in" or "into" a state refers to the state in
16 which the destination point of the product is located in the sale without
17 regard to where title was transferred.

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

21 ~~(28)~~(A)(32)(A) "Sales entity affiliate" means an entity that:

22 (i) Sells cigarettes or other tobacco products that
23 the entity acquires directly from a manufacturer or importer; and

24 (ii) Is affiliated with the manufacturer or importer
25 from which the entity acquires the cigarettes or other tobacco products.

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

30 ~~(29)~~(33) "Salesperson" means the agent or employee of a
31 wholesaler that sells or offers for sale to licensed wholesalers or licensed
32 retailers or that solicits for sale, takes orders for, or in any manner
33 promotes the sale or use of tobacco products, vapor products, alternative
34 nicotine products, or e-liquid products;

35 ~~(30)~~(A)(34)(A) "Stamps" means the Arkansas cigarette stamps
36 denoting the tax on cigarettes.

1 (B) When affixed to a container of cigarettes, the stamps
2 indicate that the tax has been paid;

3 ~~(31)~~(35) "Tobacco products" means all products containing
4 tobacco for consumption, including without limitation cigarettes, cigars,
5 little cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking
6 tobacco, including pipe tobacco, and smoking tobacco substitutes;

7 ~~(32)~~(36) "Tobacco products, vapor products, alternative nicotine
8 products, or e-liquid products vending machine" means a vending machine from
9 which tobacco products, vapor products, alternative nicotine products, or e-
10 liquid products are sold;

11 ~~(33)~~(37) "Unstamped cigarettes" means cigarettes that are not
12 contained in a package bearing a stamp permitted under this chapter;

13 (38) "Vapor product" means an electronic oral device of any size
14 or shape that contains a vapor of nicotine, e-liquid, or any another
15 substance that when used or inhaled simulates smoking, regardless of whether
16 a visible vapor is produced, including without limitation a device that:

17 (A) Is composed of a heating element, battery, electronic
18 circuit, chemical process, mechanical device or a combination of heating
19 element, battery, electronic circuit, chemical process or mechanical device;

20 (B) Works in combination with a cartridge, other container
21 or liquid delivery device containing nicotine or any other substance and
22 manufactured for use with vapor products;

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

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

29 ~~(34)~~(39) "Warehouse" means a place where tobacco products, vapor
30 products, alternative nicotine products, or e-liquid products are stored for
31 another person and to or from which place the tobacco products, vapor
32 products, alternative nicotine products, or e-liquid products, are shipped or
33 delivered upon order by the owner of the tobacco products, vapor products,
34 alternative nicotine products, or e-liquid products, to the warehouse; and

35 ~~(35)~~(40) "Wholesaler" means a person other than a manufacturer
36 or a person owned or operated by a manufacturer that:

1 (A) Does business within the state ~~and purchases unstamped~~
2 ~~or untaxed;~~

3 (B) Purchases cigarettes, ~~or~~ other tobacco products, vapor
4 products, alternative nicotine products, or e-liquid products ~~directly from~~
5 ~~manufacturers that distribute tobacco products in the state; and any source;~~

6 ~~(B) Sells to properly licensed cigarette or other tobacco~~
7 ~~product vendors or retailers~~

8 (C) Distributes or sells the cigarettes, other tobacco
9 products, vapor products, alternative nicotine products, or e-liquid products
10 to other wholesalers, vendors, or retailers; and

11 (D) Does not distribute or sell the cigarettes, other
12 tobacco products, vapor products, alternative nicotine products, or e-liquid
13 products at retail to consumers.

14
15 SECTION 3. Arkansas Code § 26-57-207 is amended to read as follows:
16 26-57-207. Privilege to do business.

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

23
24 SECTION 4. Arkansas Code §§ 26-57-213 – 26-57-216 are amended to read
25 as follows:

26 26-57-213. Invoices.

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

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

1 (c) Retailers shall:

2 (1) Maintain or produce copies of at least the last thirty (30)
3 days of tobacco product, vapor product, alternative nicotine product, or e-
4 liquid product invoices; and

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

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

11
12 26-57-214. Registration and licensing required prior to doing
13 business.

14 (a) A person shall not deal with, deliver, or cause to be delivered to
15 a retailer or consumer or otherwise do business in tobacco products, vapor
16 products, alternative nicotine products, or e-liquid products, in this state
17 without having first registered with the Director of Arkansas Tobacco Control
18 and obtained a permit or license for that purpose, except that a person
19 purchasing an existing permitted retail location may operate under the
20 selling owner's permit for a period not to exceed thirty (30) days from the
21 date of sale to allow the purchasing owner time to secure a permit.

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

23 (c) A manufacturer, wholesaler, retailer, or general tobacco products,
24 vapor products, or alternative nicotine products vendor, ~~or restricted~~
25 ~~tobacco products vendor~~ who intends to sell tobacco products, vapor products,
26 alternative nicotine products, or e-liquid products at or from one (1) or
27 more places of business owned, rented, or leased by it shall obtain a
28 separate license for each such place of business.

29 (d)(1) Any person licensed as a wholesaler shall not operate as a
30 retailer unless a retailer's license is first secured.

31 (2) Any person licensed as a retailer shall not operate as a
32 wholesaler unless a wholesaler's license is first secured.

33 (e) Any person who pleads guilty or nolo contendere to or is found
34 guilty of buying, selling, or otherwise doing business in cigarettes, ~~or~~
35 tobacco products, vapor products, alternative nicotine products, or e-liquid
36 products in this state without first obtaining the appropriate license or

1 permit is guilty of a ~~Class C~~ Class A misdemeanor.

2
3 26-57-215. Permits and licenses – Types.

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

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

12 (b)(1) In addition to securing a permit or license under subsection
13 (a) of this section, a manufacturer whose products are sold in this state
14 shall register with the Director of the Department of Finance and
15 Administration. A manufacturer whose products are sold in this state is not
16 required to obtain a dealer's license for an employee operating as the
17 manufacturer's sales representative if the manufacturer holds a license or
18 permit under subsection (a) of this section.

19 (2)(A) Every wholesaler of cigarettes who operates a place of
20 business shall secure a wholesale cigarette permit, ~~and~~ every wholesaler of
21 any vapor products, alternative nicotine products, e-liquid products, or
22 other tobacco products except cigarettes who operates a place of business
23 shall secure a wholesale tobacco, vapor product, and alternative nicotine
24 product permit.

25 (B) ~~Any~~ A wholesaler doing business in both cigarettes and
26 vapor products, alternative nicotine products, e-liquid products, or other
27 tobacco products shall secure both a wholesale cigarette permit and a
28 wholesale tobacco, vapor product, and alternative nicotine product permit.

29 (3) Every salesperson of any tobacco product, vapor product,
30 alternative nicotine product, or e-liquid product who contacts a retailer in
31 this state for the purpose of soliciting or taking and processing orders for
32 the sale of tobacco products, vapor products, alternative nicotine products
33 ,or e-liquid products or who through contact delivers or causes delivery of
34 any tobacco product, vapor product, alternative nicotine product, or e-liquid
35 product to a retailer in this state, shall first secure a salesperson's
36 license. Application shall be made by the wholesaler or general tobacco

1 products vendor who is the salesperson's employer. A salesperson's license is
2 not transferable to another employer and must be surrendered to the Director
3 of Arkansas Tobacco Control by the employer upon termination of the
4 salesperson's employment.

5 (4)(A) Every retailer of cigarettes, other tobacco products,
6 vapor products, alternative nicotine products, or e-liquid products ~~who that~~
7 operates a place of business shall secure a retail cigarette, tobacco, vapor
8 products, alternative nicotine products, or e-liquid products permit, and
9 every exclusive retailer of ~~any other tobacco products, except cigarettes,~~
10 vapor products, alternative nicotine products, or e-liquid products ~~who that~~
11 operates a place of business shall secure a retail ~~tobacco~~ exclusive vapor
12 product and alternative nicotine product store permit. ~~Any retailer doing~~
13 ~~business in both cigarettes and other tobacco products shall secure both a~~
14 ~~retail cigarette permit and a retail tobacco permit.~~

15 (B) ~~Retailers~~ Retail permit holders and dealer license
16 holders may secure temporary permits to operate at picnics, fairs, carnivals,
17 circuses, or any other temporary public gathering for periods not to exceed
18 ten (10) days for a fee of five dollars (\$5.00).

19 (5) A person engaged in the business of selling, leasing,
20 renting, or otherwise disposing of or dealing with a ~~tobacco product~~ vending
21 machine containing tobacco products, vapor products, alternative nicotine
22 products, or e-liquid products in this state shall secure a ~~General Tobacco~~
23 ~~Products Vending Permit~~ general tobacco products, vapor products, and
24 alternative nicotine products vending permit.

25 (6)(A)(i) Every general tobacco products, vapor products, and
26 alternative nicotine products vendor ~~and every restricted tobacco vendor must~~
27 shall obtain a proper license from the Director of Arkansas Tobacco Control.
28 However, municipal corporations may license and tax the privilege of doing
29 business as a general tobacco products, vapor products, and alternative
30 nicotine products vendor ~~or restricted tobacco vendor~~ in cities where the
31 vendors maintain an established place of business, provided that the machine
32 license tax imposed may not exceed fifty percent (50%) of the amounts levied
33 on the vendors' licenses under this subchapter.

34 (ii) If a municipality by ordinance licenses or
35 taxes the privilege of doing business as a general tobacco products, vapor
36 products, and alternative nicotine products vendor ~~or restricted tobacco~~

1 ~~vendor~~, proof that the license is in good standing shall be a mandatory
2 condition for the issuance of a state license required under this section.

3 (B)(i)(a) In addition, every general tobacco products,
4 vapor products, and alternative nicotine products ~~vendor or restricted~~
5 ~~tobacco vendor must~~ shall obtain a permit stamp for each machine of any type
6 placed in operation in this state for the purpose of vending any tobacco
7 products, vapor products, alternative nicotine products, or e-liquid
8 products.

9 (b) This stamp shall be affixed to the machine
10 in a conspicuous location together with a decal or card reciting the name,
11 address, and license number of the vendor operating the machine.

12 (ii) No stamp will be issued for any machine upon
13 which the state gross receipts or state compensating tax has not been paid,
14 and the Director of ~~the Department of Finance and Administration~~ Arkansas
15 Tobacco Control shall require proof of payment before the initial issue of a
16 stamp for any ~~tobacco products~~ vending machine containing tobacco products,
17 vapor products, alternative nicotine products, or e-liquid products.

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

19 (A) A permit for a sole proprietor is issued in the sole
20 proprietor's name and in the sole proprietor's fictitious business name, if
21 any;

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

24 (a) The managing partner or managing member;
25 and

26 (b) The partnership or limited liability
27 company.

28 (ii) ~~The~~ If the managing partner or managing member
29 of a limited liability company ~~may not be~~ is a partnership, limited liability
30 company, or corporation, ~~and, then the permit shall be issued in the name of:~~

31 (a) The president or chief executive officer;
32 and

33 (b) The partnership or limited liability
34 company.

35 (C) A permit for a publicly traded or nonpublicly traded
36 corporation is issued in the name of the president or chief executive officer

1 of the corporation and in the name of the corporation.

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

5 (A) The managing partner, limited liability company
6 managing member, or president or chief executive officer of a corporation,
7 partnership, or limited liability company; or

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

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

16 (2)(A) When a partnership or limited liability company permitted
17 under this subchapter changes, removes, or replaces the managing partner, ~~or~~
18 managing member, president, or chief executive officer, the existing permit
19 issued under this subchapter is void, and the partnership or limited
20 liability company shall apply for and may be issued a new permit under this
21 subchapter.

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

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

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

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

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

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

15
16 26-57-216. Permits and licenses – Number and location – Background
17 check required.

18 The Arkansas Tobacco Control Board may determine in its reasonable
19 discretion and in accordance with this subchapter:

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

21 (2)(A) The locations thereof.

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

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

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

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

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

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

SECTION 5. Arkansas Code § 26-57-219 is amended to read as follows:

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

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

(1) Wholesale Cigarette Permit \$ 500.00

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

(3) General Tobacco Products, Vapor Products, and Alternative Nicotine Products Vending Permit (vendor) 100.00

(4) Tobacco Products, Vapor Products and Alternative Nicotine Products Vending Machine License, per machine 10.00

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

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

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

(5) Retail Cigarette, Tobacco, Vapor Product, and Alternative Nicotine Product Permit 50.00

(6) Retail Exclusive Vapor Product and Alternative Nicotine Product Permit 100.00

~~(6)(7) Wholesale Salesperson's License 25.00~~

~~(7)(8) Dealer's License 25.00~~

~~(8)(9) Manufacturer's Representative Fee 25.00~~

~~(9)(10) Manufacturer Cigarette Permit 500.00~~

~~(10)(11)(A) Manufacturer Tobacco, Vapor Product, and Alternative Nicotine Product Permit 500.00~~

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

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

3 (2)(A) Upon the failure to timely renew a permit or license
4 issued under this subchapter, a late fee of two (2) times the amount of the
5 permit or license fee in question shall be owed in addition to the annual
6 privilege fee for the permit or license.

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

11 (3) A permit or license shall not be issued to the applicant
12 until the late fee and the license or permit fee have been paid.

13 (c) A permit or license issued under this subchapter shall not be
14 renewed for a permit or license holder who is delinquent more than ninety
15 (90) days on a privilege fee, tax relating to the sale or dispensation of
16 cigarettes or tobacco products, or any other state and local tax due the
17 Director of the Department of Finance and Administration.

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

23 (e) A permittee or licensee who has unpaid fines or an unserved permit
24 or license suspension may not transfer, sell, or give cigarette, tobacco,
25 vapor product, alternative nicotine product, or e-liquid product inventory of
26 the business associated with the permit or license to a third party until all
27 fines are paid in full and all suspensions are completed successfully nor
28 shall any third party be issued a new permit or license for the business
29 location.

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

35
36 SECTION 6. Arkansas Code § 26-57-223 is amended to read as follows:

1 26-57-223. Permits and licenses – Suspension or revocation.

2 (a) All permits and licenses issued under this subchapter may be
3 suspended or revoked by the Director of Arkansas Tobacco Control for any
4 violation of this subchapter or the rules pertaining to this subchapter,
5 subject to an appeal hearing at the next regularly scheduled Arkansas Tobacco
6 Control Board meeting.

7 (b) The director may revoke ~~for one (1) year~~ all permits or licenses
8 to deal in tobacco products, vapor products, alternative nicotine products,
9 or e-liquid products associated with ~~of~~ any person who is convicted of
10 criminally violating this subchapter ~~or the regulations pertaining to this~~
11 ~~subchapter a second time~~ with the revocation being subject to an appeal to
12 the board.

13
14 SECTION 7. Arkansas Code §§ 26-57-226 – 26-57-228 are amended to read
15 as follows:

16 26-57-226. Penalties.

17 Any person within the jurisdiction of this state who is not licensed to
18 sell, deliver, or cause to be delivered tobacco products, vapor products,
19 alternative nicotine products, or e-liquid products to consumers who sells,
20 takes orders from, delivers, or causes to be delivered immediately or in the
21 future any tobacco products, vapor products, alternative nicotine products,
22 or e-liquid products to consumers, is guilty of a*

23 ~~(1) Class C misdemeanor for the first offense; and~~

24 ~~(2) Class B misdemeanor for each additional offense~~ Class A
25 misdemeanor.

26
27 26-57-227. Operation of vending machine without license a public
28 nuisance – Seizure and sale – Redemption.

29 (a) Any person who engages in the business of owning, operating, or
30 leasing any ~~tobacco product~~ vending machines containing tobacco products,
31 vapor products, alternative nicotine products, or e-liquid products without
32 first obtaining the license described in this subchapter is declared to be
33 maintaining a public nuisance.

34 (b) Any ~~tobacco product~~ vending machine so operated may be seized and
35 sold by the Director of Arkansas Tobacco Control at public auction upon the
36 order of the Pulaski County Circuit Court.

1 (c) These machines may be redeemed prior to sale by the owner upon the
2 payment of all taxes or fees due on the machine and all costs and expenses
3 incurred in enforcing this section if the offender pays all taxes, fees, and
4 costs within ten (10) days after seizure of the machines by the director.

5
6 26-57-228. Purchases from unregistered, unlicensed dealers unlawful.

7 (a) It is unlawful for a retailer of tobacco products, vapor products,
8 alternative nicotine products, or e-liquid products to purchase tobacco
9 products, vapor products, alternative nicotine products, or e-liquid products
10 from a person other than a licensed manufacturer, licensed wholesaler, or
11 other licensed retailer.

12 (b) Any retailer violating the provisions of this subchapter is guilty
13 of a Class B misdemeanor for each purchase defined in subsection (a) of this
14 section.

15
16 SECTION 8. Arkansas Code §§ 26-57-230 and 26-57-231 are amended to
17 read as follows:

18 26-57-230. Common carriers.

19 (a) Common carriers transporting tobacco products, vapor products,
20 alternative nicotine products, or e-liquid products may be required by the
21 Director of the Department of Finance and Administration or the Director of
22 Arkansas Tobacco Control to give a statement of all consignments of tobacco
23 products, vapor products, alternative nicotine products, or e-liquid products
24 showing date, point of origin, point of delivery, and to whom delivered.

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

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

35
36 26-57-231. Failure to allow inspection unlawful.

1 A person required to pay taxes or obtain a permit under this subchapter
2 who fails or refuses to permit the Department of Finance and Administration
3 or Arkansas Tobacco Control to examine or inspect the person's ~~taxable~~ stock
4 of tobacco products, vapor products, alternative nicotine products, e-liquid
5 products, invoice books, papers, and memoranda considered necessary to secure
6 information directly relating to the enforcement of this subchapter is guilty
7 of a+

8 ~~(1) Violation for the first and second offense; and~~
9 ~~(2) Class C misdemeanor for each additional offense~~ Class A
10 misdemeanor.
11

12 SECTION 9. Arkansas Code § 26-57-232(a)(2), concerning wholesaler
13 restrictions and criminal violations of wholesalers, is amended to read as
14 follows:

15 (2) Except as otherwise provided herein, the wholesaler may sell
16 tobacco products, vapor products, alternative nicotine products, or e-liquid
17 products only to persons properly licensed under this subchapter;
18

19 SECTION 10. Arkansas Code §§ 26-57-233 and 26-57-234 are amended to
20 read as follows:

21 26-57-233. Salesperson – Restrictions – Violations.

22 Every salesperson who sells, offers for sale, takes orders, and
23 solicits for sale any tobacco products, vapor products, alternative nicotine
24 products, or e-liquid products for immediate or future delivery to
25 wholesalers of tobacco products, vapor products, alternative nicotine
26 products, or e-liquid products in this state may do so only under the
27 following restrictions:

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

30 (2) The salesperson may sell to or take orders for tobacco
31 products, vapor products, alternative nicotine products, or e-liquid products
32 from licensed wholesalers, provided that the tobacco products, vapor
33 products, alternative nicotine products, or e-liquid products are consigned
34 or delivered only to ~~registered~~ licensed manufacturers or licensed
35 wholesalers;

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

1 products, vapor products, alternative nicotine products, or e-liquid products
2 from licensed retailers, provided that the tobacco, vapor products,
3 alternative nicotine products, or e-liquid products shall be delivered to the
4 retailer only by a licensed wholesaler; and

5 (4)(A) The wholesaler shall keep complete records of all sales
6 or orders taken for dealers in tobacco products, vapor products, alternative
7 nicotine products, or e-liquid products in this state, copies of all
8 invoices, orders taken, and other instruments as evidence of sales or
9 disposition of tobacco products, vapor products, alternative nicotine
10 products, or e-liquid products.

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

15
16 26-57-234. Retailers and vendors – Restrictions – Violations.

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

19 (1) Retailers and vendors not possess, place in their stock,
20 have on their premises, sell, or otherwise dispose of any cigarettes to which
21 stamps denoting the tax due thereon have not been affixed;

22 (2) Retailers and vendors require that properly cancelled stamps
23 are affixed to all cigarettes purchased or otherwise received or accepted by
24 them before they purchase or otherwise become the owner or possessor of the
25 cigarettes;

26 (3) Retailers and vendors require from the wholesaler at the
27 time of each purchase or receipt of cigarettes an invoice showing the
28 quantity, kind, and price of the cigarettes and the stamps required to show
29 that the tax has been paid, and date of sale or delivery;

30 (4)(A) The retailer shall keep records showing the description
31 and date of the receipt of each lot of tobacco products, vapor products,
32 alternative nicotine products, or e-liquid products, from whom purchased, and
33 when received on the premises, or any other requirements prescribed by the
34 Director of the Department of Finance and Administration.

35 (B) The records required under subdivision (a)(4)(A) of
36 this section are subject to inspection by the Department of Finance and

1 Administration and Arkansas Tobacco Control;

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

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

9 (b) Upon a retailer's failure to comply with any part of this section,
10 the Director of Arkansas Tobacco Control may revoke the retailer's permit.

11 (c) ~~Any~~ A retailer or vendor who fails or refuses to retain in his or
12 her files invoices of tobacco products, vapor products, alternative nicotine
13 products, or e-liquid products, and stamps, or who fails or refuses to
14 furnish the statements and information or make the reports concerning
15 receipts and sales of tobacco products, vapor products, alternative nicotine
16 products, or e-liquid products, as required by this subchapter or prescribed
17 by the Director of the Department of Finance and Administration, or who
18 violates any of the requirements of this section, is guilty of a violation.

19
20 SECTION 11. Arkansas Code § 26-57-247(b), concerning the seizure,
21 forfeiture, and disposition of tobacco products and other property, is
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, and tobacco, vapor product, and alternative nicotine
2 product permit or retail exclusive vapor product and alternative nicotine
3 product 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, and tobacco,
7 vapor product, and alternative nicotine product permit or retail exclusive
8 vapor product and alternative nicotine product store permit.

9
10 SECTION 12. Arkansas Code § 26-57-247(e)(1) and (2), concerning the
11 seizure, forfeiture, and disposition of tobacco products and other property,
12 are amended to read as follows:

13 (e) The following are subject to forfeiture under this section upon
14 order by a circuit court:

15 (1) Tobacco products, vapor products, alternative nicotine
16 products, or e-liquid products distributed, dispensed, or acquired in
17 violation of this subchapter;

18 (2) Raw materials, products, or equipment used or intended for
19 use in manufacturing, compounding, processing, delivering, importing, or
20 exporting a tobacco product, vapor product, alternative nicotine product, or
21 e-liquid product in violation of this subchapter;

22
23 SECTION 13. Arkansas Code § 26-57-247(e)(6) and (7), concerning the
24 seizure, forfeiture, and disposition of tobacco products and other property,
25 are amended to read as follows:

26 (6)(A) Except as provided in subdivision (e)(6)(B) of this
27 section, a thing of value, including:

28 (i) ~~Firearms furnished or intended to be furnished~~
29 ~~in exchange for a~~ purchased from the proceeds of the sale of untaxed tobacco
30 ~~product~~ products, vapor products, alternative nicotine products, or e-liquid
31 products in violation of this subchapter or used in furtherance of a criminal
32 offense as described in § 26-57-245;

33 (ii) Proceeds or profits traceable to an exchange
34 described in subdivision (e)(6)(A)(i) of this section; and

35 (iii) Money, negotiable instruments, or security
36 used or intended to be used to facilitate a violation of this subchapter.

1 (B) Property shall not be forfeited under subdivision
2 (e)(6)(A) of this section to the extent of the interest of an owner by reason
3 of an act or omission established by him or her by a preponderance of the
4 evidence to have been committed or omitted without his or her knowledge or
5 consent;

6 (7)(A) Money, coins, or currency found in close proximity to a
7 forfeitable tobacco product, vapor product, alternative nicotine product, or
8 e-liquid product or a forfeitable record of an importation of a tobacco
9 product, vapor product, alternative nicotine product, or e-liquid product is
10 presumed to be forfeitable under this section.

11 (B) The burden of proof is upon a claimant of the money,
12 coins, or currency to rebut the presumption in subdivision (e)(7)(A) of this
13 section by a preponderance of the evidence; and
14

15 SECTION 14. Arkansas Code § 26-57-247(f) and (g), concerning the
16 seizure, forfeiture, and disposition of tobacco products and other property,
17 are amended to read as follows:

18 (f) A tobacco product, vapor product, alternative nicotine product, or
19 e-liquid product that is possessed, transferred, sold, or offered for sale in
20 violation of this subchapter may be seized and immediately forfeited to the
21 state.

22 (g)(1) Property subject to forfeiture under this subchapter may be
23 seized by a law enforcement agent upon process issued by a circuit court
24 having jurisdiction over the property on petition filed by the prosecuting
25 attorney of the judicial circuit.

26 (2) Seizure without process may be made if:

27 (A) The seizure is incident to an arrest or a search under
28 a search warrant or an inspection under ~~an administrative inspection warrant~~
29 the regulatory authority of Arkansas Tobacco Control;

30 (B) The property subject to seizure has been the subject
31 of a prior judgment in favor of the state in a criminal injunction or
32 forfeiture proceeding based upon this subchapter;

33 (C) The seizing law enforcement agency has probable cause
34 to believe that the property is directly or indirectly dangerous to health or
35 safety; or

36 (D) The seizing law enforcement agency has probable cause

1 to believe that the property was used or is intended to be used in violation
2 of this subchapter.

3
4 SECTION 15. Arkansas Code § 26-57-247(1)(1)(A)(iv), concerning an
5 order by a circuit court to seize property, is amended to read as follows:

6 (iv)(a) An aircraft is forfeited to the office of
7 the Director of Arkansas Tobacco Control and may be used only for tobacco,
8 vapor product, alternative nicotine product, or e-liquid product smuggling
9 interdiction efforts within the discretion of the Director of Arkansas
10 Tobacco Control.

11 (b) However, if the Director of Arkansas
12 Tobacco Control determines that the aircraft should be sold, ~~the sale shall~~
13 ~~be conducted under § 5-5-101(e) and (f), and the proceeds shall be deposited~~
14 ~~into the State Treasury as special revenues to be credited to the Special~~
15 ~~State Assets Forfeiture Fund~~ the proceeds of the sale shall be distributed as
16 set forth in subdivision (1)(1)(A)(i)(b) of this section;

17
18 SECTION 16. Arkansas Code § 26-57-247(1)(1)(A)(vi), concerning an
19 order by a circuit court to seize property, is amended to read as follows:

20 (vi) A tobacco product, vapor product, alternative
21 nicotine product, or e-liquid product shall be destroyed pursuant to a court
22 order;

23
24 SECTION 17. Arkansas Code § 26-57-249 is amended to read as follows:

25 26-57-249. Destruction of tobacco products upon conviction –
26 Procedure.

27 (a) Upon conviction of any person charged with a violation of any
28 tobacco, vapor product, alternative nicotine product, or e-liquid product law
29 or rule which resulted in the seizure of tobacco products, vapor products,
30 alternative nicotine products, or e-liquid products, the court shall issue an
31 order to destroy the tobacco products, vapor products, alternative nicotine
32 products, or e-liquid products confiscated by the Director of Arkansas
33 Tobacco Control or by any state, county, or municipal officer in this state.

34 (b) Upon a finding of guilty of any person charged with a violation of
35 a state tobacco, vapor product, alternative nicotine product, or e-liquid
36 product law or rule in a proceeding before the Arkansas Tobacco Control Board

1 that resulted in the seizure of tobacco products, vapor products, alternative
2 nicotine products, or e-liquid products, the board shall issue an order to
3 destroy the tobacco products, vapor products, alternative nicotine products,
4 or e-liquid products, confiscated by the director or by any state, county, or
5 municipal officer in this state.

6 (c) Every court of record in this state shall notify the director of
7 the disposition made of each case in the court as to whether the defendant
8 was convicted or acquitted.

9 (d) Upon application of the director, the board or the court issuing a
10 destruction order may instead release the tobacco products, vapor products,
11 alternative nicotine products, or e-liquid products to the use and benefit of
12 Arkansas Tobacco Control for suitable law enforcement or training purposes.
13

14 SECTION 18. Arkansas Code § 26-57-254 is amended to read as follows:

15 26-57-254. ~~Health inspections~~ Safety inspections on permitted products
16 - Restrictions on use of e-liquid products and alternative nicotine products.

17 (a) In order to assure that the citizens of this state receive only
18 tobacco products, vapor products, alternative nicotine products, or e-liquid
19 products which that are fresh and not contaminated, and to ensure the safety
20 of Arkansas youth, the Director of ~~the Department of Health~~ Arkansas Tobacco
21 Control is authorized under this subchapter to:

22 (1) ~~make reasonable inspection of~~ Inspect or cause to be
23 inspected any tobacco ~~products~~ product, vapor product, alternative nicotine
24 product, or e-liquid container in places of storage or distribution
25 authorized under this subchapter; and

26 (2) ~~may require~~ Require any ~~such~~ tobacco products, vapor
27 products, alternative nicotine products, or e-liquid containers found to be
28 contaminated, damaged, or not fresh be removed from stock and be either
29 returned to the proper wholesaler or manufacturer for disposal according to
30 law or delivered to the Director of Arkansas Tobacco Control for destruction
31 or disposal.

32 (b)(1) It is a violation for any person to use a tobacco product,
33 vapor product, alternative nicotine product, or e-liquid product in or on the
34 grounds of any school, child care facility, or healthcare facility.

35 (2) As used in this subdivision:

36 (A) "Child care facility" means the same as provided in §

1 20-78-202(2);

2 (B) "Healthcare facility" means the same as provided in §
3 20-27-1803(6); and

4 (C) "School" means:

5 (i) Any buildings, parking lots, playing fields,
6 playgrounds, school buses, or other school vehicles; or

7 (ii) Any off-campus school-sponsored or -sanctioned
8 events with respect to any public, charter, or private school where children
9 attend classes in kindergarten programs or grades one through twelve (1 -
10 12).

11 (c) On and after the effective date of this section, all alternative
12 nicotine products and e-liquid containers containing nicotine sold at retail
13 in this state shall satisfy the child-resistant packaging effectiveness
14 standards described in § 26-57-203 when tested in accordance with the method
15 described by 16 C.F.R. § 1700.20, as it is existed on January 1, 2015.

16 (d) As used in this section, "e-liquid container" means a bottle or
17 other container of e-liquid that is sold or provided for mixing at retail and
18 is marketed or intended for use in a vapor product, but does not include e-
19 liquid contained in a cartridge that is sold, marketed, or intended for use
20 in a vapor product if the cartridge is prefilled and sealed by the
21 manufacturer and is not intended to be opened by the consumer.

22
23 SECTION 19. Arkansas Code § 26-57-255(a)(1) and (2), concerning the
24 creation of the Arkansas Tobacco Control Board, is amended to read as
25 follows:

26 (1) Two (2) members of the board shall be ~~tobacco products~~
27 wholesalers of tobacco products, vapor products, alternative nicotine
28 products, or e-liquid products;

29 (2) Two (2) members of the board shall be ~~tobacco products~~
30 retailers of tobacco products, vapor products, alternative nicotine products,
31 or e-liquid products; and

32
33 SECTION 20. Arkansas Code § 26-57-256(a)(4) and (5), concerning the
34 duties of the Arkansas Tobacco Control Board, are amended to read as follows:

35 (4)(A) Cooperate with the Revenue Division of the Department of
36 Finance and Administration in the enforcement of the tax laws affecting the

1 sale of tobacco products in this state and in the enforcement of all other
2 state and local tax laws.

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

7 (i) Federal tax identification numbers issued by the
8 Internal Revenue Service;

9 (ii) Social Security numbers; and

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

12 (C)(i) Each year the board shall provide a list of all
13 applicants for the issuance or renewal of all tobacco, vapor product,
14 alternative nicotine product, or e-liquid product permits and licenses to the
15 Director of the Department of Finance and Administration.

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

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

26 (B)(i) After a notice and hearing held in accordance with
27 the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board
28 finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-
29 701 et seq., or the rules promulgated by the board, the board may suspend,
30 revoke, or not renew any or all permits and licenses issued by the board to
31 any person or entity.

32 (ii) In addition, the board may levy a civil penalty
33 in an amount not to exceed five thousand dollars (\$5,000) for each violation
34 against any person or entity found to be in violation.

35 (iii) Each day of the violation shall be deemed a
36 separate violation.

1 (C) In that regard, the board may examine or cause to be
2 examined under oath any witness and the books and records of any licensee,
3 person, or entity; and
4

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

7 (f) The board ~~shall~~ may consider the following factors when reviewing
8 a possible violation:

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

13 (2) The business has informed its employees of the applicable
14 laws regarding the sale of cigarettes, ~~and~~ tobacco products, vapor products,
15 alternative nicotine products, or e-liquid products to persons less than
16 eighteen (18) years of age;

17 (3) The business required employees to verify the age of
18 cigarette, ~~or~~ tobacco product, vapor product, alternative nicotine product,
19 e-liquid product, or e-liquid customers by way of photographic
20 identification;

21 (4) The business has established and imposed disciplinary
22 sanctions for noncompliance; and

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

27 (g)(1) A penalty under subsection (d) of this section for a violation
28 of § 5-27-227 shall not be imposed upon a retailer or agent or employee of a
29 retailer who can establish an affirmative defense that before the date of the
30 violation the retailer or agent or employee of the retailer furnishing the
31 tobacco in any form, vapor products, alternative nicotine products, or e-
32 liquid products or cigarette papers reasonably relied upon proof of age that
33 identified the person receiving the tobacco in any form, vapor products,
34 alternative nicotine products, e-liquid products, or cigarette papers as
35 being eighteen (18) years of age or older.

36 (2) As used in this section, “proof of age” means any document

1 issued by a governmental agency containing a description of the person or the
2 person's photograph, or both, and giving the person's date of birth and
3 includes without limitation a passport, military identification card, or
4 driver's license.

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

8
9 SECTION 22. Arkansas Code § 26-57-257(l) is amended to read as
10 follows:

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

15
16 SECTION 23. Arkansas Code § 26-57-257(r) is amended to read as
17 follows:

18 (r) The enforcement of state laws relating to the prohibition of the
19 barter or sale of tobacco in any form, vapor products, alternative nicotine
20 products, e-liquid products, or cigarette papers to minors by multiple state
21 agencies shall be coordinated to avoid duplicative inspections of the same
22 retailer by multiple state agencies.

23
24 SECTION 24. Arkansas Code § 26-57-257, concerning the duties of the
25 Director of the Arkansas Tobacco Control, is amended to add an additional
26 subsection to read as follows:

27 (s)(1) Child safety being of paramount concern when dealing with
28 alternative nicotine products and e-liquid products, the Director of Arkansas
29 Tobacco Control may adopt safety and hygiene rules for persons that prepare
30 or mix e-liquid products or alternative nicotine products that include
31 without limitation:

32 (A) Child-resistant packaging effectiveness standards in
33 accordance with § 26-57-254;

34 (B) Regulation of the production of custom or "create your
35 own" e-liquids, or alternative nicotine product mixes; and

36 (C) Workplace safety rules for any location where e-

1 liquids or alternative nicotine products are mixed or prepared, including
2 without limitation:

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

6 (ii) Cleanliness and maintenance of e-liquid
7 preparation and mixing equipment;

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

10 (iv) Prohibition of food and drink consumption and
11 vapor, cigarette, or tobacco use in any e-liquid preparation or mixing area;
12 and

13 (v) Prohibition of the presence of any animals in
14 any e-liquid preparation or mixing area.

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

20 SECTION 25. Arkansas Code § 26-57-259 is amended to read as follows:

21 26-57-259. Nonpreemption.

22 (a) This act and the rules, ~~regulations~~, and other actions of the
23 Arkansas Tobacco Control Board shall not be construed or interpreted so as to
24 preempt or in any other manner qualify or limit the enactment and enforcement
25 of any federal, state, county, municipal, or other local regulation of the
26 manufacture, sale, storage, or distribution of tobacco products that is more
27 restrictive than this act or the rules and regulations promulgated by the
28 board.

29 (b) This act and the rules, ~~regulations~~, and other actions of the
30 board shall not be construed or interpreted so as to preempt or otherwise
31 limit any legal or equitable claims or causes of action brought under the
32 common law or any federal or state statutes.

33 (c) Nothing in this act nor any rule ~~or regulation~~ of the board shall
34 be construed or interpreted so as to require any state, county, municipal, or
35 other local authority to exhaust any administrative remedies through the
36 board, including without limitation the right to seize and forward to the

1 board the state license of any vendor or retailer found to have illegally
2 sold tobacco products, vapor products, alternative nicotine products, or e-
3 liquid products to a person less than eighteen (18) years of age, provided
4 that the vendor or retailer shall be given a hearing before the board at the
5 board's next regularly scheduled meeting.

6
7 SECTION 26. Arkansas Code § 26-57-265(b), concerning reports by
8 wholesalers to Arkansas Tobacco Control, is amended to read as follows:

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

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

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

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

20 (4) The Arkansas permit number of each retailer or wholesaler or
21 the equivalent permit number if the retailer or wholesaler resides outside of
22 the state; and

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

25 (A) The quantity, units, and brand styles of the
26 cigarettes in stamped and unstamped packages that were delivered to each
27 retailer or wholesaler; ~~and~~

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

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

33
34 SECTION 27. Arkansas Code Title 26, Chapter 57, Subchapter 2, is
35 amended to add additional sections to read as follows:

36 26-57-266. Enforcement Agents – Selection – Qualifications –

1 Authority.

2 (a) Arkansas Tobacco Control is designated as a law enforcement
3 agency.

4 (b) The Director of Arkansas Tobacco Control shall assign personnel as
5 agents of Arkansas Tobacco Control to conduct investigations of violations of
6 tobacco laws in this state.

7 (c) Personnel assigned as agents of Arkansas Tobacco Control shall:

8 (1) Be considered fulltime law enforcement officers by the
9 Arkansas Commission on Law Enforcement Standards and Training under § 12-9-
10 101 et seq.; and

11 (2) Have statewide law enforcement authority.
12

13 26-57-267. Preemption for vapor products, alternative nicotine
14 products, and e-liquid products.

15 This subchapter and the rules and other actions of the Arkansas Tobacco
16 Control Board shall preempt the enactment and enforcement of any county,
17 municipal, or other local regulation of the manufacture, sale, storage, or
18 distribution of vapor products or alternative nicotine products that is more
19 restrictive than this act or the rules promulgated by the board.
20

21 *SECTION 28. Arkansas Code § 19-6-301, concerning the enumeration of*
22 *special revenues, is amended to add an additional subdivision to read as*
23 *follows:*

24 (253) All permit and license fees received by Arkansas Tobacco Control
25 under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.
26

27 *SECTION 29. Arkansas Code Title 19, Chapter 6, Subchapter 8, is*
28 *amended to add an additional section to read as follows:*

29 19-6-829. Arkansas Tobacco Control Revenue Fund.

30 (a) There is created on the books of the Treasurer of State, the
31 Auditor of the State, the Chief Fiscal Officer of the State a special revenue
32 fund to be known as the "Arkansas Tobacco Control Revenue Fund".

33 (b)(1) All permit and license fees received by Arkansas Tobacco
34 Control under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et
35 seq., shall be deposited into the State Treasury as special revenues to the
36 credit of the fund.

1 (2) The fund shall also consist of any other revenues authorized
2 by law.

3 (c)(1) The fund shall be used for expenses incurred by Arkansas
4 Tobacco Control in the organization, maintenance, operation, and merchant
5 education and training with regard to enforcement of § 5-27-227, the Arkansas
6 Tobacco Products Tax Act of 1977, § 26-57-201 et seq., and the Unfair
7 Cigarette Sales Act, § 4-75-701 et seq.

8 (2) Expenditures of moneys in the fund are subject to the
9 General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., the
10 Arkansas Procurement Law, § 19-11-201 et seq., and other applicable fiscal
11 laws.

12 (3) The receipts and disbursements of Arkansas Tobacco Control
13 shall be audited annually by the Division of Legislative Audit.

14
15 SECTION 30. Arkansas Code § 5-27-227 is amended to read as follows:

16 5-27-227. Providing minors with tobacco products, vapor products,
17 alternative nicotine products, e-liquid products, and cigarette papers –
18 Purchase, use, or possession prohibited – Self-service displays prohibited –
19 Placement of tobacco vending machines.

20 (a)(1) It is unlawful for any person to give, barter, or sell to a
21 minor:

22 (A) Tobacco in any form; ~~or~~

23 (B) ~~A cigarette~~ Cigarette paper; or

24 (C) A vapor product, alternative nicotine product, e-
25 liquid product, or any component of a vapor product, alternative nicotine
26 product, or e-liquid product.

27 (2) ~~A~~ Except as provided in subdivision (a)(3) of this section,
28 a person who pleads guilty or nolo contendere to or is found guilty of
29 violating subdivision (a)(1) of this section is guilty of a violation and is
30 subject to a fine not to exceed one hundred dollars (\$100) per violation
31 Class A misdemeanor.

32 (3) An employee or owner of an Arkansas Retail Cigarette, and
33 ~~Tobacco permit holder~~ a retail location permitted under § 26-57-215 who
34 violates subdivision (a)(1) of this section while inside the retail location
35 upon conviction is subject to a fine not to exceed one hundred dollars (\$100)
36 per violation.

1 (b)(1) It is unlawful for a minor to:

2 (A) Use or possess or to purchase, or attempt to purchase:

3 (i) Tobacco in any form; ~~or~~

4 (ii) Cigarette papers; or

5 (iii) A vapor product, alternative nicotine product,
6 e-liquid product, or any component of a vapor product, alternative nicotine
7 product, or e-liquid product; or

8 (B) For the purpose of obtaining or attempting to obtain
9 tobacco in any form, a vapor product, alternative nicotine product, e-liquid
10 product, any component of a vapor product, alternative nicotine product, or
11 e-liquid product, or cigarette papers, falsely represent himself or herself
12 to be eighteen (18) years of age or older by displaying proof of age that is
13 false, fraudulent, or not actually proof of the minor's age.

14 (2) Any cigarettes, tobacco products, or cigarette papers found
15 in the possession of a minor may be confiscated and destroyed by a law
16 enforcement officer.

17 (c)(1) It is not an offense under subsection (b) of this section if:

18 (A) The minor was acting at the direction of an authorized
19 agent of ~~the~~ Arkansas Tobacco Control ~~Board~~ to enforce or ensure compliance
20 with laws relating to the prohibition of the sale of tobacco in any form, a
21 vapor product, alternative nicotine product, e-liquid product, any component
22 of a vapor product, alternative nicotine product, or e-liquid product, or
23 cigarette papers to minors;

24 (B) The minor was acting at the direction of an authorized
25 agent of the Division of Behavioral Health Services to compile statistical
26 data relating to the sale of tobacco in any form, a vapor product,
27 alternative nicotine product, e-liquid product, any component of a vapor
28 product, alternative nicotine product, or e-liquid product, or cigarette
29 papers to minors;

30 (C) The minor was acting at the request of an Arkansas
31 Retail Cigarette, ~~and~~ Tobacco, Vapor Product, and Alternative Nicotine
32 Product permit holder or a retail exclusive vapor product and alternative
33 nicotine product store permit holder to assist the permit holder by
34 performing a check on the permit holder's own retail business to see if the
35 permit holder's employees would sell tobacco, a vapor product, alternative
36 nicotine product, e-liquid product, any component of a vapor product,

1 alternative nicotine product, or e-liquid product, or cigarette papers to the
2 minor; or

3 (D) The minor was acting as an agent of a retail permit
4 holder within the scope of employment.

5 (2) A minor performing activities under subdivision (c)(1) of
6 this section shall:

7 (A) Display the appearance of a minor;

8 (B) Have the written consent of the minor's parent or
9 guardian to perform the activity on file with the agency utilizing the minor;
10 and

11 (C)(i) Present a true and correct identification if asked.

12 (ii) Any failure on the part of a minor to provide
13 true and correct identification upon request is a defense to any action under
14 this section or a civil action under § 26-57-256.

15 (d) Any person who sells tobacco in any form, a vapor product,
16 alternative nicotine product, e-liquid product, any component thereof, or a
17 cigarette paper has the right to deny the sale of any tobacco in any form, a
18 vapor product, alternative nicotine product, e-liquid product, any component
19 of a vapor product, alternative nicotine product, or e-liquid product, or a
20 cigarette paper to any person.

21 (e) It is unlawful for any person who has been issued a permit or a
22 license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et
23 seq., to fail to display in a conspicuous place or on each vending machine a
24 sign indicating that the sale of tobacco products, vapor products,
25 alternative nicotine products, e-liquid products, or any component of a vapor
26 product, alternative nicotine product, or e-liquid product to or purchase or
27 possession of tobacco products by a minor is prohibited by law.

28 (f) It is unlawful for any manufacturer whose tobacco product, vapor
29 product, alternative nicotine product, e-liquid product, or any component of
30 a vapor product, alternative nicotine product, or e-liquid product is
31 distributed in this state and any person who has been issued a permit or
32 license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et
33 seq., to distribute a free sample of any tobacco product, vapor product,
34 alternative nicotine product, e-liquid product, or any component of a vapor
35 product, alternative nicotine product, or e-liquid product or coupon that
36 entitles the holder of the coupon to any free sample of any tobacco product,

1 vapor product, alternative nicotine product, e-liquid product, or any
2 component of a vapor product, alternative nicotine product, or e-liquid
3 product:

4 (1) In or on any public street or sidewalk within five hundred
5 feet (500') of any playground, public school, or other facility when the
6 playground, public school, or other facility is being used primarily by
7 minors for recreational, educational, or other purposes; or

8 (2) To any minor.

9 (g)(1)(A) It is unlawful for any person that has been issued a permit
10 or license under the Arkansas Tobacco Products Act of 1977, § 26-57-201 et
11 seq., to sell or distribute a cigarette product, vapor product, alternative
12 nicotine product, e-liquid product, or any component of a vapor product,
13 alternative nicotine product, or e-liquid product through a self-service
14 display.

15 (B) Subdivision (g)(1)(A) of this section does not apply
16 to a:

17 (i) Vending machine that complies with subdivision
18 (h)(1)(A) of this section; ~~or~~

19 (ii) Retail tobacco store; or

20 (iii) Retail exclusive vapor product or alternative
21 nicotine product store.

22 (2) As used in subdivision (g)(1) of this section:

23 (A) "Retail exclusive vapor product or alternative
24 nicotine product store" means the same as defined in § 26-57-203;

25 (B) "Retail tobacco store" means a retail store utilized
26 primarily for the sale of tobacco products, other than vapor products,
27 alternative nicotine products, e-liquid products, and accessories, and in
28 which the sale of other products is merely incidental; and

29 (C) "Self-service display" means a display:

30 (i) That contains a cigarette product, vapor
31 product, alternative nicotine product, e-liquid product, or any component of
32 a vapor product, alternative nicotine product, or e-liquid product;

33 (ii) That is located in an area where customers are
34 permitted; and

35 (iii) In which the cigarette product, vapor product,
36 alternative nicotine product, e-liquid product, or any component of a vapor

1 product, alternative nicotine product, or e-liquid product is readily
2 accessible to a customer without the assistance of a salesperson.

3 (h)(1)(A) Except as provided in subdivision (h)(2) of this section, it
4 is unlawful for any person who owns or leases a tobacco, vapor product,
5 alternative nicotine product, or e-liquid product vending machine to place a
6 tobacco, vapor product, alternative nicotine product, or e-liquid product
7 vending machine in a public place.

8 (B) As used in subdivision (h)(1)(A) of this section,
9 "public place" means a publicly or privately owned place to which the public
10 or a substantial number of people have access.

11 (2) A tobacco, vapor product, alternative nicotine product, or
12 e-liquid product vending machine may be placed in a:

13 (A) Restricted area within a factory, business, office, or
14 other structure to which a member of the general public is not given access;

15 (B) Permitted premises that has a permit for the sale or
16 dispensing of an alcoholic beverage for on-premises consumption that
17 restricts entry to a person twenty-one (21) years of age or older; or

18 (C) Place where the tobacco, vapor product, alternative
19 nicotine product, or e-liquid product vending machine is under the
20 supervision of the owner or an employee of the owner.

21 (i) Any retail permit holder or license holder who violates any
22 provision in this section is deemed guilty of a violation and subject to
23 penalties under § 26-57-256.

24 (j)(1) A notice of alleged violation of this section shall be given to
25 the holder of a retail permit or license or an agent of the holder within ten
26 (10) days of the alleged violation.

27 (2)(A) The notice shall contain the date and time of the alleged
28 violation.

29 (B)(i) The notice shall also include either the name of
30 the person making the alleged sale or information reasonably necessary to
31 determine the location in the store that allegedly made the sale.

32 (ii) When appropriate, information under subdivision
33 (j)(2)(B)(i) of this section should include, but not be limited to, the:

34 (a) Cash register number;

35 (b) Physical location of the sale in the
36 store; and

1 (c) If possible, the lane or aisle number.

2 (k) Notwithstanding the provisions of subsection (i) of this section,
3 the court shall consider the following factors when reviewing a possible
4 violation:

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

8 (2) The business has informed its employees of the applicable
9 laws regarding the sale of cigarettes, ~~and~~ tobacco products, vapor products,
10 alternative nicotine products, and e-liquid products to minors;

11 (3) The business has required employees to verify the age of a
12 cigarette, ~~or~~ tobacco product, vapor product, alternative nicotine product,
13 or e-liquid product customer by way of photographic identification;

14 (4) The business has established and imposed disciplinary
15 sanctions for noncompliance; and

16 (5) That the appearance of the purchaser of the tobacco in any
17 form, vapor product, alternative nicotine product, e-liquid product, or
18 cigarette papers was such that an ordinary prudent person would believe him
19 or her to be of legal age to make the purchase.

20 (1) A person convicted of violating any provision of this section
21 whose permit or license to distribute or sell a tobacco product, vapor
22 product, alternative nicotine product, or e-liquid product is suspended or
23 revoked upon conviction shall surrender to the court any permit or license to
24 distribute or sell a tobacco product, and the court shall transmit the permit
25 or license to distribute or sell a tobacco product, vapor product,
26 alternative nicotine product, or e-liquid product to the Director of ~~the~~
27 ~~Department of Finance and Administration and instruct the Director of~~
28 ~~Arkansas Tobacco Control:~~

29 (1) To suspend or revoke the person's permit or license to
30 distribute or sell a tobacco product, vapor product, alternative nicotine
31 product, or e-liquid product and to not renew the permit or license; and

32 (2) Not to issue any new permit or license to that person for
33 the period of time determined by the court in accordance with this section.
34

35 SECTION 31. Arkansas Code § 4-16-101 is repealed.

36 ~~4-16-101. Providing alternative nicotine products to minors prohibited~~

~~—Procedures.~~

~~(a) As used in this section:~~

~~(1)(A) “Alternative nicotine product” means:~~

~~(i) An electronic cigarette; or~~

~~(ii) Any other product that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any other means.~~

~~(B) “Alternative nicotine product” does not include a:~~

~~(i) Cigarette as defined in § 20-27-2103 or other tobacco product as defined in § 20-27-705;~~

~~(ii) Product that is a drug under 21 U.S.C. §~~

~~321(g)(1);~~

~~(iii) Product that is a device under 21 U.S.C. §~~

~~321(h); or~~

~~(iv) Combination product described in 21 U.S.C. §~~

~~353(g); and~~

~~(2)(A) “Electronic cigarette” means an electronic product or device that produces a vapor that delivers nicotine or another substance to the person inhaling from the device to simulate smoking, and that is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.~~

~~(B) “Electronic cigarette” does not include a:~~

~~(i) Cigarette as defined in § 20-27-2103 or other tobacco product;~~

~~(ii) Product that is a drug under 21 U.S.C. §~~

~~321(g)(1);~~

~~(iii) Product that is a device under 21 U.S.C. §~~

~~321(h); or~~

~~(iv) Combination product described in 21 U.S.C. § 353(g).~~

~~(b) A person shall not sell, offer for sale, give, or furnish any alternative nicotine product, or a cartridge or component of an alternative nicotine product, to an individual under eighteen (18) years of age either directly or indirectly by an agent or employee or by a vending machine owned by the person or located in the person’s establishment.~~

~~(c) Before selling, offering for sale, giving, or furnishing an~~

~~alternative nicotine product or a cartridge or component of an alternative nicotine product to an individual, the person shall verify that the individual is at least eighteen (18) years of age by:~~

~~(1) Examining from an individual that appears to be under twenty-seven (27) years of age a government issued photographic identification card that establishes the individual is at least eighteen (18) years of age; or~~

~~(2) For sales made through the Internet or another remote sales method, performing an age verification through an independent, third party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes that the individual is eighteen (18) years of age or older.~~

SECTION 32. Arkansas Code § 4-75-714 is repealed.

~~4-75-714. Enforcement Agents—Selection—Qualifications—Authority.~~

~~(a) Arkansas Tobacco Control is designated as a law enforcement agency.~~

~~(b) The Director of Arkansas Tobacco Control shall assign personnel as agents of Arkansas Tobacco Control to conduct investigations of violations of tobacco laws in this state.~~

~~(c) Personnel assigned as agents of Arkansas Tobacco Control shall:~~

~~(1) Be considered a law enforcement officer by the Arkansas Commission on Law Enforcement Standards and Training under § 12-9-101 et seq.; and~~

~~(2) Have statewide law enforcement authority.~~

SECTION 33. Arkansas Code § 5-27-233 is repealed.

~~5-27-233. Providing minors with e-cigarettes and e-cigarette products prohibited—Purchase, use, or possession prohibited—Self-service displays and vending machines prohibited.~~

~~(a) As used in this section:~~

~~(1) "E-cigarette" means an electronic oral device that provides a vapor of nicotine or another substance that, when used or inhaled, simulates smoking, including without limitation a device that:~~

~~(A) Is composed of a heating element, battery, electronic~~

~~circuit, or a combination of heating element, battery, or electronic circuit;~~

~~(B) Works in combination with a liquid nicotine delivery device composed either, in whole or in part, of pure nicotine and manufactured for use with e-cigarettes; and~~

~~(C) Is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor; and~~

~~(2) "Self-service display or vending machine" means a display or vending machine;~~

~~(A) That contains e-cigarettes or e-cigarette products;~~

~~(B) That is located in an area where customers are permitted; and~~

~~(C) In which e-cigarettes or e-cigarette products are readily accessible to a customer without the assistance of a salesperson.~~

~~(b)(1) It is unlawful for a person or business to give, barter, or sell to a minor;~~

~~(A) An e-cigarette; or~~

~~(B) An e-cigarette product.~~

~~(2) A business owner who pleads guilty or nolo contendere to or is found guilty of violating subdivision (b)(1) of this section is guilty of a violation and is subject to a fine not to exceed one hundred dollars (\$100) per violation.~~

~~(3) An employee of a business who violates subdivision (b)(1) of this section is subject to a fine not to exceed one hundred dollars (\$100) per violation.~~

~~(c)(1) It is unlawful for a minor to:~~

~~(A) Use or possess or to purchase or attempt to purchase;~~

~~(i) An e-cigarette; or~~

~~(ii) An e-cigarette product; or~~

~~(B) For the purpose of obtaining or attempting to obtain e-cigarettes or e-cigarette products, falsely represent himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the minor's age.~~

~~(2) An e-cigarette or e-cigarette product found in the possession of a minor may be confiscated and destroyed by a law enforcement officer.~~

~~(d) It is not an offense under subsection (c) of this section if the minor was acting as an agent of a business within the scope of employment.~~

~~(e) A person or business that sells e-cigarettes or e-cigarette products has the right to deny the sale of e-cigarettes or e-cigarette products to any person.~~

~~(f) It is unlawful for a business to fail to display in a conspicuous place or on each vending machine a sign indicating that the sale of e-cigarettes or e-cigarette products to or purchase or possession of e-cigarettes or e-cigarette products by a minor is prohibited by law.~~

~~(g) It is unlawful for a manufacturer to distribute a free sample of an e-cigarette or e-cigarette product or a coupon that entitles the holder of the coupon to a free sample of an e-cigarette or e-cigarette product:~~

~~(1) In or on a public street or sidewalk within five hundred feet (500') of a playground, public school, or other facility when the playground, public school, or other facility is being used primarily by minors for recreational, educational, or other purposes; or~~

~~(2) To a minor.~~

~~(h) It is unlawful for a person or business to sell or distribute e-cigarettes or e-cigarette products through a self-service display or vending machine that is accessible to minors.~~

~~(i) A court shall consider the following factors when reviewing a possible violation of this section:~~

~~(1) The business has adopted and enforced a written policy against selling e-cigarettes or e-cigarette products to minors;~~

~~(2) The business has informed its employees of the applicable laws regarding the sale of e-cigarettes or e-cigarette products to minors;~~

~~(3) The business has required employees to verify the age of an e-cigarette or e-cigarette products customer by way of photographic identification;~~

~~(4) The business has established and imposed disciplinary sanctions for noncompliance; and~~

~~(5) That the appearance of the purchaser of the e-cigarettes or e-cigarette products was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.~~

SECTION 34. EMERGENCY CLAUSE. *It is found and determined by the*

General Assembly of the State of Arkansas that the state must be able to plan and give effective notice for the new comprehensive permits created by this act; that it is essential to the operation of Arkansas Tobacco Control and the tobacco, vapor product, and alternative nicotine product industry that this act be effective on the renewal date for permits issued by Arkansas Tobacco Control to ensure proper funding for the enforcement of the new regulations and requirements of this act; that a delay in the effectiveness of this act after the renewal date of permits and regulations issued by Arkansas Tobacco Control may cause irreparable harm upon the proper administration and provision of essential governmental programs; and that this act is necessary to ensure that the industry and the citizens of Arkansas are provided guidance regarding permits for vapor products and alternative nicotine products. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on May 1, 2015.

/s/E. Williams

APPROVED: 04/07/2015