

Stricken language would be deleted from and underlined language would be added to present law.

Act 1071 of the Regular Session

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State of Arkansas

92nd General Assembly

Regular Session, 2019

As Engrossed: H4/5/19

A Bill

HOUSE BILL 1980

By: Representative A. Davis

By: Senator Rapert

For An Act To Be Entitled

AN ACT CONCERNING ARKANSAS TOBACCO CONTROL AND THE REGULATION OF TOBACCO PRODUCTS, VAPOR PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, E-LIQUID PRODUCTS, AND CIGARETTE PAPERS; TO AMEND THE UNFAIR CIGARETTE SALES ACT; TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE UNFAIR CIGARETTE SALES ACT;
TO AMEND THE ARKANSAS TOBACCO PRODUCTS
TAX ACT OF 1977; AND TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code § 4-75-703 is amended to read as follows:

4-75-703. Sales excepted from subchapter.

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

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

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



advertised, offered for sale, or to be sold;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4-75-707. License Permit requirement.

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

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

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

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

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

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

SECTION 4. 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~~ sales to minors, §§ 20-27-704 – 20-27-709 regulating pricing, establishing a policy for public smoking, and this subchapter, to provide for close supervision and control of the sale of ~~cigarettes, other~~ tobacco products, vapor products, alternative nicotine products, and e-liquid products;

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

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

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

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

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

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

(1) “Alternative nicotine product” means:

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

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

- (i) ~~Cigarette;~~
- ~~(ii)~~ Tobacco product;
- ~~(iii)~~(ii) Vapor product;
- ~~(iv)~~(iii) Product that is a drug under 21 U.S.C. § 321(g)(1);
- ~~(v)~~(iv) Product that is a device under 21 U.S.C. § 321(h); or
- ~~(vi)~~(v) Product that constitutes a combination drug, device, or biological product as described in 21 U.S.C. § 353(g);

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

~~(11) “Dealer’s License” means a license for an entity that:~~
~~(A) Represents cigarette, tobacco, vapor product, alternative nicotine product, or e-liquid product manufacturers for the purpose of promoting the manufacturers’ products in the State of Arkansas;~~
and

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

~~(12)~~(11) “Directory” means:

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

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

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

~~(14)~~(13) “First sale” means:

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

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

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

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

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

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

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

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

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

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

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

(15) "Invoice" means documentation that is:

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

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

~~(18)(A)~~(16)(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, distributor, or any other seller to acquire tobacco products, vapor products, alternative nicotine products, ~~and~~ or e-liquid products that the 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 sells the tobacco products, vapor products, alternative nicotine products, or e-liquid products in question;

~~(19)~~(17) “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;

~~(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;

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(26)~~(25) "Place of business" means the ~~place where~~ physical location;

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

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

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

receiving product in connection with a purchase;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(35) "Vendor" means a person that:

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

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

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

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

(A) Does business within the state;

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

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

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

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

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

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

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

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

26-57-206. Rules.

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

26-57-207. Privilege to do business.

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

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

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

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

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

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

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

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

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

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

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

26-57-209. Exemption from tax.

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

- (1) Tobacco products sold to military departments of the United States or the state for resale on military bases within the state;
- (2) Tobacco products sold and delivered to authorized purchasers outside the state for resale; and
- (3) Cigarettes sold and delivered to other wholesalers ~~licensed~~ permitted under this subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Such stock purchased for distribution within Arkansas

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

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

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

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

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

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

(c) Retailers shall:

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

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

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

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

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

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

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

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

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

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

(iii) When the transfer occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This stamp shall be affixed to the machine

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

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

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

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

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

(a) The managing partner or managing member;

and

(b) The partnership or limited liability

company.

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

(a) The president or chief executive officer;

and

(b) The partnership or limited liability

company; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2)(A) The locations thereof.

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

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

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

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

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

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

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

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

(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 (Tobacco Products, Vapor Products, Alternative Nicotine Products, or E-liquid Products) \$
500.00 \$1,000

- (2) ~~Wholesale Tobacco, Vapor Product, and Alternative Nicotine Product Permit~~ 500.00
- ~~(3) General Tobacco Products, Vapor Products, and Alternative Nicotine Products Vending Vendor Permit (vendor)~~ 100.00 \$100
- ~~(4)(3) Tobacco Products, Vapor Products, and Alternative Nicotine Products Vending Machine License, per machine Permit (per machine)~~ \$10.00
- ~~(5)(4) Retail Cigarette, Tobacco, Vapor Product, and Alternative Nicotine Product Permit (Tobacco Products, Vapor Products, Alternative Nicotine Products, or E-liquid Products)~~ 50.00 \$100
- ~~(6)(5) Retail Exclusive Vapor Product and Alternative Nicotine E-liquid Product Only Permit~~ 100.00 \$50.00
- ~~(7)(6) Wholesale Salesperson's License Wholesaler's Salesperson Permit~~ \$25.00
- ~~(8) Dealer's License~~ 25.00
- ~~(9)(7) Manufacturer's Representative Fee Salesperson Permit~~ \$25.00
- ~~(10)(8) Manufacturer Cigarette Only Permit~~ 500.00 \$500
- ~~(11)(A)(9)(A) Manufacturer Tobacco, Vapor Product, Products and Alternative Nicotine Product Products Only Permit~~ 500.00 \$500
- (B) Notwithstanding subdivision ~~(a)(11)(A)~~ (a)(9)(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, Products~~ and Alternative Nicotine ~~Product Products Only Permit~~ Products Only Permit to receive the permit at no cost.
- (10) Manufacturer Vapor Product and E-liquid Product Only Permit \$500
- (11) Vapor Product and E-liquid Product Exclusive Permit (Manufacturer, Wholesaler, and Retailer) \$1,000

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

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

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

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

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

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

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

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

~~26-57-220. Permits and licenses — Duration.~~

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

26-57-221. Permits ~~and licenses~~ — Not transferable.

A permit ~~or license~~ is not:

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

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

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

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

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

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

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

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

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

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

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

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

26-57-226. Penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26-57-230. Common carriers.

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

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

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

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

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

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

to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

offense – Deceptive trade practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or offered for sale; and

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

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

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

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

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

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

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

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

Arkansas Tobacco Control for suitable law enforcement or training purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The board shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Social Security numbers; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4) The business has established and imposed disciplinary~~

~~sanctions for noncompliance; and~~

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

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

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

~~(h)(b) Any cigarettes, tobacco products, vapor products, alternative nicotine products, or e-liquid products, or cigarette papers found in the possession of a minor may be confiscated and destroyed.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(n)~~(1) All hearings and appeals from any hearing shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~accordance with § 26-57-254;~~

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

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

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

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

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

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

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

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

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

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

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

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

26-57-259. Nonpreemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

/s/A. Davis **APPROVED: 4/16/19**

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