

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

State of Arkansas
92nd General Assembly
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As Engrossed: H3/5/19 S3/14/19
A Bill

HOUSE BILL 1565

By: Representatives A. Davis, M. Gray, L. Johnson, Maddox

By: Senators J. Dismang, Irvin

For An Act To Be Entitled

AN ACT TO PROVIDE FUNDING FOR A NATIONAL CANCER INSTITUTE-DESIGNATED CANCER CENTER IN THE STATE THROUGH CHANGES IN THE LAWS RELATING TO THE SALE AND TAXATION OF CERTAIN PRODUCTS; TO REGULATE THE SALE AND TAXATION OF TOBACCO PRODUCTS, CIGARETTE PAPER, AND E-CIGARETTES; TO AMEND THE UNFAIR CIGARETTE SALES ACT; TO AMEND THE AGE AT WHICH A PERSON MAY PURCHASE TOBACCO PRODUCTS, CIGARETTE PAPER, ALTERNATIVE NICOTINE PRODUCTS, AND E-CIGARETTES; TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977; TO CREATE AN ADDITIONAL TAX ON CIGARETTE PAPER; *TO REPEAL THE BORDER ZONE TAX RATES FOR CIGARETTES*; TO DEDICATE THE ADDITIONAL TAX REVENUE TO THE UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES NATIONAL CANCER INSTITUTE DESIGNATION TRUST FUND TO ASSIST THE UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES IN OBTAINING STATUS AS A NATIONAL CANCER INSTITUTE-DESIGNATED CANCER CENTER; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FUNDING FOR A NATIONAL CANCER INSTITUTE-DESIGNATED CANCER CENTER IN THE STATE THROUGH CHANGES IN THE LAWS RELATING TO THE SALE AND TAXATION OF TOBACCO PRODUCTS, CIGARETTE PAPER, AND E-CIGARETTES.



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

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

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

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

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

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

(m)(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 4. Arkansas Code § 5-78-102 is amended to read as follows:

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

(a)(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.

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

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

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

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

SECTION 5. Arkansas Code § 9-25-101(b), concerning the age of majority and exceptions to the age of majority, is amended to read as follows:

(b)(1) Any law of the State of Arkansas that presently requires a person to be of a minimum age of twenty-one (21) years to enjoy any privilege

or right or to do any act or to participate in any event, election, or other activity shall be deemed to require that person to be of a minimum age of eighteen (18) years.

(2) However, this section shall not repeal, amend, or otherwise affect any existing laws concerning or in any way relating to beer, wines, spirituous, vinous, malt liquors, or other alcoholic beverages, tobacco products, vapor products, alternative nicotine products, e-liquid products, or cigarette papers, and the sale thereof to persons under twenty-one (21) years of age.

SECTION 6. Arkansas Code § 19-5-202(b)(2)(B)(iii), concerning distributions from the General Revenue Fund Account, is amended to read as follows:

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

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

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

SECTION 7. Arkansas Code § 26-57-208(1), concerning the excise tax levied on cigarettes and other tobacco products, is amended to read as

follows:

~~(1)(A) The excise or privilege tax on cigarettes sold in this state is ten dollars and fifty cents (\$10.50) per one thousand (1,000) cigarettes sold.~~

~~(B)(i) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas.~~

~~(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.~~

~~(C)(i) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any Arkansas city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.~~

~~(ii) The tax shall not exceed the tax upon cigarettes imposed by this subchapter.~~

~~(D)(i) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state when the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.~~

~~(ii) As used in subdivision (1)(D)(i) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Bureau of the Census with a population of at least one million (1,000,000).~~

~~(iii) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.~~

~~(E)(i) The reduced border zone tax rates set forth in subdivisions (1)(B) (D) of this section apply only to sales made at retail by Arkansas border zone retailers to actual consumers of the cigarettes.~~

~~(ii)(a) The sale of cigarettes by an Arkansas border zone retailer to any other retailer or wholesaler does not qualify for the reduced border zone tax rate.~~

~~(b) The full amount of Arkansas cigarette~~

~~excise tax will be due on any cigarettes sold in such a manner;~~

SECTION 8. Arkansas Code § 26-57-256(f)-(h), concerning the powers of the Arkansas Tobacco Control Board, are amended to read as follows:

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

SECTION 9. Arkansas Code § 26-57-256, concerning the powers of the Arkansas Tobacco Control Board, is amended to add an additional subsection to read as follows:

(1)(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 10. Arkansas Code § 26-57-257(r), concerning the Director of Arkansas Tobacco Control, is amended to read as follows:

(r) The enforcement of state laws relating to the prohibition of the barter or sale of tobacco in any form, vapor products, alternative nicotine products, e-liquid products, or cigarette papers to ~~minors~~ 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.

SECTION 11. Arkansas Code § 26-57-259(a), concerning nonpreemption under the Arkansas Tobacco Products Tax Act of 1977, is amended to read as follows:

(a)(1) This ~~act~~ subchapter and the rules and other actions of the Arkansas Tobacco Control Board 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, ~~county, municipal, or other local~~ regulation of the manufacture, sale, storage, or distribution of tobacco products that is more restrictive than this ~~act~~ subchapter or the rules and regulations promulgated by the board.

(2)(A) This subchapter and the rules and other actions of the board 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.

(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 and that has been enacted as of the effective date of this act is not preempted under this subdivision (a)(2).

SECTION 12. Arkansas Code § 26-57-259(c), concerning nonpreemption of the Arkansas Tobacco Control Board, is amended to read as follows:

(c) ~~Nothing in this act nor any rule~~ This subchapter and the rules of the board shall not be construed or interpreted so as to require ~~any~~ 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 of ~~any~~ a vendor or retailer found to have illegally sold tobacco products, vapor products, alternative nicotine products, or e-liquid products to a ~~person less than eighteen (18) years of age~~ 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 13. Arkansas Code § 26-57-802(b), concerning an additional tax levied on cigarettes, is repealed.

~~(b)(1) The additional tax levied in this section shall also be applicable to cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any city that adjoins a state line. It is the intent of this section that the rate of tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line or in any Arkansas city that adjoins a state line shall be:~~

~~(A) The rate imposed by law on cigarettes sold in the adjoining state plus the fifty cents (50¢) per one thousand (1,000) cigarettes levied in this section and cited in § 26-57-803(a)(2); or~~

~~(B) The rate imposed by law on cigarettes sold in the~~

~~adjoining state plus the twenty five cents (25¢) per one thousand (1,000) cigarettes levied in this section and cited in § 26-57-803(a)(3).~~

~~(2) The rate shall not exceed the total tax levied on cigarettes in this state.~~

SECTION 14. Arkansas Code § 26-57-803(a), concerning an additional tax levied on cigarettes and other tobacco products, is amended to read as follows:

(a)~~(1)~~ In addition to the excise or privilege taxes levied under §§ 26-57-208 and 26-57-802, there is levied a tax of four dollars and seventy-five cents (\$4.75) per one thousand (1,000) cigarettes sold in the state.

~~(2) Whenever there are two (2) adjoining cities, each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas plus the fifty cents (50¢) per one thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.~~

~~(3) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line, in any Arkansas city which adjoins a state line, or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the twenty five cents (25¢) per one thousand (1,000) cigarettes presently imposed by § 26-57-802. The tax shall not exceed the tax upon cigarettes imposed by this subchapter.~~

~~(4)(A) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state plus the additional tax levied by § 26-57-802 when the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.~~

~~(B) As used in subdivision (a)(4)(A) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Bureau of the Census with a population of at least one million (1,000,000).~~

~~(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.~~

SECTION 15. Arkansas Code § 26-57-804(b), concerning an additional tax levied on cigarettes, is repealed.

~~(b)(1)(A) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside Arkansas.~~

~~(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.~~

~~(2)(A) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line in any Arkansas city that adjoins a state line or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.~~

~~(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.~~

~~(3)(A) The tax on cigarettes shall be at the rate imposed by law on cigarettes sold in the adjoining state if the cigarettes are sold in an Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city.~~

~~(B) As used in subdivision (b)(3)(A) of this section, "Arkansas border city" means a city that is entitled to the border zone cigarette tax rate and is separated by a navigable river from a city in the other state that is located in a metropolitan statistical area designated by the United States Bureau of the Census with a population of at least one million (1,000,000).~~

~~(C) The tax shall not exceed the tax upon cigarettes otherwise imposed under Arkansas law.~~

~~(4)(A) A wholesaler or retailer shall not sell cigarettes to a retailer located outside a border zone described in subdivisions (b)(1)-(3) of this section unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.~~

~~(B) A retailer located outside a border zone described in subdivisions (b)(1)-(3) of this section shall not possess or offer for sale cigarettes unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.~~

~~(C) A violation of this subdivision (b)(4) shall be grounds for the suspension or revocation of a permit or license issued by the Director of Arkansas Tobacco Control.~~

SECTION 16. Arkansas Code § 26-57-806(b), concerning an additional tax levied on cigarettes, is repealed.

~~(b)(1)(A) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside Arkansas.~~

~~(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.~~

~~(2)(A) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a state line in any Arkansas city that adjoins a state line or in any city that is separated only by a navigable river from a city that adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state.~~

~~(B) The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.~~

~~(3)(A) The tax on cigarettes sold in any Arkansas city or incorporated town whose corporate limits adjoin the corporate limits of an Arkansas border city shall be at the rate imposed by law on cigarettes sold in the adjoining state.~~

~~(B) As used in subdivision (b)(3)(A) of this section, "Arkansas border city" means a city which is entitled to the border zone cigarette tax rate and is separated by a navigable river from the city in the other state that is located in a metropolitan statistical area designated by the United States Bureau of the Census with a population of at least one million (1,000,000).~~

~~(C) The tax shall not exceed the tax upon cigarettes~~

~~otherwise imposed under Arkansas law.~~

~~(4)(A) A wholesaler or retailer shall not sell cigarettes to a retailer located outside a border zone described in subdivisions (b)(1)-(3) of this section unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.~~

~~(B) A retailer located outside a border zone described in subdivisions (b)(1)-(3) of this section shall not possess or offer for sale cigarettes unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, 26-57-804, and 26-57-1101 without regard to any reduced border zone rate has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.~~

~~(C) A violation of this subdivision (b)(4) shall be grounds for the suspension or revocation of a permit or license issued by the Director of Arkansas Tobacco Control.~~

SECTION 17. Arkansas Code Title 26, Chapter 57, Subchapter 8, is amended to add an additional section to read as follows:

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

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

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

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

SECTION 18. EFFECTIVE DATE. Sections 2-17 of this act are effective on the first day of the second calendar month following the effective date of this act.

/s/A. Davis