

# ARKANSAS TOBACCO CONTROL BOARD

## Enabling Laws

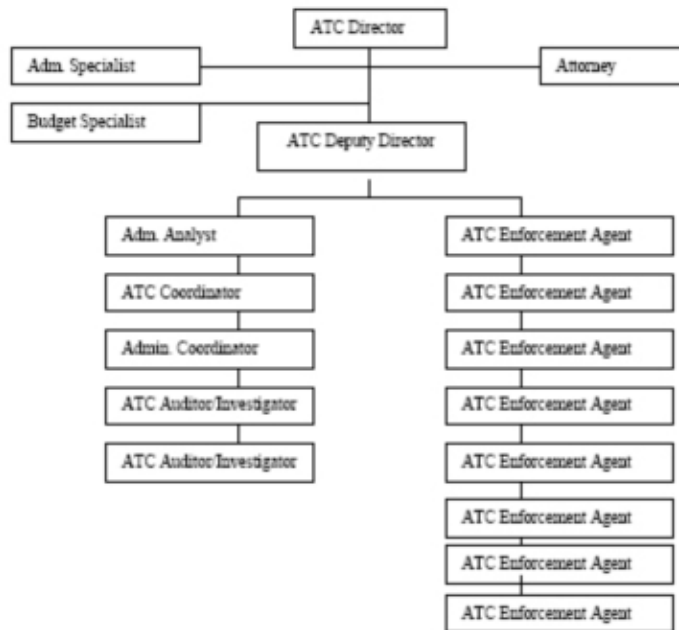
Act 503 of 2007  
A.C.A. §26-57-255 et seq.

## History and Organization

The Arkansas Tobacco Control Board was created by Act 1337 of 1997 by the Legislature, who authorized an eight (8) member Board appointed by the Governor. The Board is constituted as follows: Two (2) members of the Board shall be tobacco products wholesalers; two (2) members shall be tobacco products retailers; and four (4) members shall be members of the public-at-large who are not public employees or officials, at least one of which shall be an African American, and two (2) of whom shall be selected from a list of at least eight (8) candidates supplied to the Governor by the Arkansas Medical Society. On July 19, 2001, the Board entered into a subrecipient contractual agreement with the Arkansas Department of Health to receive monies from the Master Tobacco Settlement Fund for the enforcement of Sales to Minors Compliance Checks. Our mission is to enforce the state laws and regulations pertaining to tobacco sales for the protection of the citizens of Arkansas.

The Board authorizes the issuance of permits for all retail, wholesale, and sales representatives dealing in cigarette or tobacco products in the State of Arkansas as well as ruling on applications to sell cigarettes with a lower than the statutorily presumed cost of doing business. The Board acts as an administrative law judge in disciplinary proceedings against said permit holders who have been cited for violating Arkansas tobacco laws or regulations by the Arkansas Tobacco Control (ATC) agency. The Director of the ATC is appointed by, and serves at the pleasure of, the Governor.

The ATC is tasked with enforcing the Board's regulations and all of Arkansas' tobacco laws. Among the statutes enforced by the ATC are: A.C.A. §26-57-213 Invoices, A.C.A. §26-57-214 Registration and licensing required prior to doing business, A.C.A. §26-57-219, Permits and licenses -- Annual privilege tax, A.C.A. §26-57-225 Failure to secure permit unlawful, A.C.A. §26-57-226 Sale, delivery, etc., without license - Penalty, A.C.A. §26-57-228 Purchases from unregistered, unlicensed dealers unlawful, A.C.A. §26-57-231 Failure to allow inspection unlawful, A.C.A. §26-57-240 Counterfeiting of stamps unlawful - Penalty, A.C.A. §26-57-245 Unstamped products or products with unpaid taxes -- Purchase, sale, receipt, etc., a criminal offense, A.C.A. §26-57-262 Sale of export cigarettes, A.C.A. §26-57-1303 Certifications - Directory - Tax stamps, A.C.A. §26-57-1306 Penalties and other remedies, A.C.A. §5-27-227 Providing minors with tobacco products and cigarette papers - Purchase, use, or possession prohibited - Self-service displays prohibited - Placement of tobacco vending machines, A.C.A. §5-78-102 Confiscation of tobacco products authorized, A.C.A. §4-75-701 et seq. The Unfair Cigarette Sales Act. The ATC also works closely with other local, state and federal law enforcement agencies.



**Agency Commentary**

The Arkansas Tobacco Control Board was created by Act 1337 of 1997 to regulate any individual or entity, other than a manufacturer, who deals in cigarettes or other tobacco products in the State of Arkansas by ensuring that said individual or entity is duly permitted by Arkansas Tobacco Control, and that all individuals or entities that deal in cigarettes or tobacco in Arkansas, comply with all the tobacco laws and regulations of the state.

This compliance includes but is not limited to ensuring that all tobacco products are purchased according to state statute and regulation, that no tobacco products are sold to anyone under age eighteen and that all tobacco products sold in Arkansas are legitimate products that have been handled, taxed, and, in the case of cigarettes, priced, in accordance with Arkansas law.

It is Arkansas Tobacco Control’s mandate to investigate all violations of Arkansas tobacco law and as appropriate, to either prosecute said violations administratively before the Arkansas Tobacco Control Board or refer them to the appropriate prosecuting attorney’s office for criminal prosecution. Currently, Arkansas Tobacco Control receives two revenue streams, a small appropriation from General Revenue and funding from the Master Settlement Agreement’s Tobacco Settlement Fund that is channeled through the Department of Health to Arkansas Tobacco Control as a fund transfer.

In addition to Base Level, the Board is requesting the following:

Appropriation increases in Operating Expense in the amount of \$92,149 in each year of the biennium which is equal to a previously approved Cash Letter for FY2009. This will cover the cost of increases in gasoline and rent, meals and lodging expense due to increased task force operations around the state.

Appropriation increase in Capital Outlay in the amount of \$32,250 in each year of the biennium. Four (4) enforcement vehicles will need to be replaced in both years. These vehicles will range in mileage from 75,000 to 135,000 miles. Once a vehicle reaches the 75,000 mile mark or above, maintenance costs begin to rise making it cost prohibitive for the agency to retain. The sales tax costs will be \$6,000 each

year for these purchases. Appropriation for these vehicles will be provided by Department of Finance & Administration, and therefore are not included in this request.

In addition, each of our enforcement vehicles is equipped with notebook computers. Our current computers are four (4) years old and need replacing. Constant movement and vehicle vibration require that rugged, shock proof computers be used in the field. We plan to replace seven (7) computers in FY2010 at a cost of \$26,250 and seven (7) computers in FY2011 at a cost of \$26,250.

## Audit Findings

DIVISION OF LEGISLATIVE AUDIT  
AUDIT OF :  
ARKANSAS TOBACCO CONTROL BOARD  
FOR THE YEAR ENDED JUNE 30, 2005

Findings	Recommendations
None	None

## Employment Summary

	Male	Female	Total	%
White Employees	9	5	14	82 %
Black Employees	1	2	3	18 %
Other Racial Minorities	0	0	0	0 %
Total Minorities			3	18 %
Total Employees			17	100 %

## Publications

**A.C.A. 25-1-204**

Name	Statutory Authorization	Required for		# of Copies	Reason(s) for Continued Publication and Distribution
		Governor	General Assembly		
None	N/A	N	N	0	N/A

## Department Appropriation Summary

### Historical Data

### Agency Request and Executive Recommendation

Appropriation	2007-2008		2008-2009		2008-2009		2009-2010						2010-2011					
	Actual	Pos	Budget	Pos	Authorized	Pos	Base Level	Pos	Agency	Pos	Executive	Pos	Base Level	Pos	Agency	Pos	Executive	Pos
2EH Sales to Minors Enforcement - Cash	997,516	13	992,852	13	884,100	13	915,499	13	1,039,898	13	1,039,898	13	927,558	13	1,051,957	13	1,051,957	13
983 Tobacco Control Board Operations	366,751	5	379,741	5	377,954	5	394,241	5	394,241	5	394,241	5	399,225	5	399,225	5	399,225	5
<b>Total</b>	<b>1,364,267</b>	<b>18</b>	<b>1,372,593</b>	<b>18</b>	<b>1,262,054</b>	<b>18</b>	<b>1,309,740</b>	<b>18</b>	<b>1,434,139</b>	<b>18</b>	<b>1,434,139</b>	<b>18</b>	<b>1,326,783</b>	<b>18</b>	<b>1,451,182</b>	<b>18</b>	<b>1,451,182</b>	<b>18</b>

Funding Sources		%		%		%		%		%		%		%		%		%
General Revenue 4000010	366,751	26.9	379,741	27.7			394,241	30.1	394,241	27.5	394,241	27.5	399,225	30.1	399,225	27.5	399,225	27.5
Cash Fund 4000045	997,516	73.1	992,852	72.3			915,499	69.9	1,039,898	72.5	1,039,898	72.5	927,558	69.9	1,051,957	72.5	1,051,957	72.5
<b>Total Funds</b>	<b>1,364,267</b>	<b>100.0</b>	<b>1,372,593</b>	<b>100.0</b>			<b>1,309,740</b>	<b>100.0</b>	<b>1,434,139</b>	<b>100.0</b>	<b>1,434,139</b>	<b>100.0</b>	<b>1,326,783</b>	<b>100.0</b>	<b>1,451,182</b>	<b>100.0</b>	<b>1,451,182</b>	<b>100.0</b>
Excess Appropriation/(Funding)	0		0				0		0		0		0		0		0	
<b>Grand Total</b>	<b>1,364,267</b>		<b>1,372,593</b>				<b>1,309,740</b>		<b>1,434,139</b>		<b>1,434,139</b>		<b>1,326,783</b>		<b>1,451,182</b>		<b>1,451,182</b>	

2EH - Actual and Budget amounts exceed Authorized due to a transfer from the Cash Fund Holding Account.

983 - Budget amount exceeds Authorized due to salary adjustments during the 2007-2009 biennium.

## Agency Position Usage Report

FY2006 - 2007						FY2007 - 2008						FY2008 - 2009					
Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused
	Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total	
18	18	0	18	0	0.00 %	18	17	1	18	0	5.56 %	18	17	1	18	0	5.56 %

## **Analysis of Budget Request**

**Appropriation:** 2EH - Sales to Minors Enforcement - Cash

**Funding Sources:** NTC - Cash in Treasury

The Arkansas Tobacco Control Board administers the Sales to Minors program. This program is responsible for executing the sales to minors checks and enforcing any violations that result from these checks. Funding for this program is made available through a grant from the Arkansas Department of Health using Master Tobacco Settlement funds.

Base Level salaries for classified positions reflect the recommendations of the Pay Plan Study and unclassified positions reflect similar adjustments in line item salaries. A 2.3% Cost of Living Allowance is reflected in the second year of the biennium. The Base Level request for Regular Salaries may include board member Stipend payments and Career Service payments for eligible employees. Personal Services Matching includes a \$75 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$425.

The Board's Base Level request includes thirteen (13) positions as well as appropriation in the amount of \$915,499 in FY2010 and \$927,558 in FY2011.

The Board's Change Level request includes restoration of appropriation from a previously approved Cash Letter in the amount of \$92,149 in each year of the biennium for Operating Expenses to cover increases in rent, fuel purchases, and meals and lodging due to increased task force operations around the State.

The Board also requests total Capital Outlay appropriation of \$32,250 in each year of the biennium. \$26,250 of the total is requested for the replacement of fourteen (14) notebook computers, utilized in enforcement vehicles, equipped to withstand shock and ruggedness of vehicle vibration. \$6,000 of the total is requested each year of the biennium to cover sales tax on eight (8) replacement vehicles the Board has deemed cost prohibitive in terms of maintenance.

The Executive Recommendation provides for the Agency Request. Expenditure of appropriation is contingent upon available funding.

## Appropriation Summary

**Appropriation:** 2EH - Sales to Minors Enforcement - Cash

**Funding Sources:** NTC - Cash in Treasury

### Historical Data

### Agency Request and Executive Recommendation

Commitment Item		Historical Data			2009-2010			2010-2011		
		2007-2008 Actual	2008-2009 Budget	2008-2009 Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	424,355	460,184	442,090	473,408	473,408	473,408	483,528	483,528	483,528
<b>#Positions</b>		<b>13</b>	<b>13</b>	<b>13</b>	<b>13</b>	<b>13</b>	<b>13</b>	<b>13</b>	<b>13</b>	<b>13</b>
Personal Services Matching	5010003	142,775	142,633	144,124	157,005	157,005	157,005	158,944	158,944	158,944
Operating Expenses	5020002	265,732	310,808	218,659	218,659	310,808	310,808	218,659	310,808	310,808
Conference & Travel Expenses	5050009	167	19,495	19,495	19,495	19,495	19,495	19,495	19,495	19,495
Professional Fees	5060010	26,650	46,932	46,932	46,932	46,932	46,932	46,932	46,932	46,932
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Capital Outlay	5120011	137,837	12,800	12,800	0	32,250	32,250	0	32,250	32,250
<b>Total</b>		<b>997,516</b>	<b>992,852</b>	<b>884,100</b>	<b>915,499</b>	<b>1,039,898</b>	<b>1,039,898</b>	<b>927,558</b>	<b>1,051,957</b>	<b>1,051,957</b>
<b>Funding Sources</b>										
Cash Fund	4000045	997,516	992,852		915,499	1,039,898	1,039,898	927,558	1,051,957	1,051,957
Total Funding		997,516	992,852		915,499	1,039,898	1,039,898	927,558	1,051,957	1,051,957
Excess Appropriation/(Funding)		0	0		0	0	0	0	0	0
<b>Grand Total</b>		<b>997,516</b>	<b>992,852</b>		<b>915,499</b>	<b>1,039,898</b>	<b>1,039,898</b>	<b>927,558</b>	<b>1,051,957</b>	<b>1,051,957</b>

The FY2009 Budget amount in Regular Salaries exceeds the Authorized amount due to salary adjustments during the 2007-2009 biennium.

Actual and Budget amounts exceed Authorized in Operating Expenses due to a transfer from the Cash Fund Holding Account.

Actual amount exceeds Authorized in Capital Outlay due to a transfer from the Cash Fund Holding Account and Motor Vehicle Acquisition.

## Change Level by Appropriation

**Appropriation:** 2EH - Sales to Minors Enforcement - Cash

**Funding Sources:** NTC - Cash in Treasury

### Agency Request

Change Level		2009-2010	Pos	Cumulative	% of BL	2010-2011	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>915,499</b>	<b>13</b>	<b>915,499</b>	<b>100.0</b>	<b>927,558</b>	<b>13</b>	<b>927,558</b>	<b>100.0</b>
C01	Existing Program	98,149	0	1,013,648	110.7	98,149	0	1,025,707	110.6
C08	Technology	26,250	0	1,039,898	113.6	26,250	0	1,051,957	113.4

### Executive Recommendation

Change Level		2009-2010	Pos	Cumulative	% of BL	2010-2011	Pos	Cumulative	% of BL
<b>BL</b>	<b>Base Level</b>	<b>915,499</b>	<b>13</b>	<b>915,499</b>	<b>100.0</b>	<b>927,558</b>	<b>13</b>	<b>927,558</b>	<b>100.0</b>
C01	Existing Program	98,149	0	1,013,648	110.7	98,149	0	1,025,707	110.6
C08	Technology	26,250	0	1,039,898	113.6	26,250	0	1,051,957	113.4

### Justification

C01	The Board is requesting restoration of appropriation from a previously approved Cash Letter in the amount of \$92,149 each year of the biennium in Operating Expenses due to anticipated increases in rent, fuel purchases, and with increased task force operations around the state, additional costs related to meals and lodging. Additionally \$6,000 is requested in Capital Outlay to cover vehicle sales tax.
C08	The Board is requesting appropriation in the amount of \$26,250 each year of the biennium in Capital Outlay for the replacement of seven (7) notebook computers each year of the biennium. This request is reflected in the Board's approved IT Plan under IT Support Costs-Hardware.



## **Analysis of Budget Request**

**Appropriation:** 983 - Tobacco Control Board Operations

**Funding Sources:** HUA - Miscellaneous Agencies Fund

The Arkansas Tobacco Control Board was established by Act 1337 of 1997 to regulate and issue permits and licenses to any person (except manufacturers) handling, receiving, processing, storing, distributing, taking orders for, soliciting orders of, selling, offering for sale or dealing in, through sale, barter or exchange, any cigarettes or other tobacco products in the State of Arkansas. General revenue is the sole source of funding for this appropriation.

Base Level salaries for classified positions reflect the recommendations of the Pay Plan Study as well as the Tobacco Control Board Director changing from an unclassified to classified position; salaries for both were adjusted accordingly. A 2.3% Cost of Living Allowance is reflected in the second year of the biennium. The Base Level request for Regular Salaries may include board member Stipend payments and Career Service payments for eligible employees. Personal Services Matching includes a \$75 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$425.

The Agency Request is for Base Level appropriation and general revenue funding in the amount of \$394,241 in FY2010 and \$399,225 in FY2011.

The Executive Recommendation provides for the Agency Request.

## Appropriation Summary

**Appropriation:** 983 - Tobacco Control Board Operations

**Funding Sources:** HUA - Miscellaneous Agencies Fund

### Historical Data

### Agency Request and Executive Recommendation

Commitment Item		Historical Data			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
		2007-2008 Actual	2008-2009 Budget	2008-2009 Authorized	2009-2010			2010-2011		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	238,189	244,138	237,976	252,468	252,468	252,468	256,652	256,652	256,652
<b>#Positions</b>		<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>
Personal Services Matching	5010003	69,908	67,704	69,189	73,874	73,874	73,874	74,674	74,674	74,674
Operating Expenses	5020002	57,010	57,899	60,789	57,899	57,899	57,899	57,899	57,899	57,899
Conference & Travel Expenses	5050009	1,644	0	5,000	0	0	0	0	0	0
Professional Fees	5060010	0	10,000	5,000	10,000	10,000	10,000	10,000	10,000	10,000
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Capital Outlay	5120011	0	0	0	0	0	0	0	0	0
<b>Total</b>		<b>366,751</b>	<b>379,741</b>	<b>377,954</b>	<b>394,241</b>	<b>394,241</b>	<b>394,241</b>	<b>399,225</b>	<b>399,225</b>	<b>399,225</b>
<b>Funding Sources</b>										
General Revenue	4000010	366,751	379,741		394,241	394,241	394,241	399,225	399,225	399,225
Total Funding		366,751	379,741		394,241	394,241	394,241	399,225	399,225	399,225
Excess Appropriation/(Funding)		0	0		0	0	0	0	0	0
<b>Grand Total</b>		<b>366,751</b>	<b>379,741</b>		<b>394,241</b>	<b>394,241</b>	<b>394,241</b>	<b>399,225</b>	<b>399,225</b>	<b>399,225</b>

Actual and Budget amounts in Regular Salaries exceeds the Authorized amount due to salary adjustments during the 2007-2009 biennium.

Actual amounts in Personal Services Matching exceed the Authorized amount due to salary adjustments during the 2007-2009 biennium.

Budget exceeds Authorized amount in Professional Fees by authority of Budget Classification Transfer.