Relevant Tobacco Statutes

Unfair Cigarette Sales Act - A.C.A. § 4-75-701 *et seq.*

A.C.A. § 4-75-701

This subchapter shall be known and may be cited as the "Unfair Cigarette Sales Act."

A.C.A. § 4-75-702

Definitions

As used in this subchapter, unless the context otherwise requires:

(1) "Basic cost of cigarettes" means whichever of the two (2) following amounts is lower, namely, the gross invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or the lowest gross replacement cost of cigarettes to the wholesaler or retailer, as the case may be, within thirty (30) days prior to the date of sale, in the quantity last purchased, whether within or before the thirty-day period, plus the full face value of any stamps or any tax which may be required by any cigarette tax act of this state or political subdivision thereof, now in effect or hereafter enacted, if not already included in the gross invoice cost of cigarettes to the wholesaler or retailer, as the case may be;

(2) "Buying pool" means and includes any combination, corporation, association, affiliation, or group of retail dealers operating jointly in the purchase, sale, exchange, or barter of cigarettes, the profits of which accrue directly or indirectly to the retail dealers;

(3) "Cigarettes" means and includes any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, except tobacco;

(4)(A) "Cost to the retailer" means the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him or her and must include, without limitation, labor including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

(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 nine and five-tenths percent (9.5%) of the basic cost of cigarettes to the retailer.

(C) In the case of any retail dealer who in connection with the retail dealer's purchase of any cigarettes shall receive not only the discounts ordinarily allowed upon purchases by a retail dealer but also in whole or in part the discounts ordinarily allowed upon purchases by a wholesale dealer, the cost of doing business by the retail dealer with respect to the said cigarettes shall be, in the

absence of proof of a lesser or higher cost of doing business by the retail dealer, the sum of the cost of doing business by the retail dealer and, to the extent that he or she shall have received the full discounts ordinarily allowed to a wholesale dealer, the cost of doing business by a wholesale dealer as defined in subdivision (5)(B) of this section;

(5)(A) "Cost to the wholesaler" means the basic cost of the cigarettes involved to the wholesaler plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by him or her and must include, without limitation, labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

(B) In the absence of the filing with the board of proof satisfactory to the board of a lesser or higher cost of doing business by the wholesale dealer making the sale, the cost of doing business by the wholesale dealer shall be presumed to be four percent (4%) of the basic cost of the cigarettes to the wholesale dealer;

(6) "Director" means the Director of Arkansas Tobacco Control;

(7) "Gross invoice cost" means the manufacturer's or wholesaler's price for the product sold as listed on the invoice to the wholesaler or retailer, as the case may be, before any deduction for allowances, whether manufacturer promotional allowances or otherwise, or for discounts of any kind;

(8) "Manufacturer promotional allowance" means any payment or compensation given by a manufacturer of cigarettes to wholesalers or to retailers to promote the sale of cigarettes and which the manufacturer requires the wholesaler to pass on to the retailer and the retailer to pass on to the retailer's customer;

(9) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint-stock company, club, agency, syndicate, the State of Arkansas, county, municipal corporation, or other political subdivision of this state, receiver, trustee, fiduciary, or trade association;

(10) "Rebate" means a payment made by a seller of cigarettes to a purchaser of cigarettes after the sale that serves as a discount or return of part of an amount previously given in payment by the purchaser of cigarettes;

(11) "Retailer" means and includes any person who is engaged in this state in the business of selling cigarettes at retail and includes any group of persons, cooperative organizations, buying pools, and any other person or group of retailers purchasing cigarettes on a cooperative basis from licensed distributors or wholesalers. Any person placing a cigarette vending machine at, on, or in any premises shall be deemed to be a retailer for each such vending machine;

(12) "Sale" or "sell" means any transfer for a consideration, exchange, barter, gift, offer for sale, advertising for sale, soliciting an order for cigarettes, and distribution in any manner or by any means whatsoever;

(13) “Sell at retail”, “sale at retail”, or “retail sales” means and includes any sale for consumption or use made in the ordinary course of trade or usual conduct of the seller's business;

(14) “Sell at wholesale”, “sale at wholesale”, and “wholesale sales” mean and include any sale made in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale; and

(15) “Wholesaler” means and includes:

(A) Any person other than a buying pool as defined in subdivision (2) of this section, wherever resident or located, who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturer thereof and who maintains an established place of business where substantially all of the business is the sale of cigarettes and related merchandise at wholesale to cigarette licensees and where at all times a substantial stock of cigarettes and related merchandise is available for resale, if seventy-five percent (75%) thereof are sold to retailers or other wholesalers not connected with the wholesaler by reason of any business connection or otherwise;

(B) Any person retailing cigarettes to consumers, if at least seventy-five percent (75%) of his or her purchases are made directly from the manufacturers thereof;

(C) Any person in this state other than a buying pool, as defined in subdivision (2) of this section, who purchases cigarettes from any other person who purchases from a manufacturer, at least seventy-five percent (75%) of which are for purposes of resale to retailers in this state not connected with the wholesaler by reason of any business connection or otherwise and who maintains an established place of business where cigarettes and related merchandise are sold at wholesale to persons licensed under this subchapter, and where at all times a substantial stock of cigarettes and related merchandise is available to all retailers for resale; and

(D) Any person in this state who acquires cigarettes solely for the purpose of resale in cigarette vending machines, provided the person operates thirty (30) or more machines.

A.C.A. § 4-75-703

Sales excepted from subchapter

(a) This subchapter 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 the cigarettes, and the advertising, offer to sell, or sale shall state the reason for the sale and the quantity of 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 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.

A.C.A. § 4-75-704

Lawful activities

(a)(1) Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to the competing wholesaler as defined by this subchapter.

(2) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to the competing retailer as defined in this subchapter.

(b) The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in § 4-75-703 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(c) In the absence of proof of the actual cost to the competing wholesaler or to the competing retailer, as the case may be, the cost may be presumed to be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to § 4-75-711(b).

A.C.A. § 4-75-705

Void contracts

Any contract, express or implied, made by any person in violation of any of the provisions of this subchapter is illegal and void and no recovery shall be had thereon.

A.C.A. § 4-75-706

Director of Arkansas Tobacco Control--Powers and duties

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

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

(B) The director may also investigate price fixing.

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

(b) Whenever any person fails to comply with this subchapter or any rule of the director promulgated under this subchapter, the 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 permit should not be revoked, may revoke or suspend the permit held by the person.

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

A.C.A. § 4-75-707

Permit requirement

(a) A person shall not engage in or conduct the business of purchasing for resale or selling cigarettes without having first obtained the appropriate permit for that purpose.

(b) All permits for the purchasing for resale or the sale of cigarettes shall be issued by the Director of Arkansas Tobacco Control, who shall make rules respecting applications for and issuance 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 permit for each place of business.

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

A.C.A. § 4-75-708

Sales at less than cost, rebates, concessions, etc.—Penalty

(a) It shall be unlawful for any wholesaler, retailer, or salesperson with intent to injure competitors or destroy or substantially lessen competition to advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to the wholesaler or retailer, as the case may be.

(b)(1) It is unlawful for any wholesaler, retailer, or salesperson to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes with intent to injure competitors or destroy or substantially lessen competition.

(2) However, it is not unlawful under this section for a wholesaler to give a rebate if the rebate is paid by check or electronic direct deposit and does not result in a sale at less than the cost to the wholesaler according to § 4-75-702(5)(A), less discounts that are received by the wholesaler from the manufacturer.

(c) It shall be unlawful for any retail dealer to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler.

(d) Any wholesaler, retailer, or salesperson who violates this section shall be guilty of a violation and upon conviction shall be subject to a fine of not more than five hundred dollars ($500).

(e) The following shall be prima facie evidence of intent to injure competitors and destroy or substantially limit competition:

(1) The advertisement, offer for sale, or sale of cigarettes by any wholesaler, retailer, or salesperson at less than cost to him or her;

(2) Any offer of a rebate in price or the giving of a rebate in price or an offer of a concession or the giving of a concession of any kind in connection with the sale of cigarettes; or

(3) Inducing or attempting to induce or procuring or attempting to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer.

A.C.A. § 4-75-709

Combination sales

(a)(1) In all advertisements, offers for sale, or sales involving two (2) or more items, at least one (1) of which items is cigarettes, at a combined price, and in all advertisements, offers for sale, or sales involving the giving of any gift or concession of any kind, whether coupons or otherwise, the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts, and concessions included in the transactions.

(2) If any such articles, products, commodities, gifts, or concessions shall not be cigarettes, the basic cost thereof shall be determined in the manner provided in § 4-75-702(1).

(b) The redemption by a retailer of coupons supplied to consumers by manufacturers and redeemable from the retailer by the manufacturers is not a violation of this subchapter if the sum of the coupon and other consideration paid by the consumer is not below the cost to the retailer.

(c) Any manufacturer's promotional allowance provided to a wholesaler or retailer may be passed on to the purchaser by the wholesaler or retailer without violating this subchapter if the sum of the manufacturer's promotional allowance and other consideration paid by the purchaser is not below the cost to the wholesaler or retailer, as the case may be.

A.C.A. § 4-75-710

Wholesale sales

When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his or her selling price to the latter the cost to the wholesaler, as provided by § 4-75-702, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of that section.

A.C.A. § 4-75-711

Costs--Establishment

(a) In determining cost to the wholesaler and cost to the retailer, the court shall receive, and consider as bearing on the bona fides of the cost, evidence tending to show that any person complained against under any of the provisions of this subchapter purchased the cigarettes involved in the complaint before the court at a fictitious price or upon terms or in such manner or under such invoices as to conceal the true cost, discounts, or terms of purchase, and shall also receive and consider as bearing on the bona fides of the costs, evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of this subchapter is committed or charged to determine and establish on the basis of actual existing conditions the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under this subchapter as tending to prove actual cost to the wholesaler or actual cost to the retailer complained against, but any party against whom any such cost survey may be introduced in evidence shall have the right to offer evidence tending to prove any inaccuracy of the cost survey or any state of facts which would impair its probative value.

A.C.A. § 4-75-712

Costs--Certain sales

In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or closeout sale, or other sale outside of the ordinary channels of trade.

A.C.A. § 4-75-713

Injunctive relief and damages

(a) The Director of Arkansas Tobacco Control or any person injured by any violation or who would suffer injury from any threatened violation of this subchapter may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin the violation or threatened violation.

(b)(1) If, in such action, a violation or threatened violation of this subchapter is established, the court shall enjoin and restrain, or otherwise prohibit, the violation or threatened violation, and in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit including reasonable attorney's fees.

(2) In the action it is not necessary that actual damages to the plaintiff be alleged or proved, but where alleged or proved, the plaintiff in the action, in addition to the injunctive relief and costs of suit, including reasonable attorney's fees, shall be entitled to recover from the defendant the actual damages sustained by him or her.

(c) In the event that no injunctive relief is sought or required, any person injured by a violation of this subchapter may maintain an action for damages and costs of suit in any court of general jurisdiction.

Sale of Tobacco Products, Vapor Products, Alternative Nicotine Products, or E-Liquid Products to Minors

A.C.A. § 5-27-227

Providing minors with tobacco products, vapor products, alternative nicotine products, e-liquid products, and cigarette papers--Purchase, use, or possession prohibited--Self-service displays prohibited--Placement of tobacco vending machines

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

(A) Tobacco in any form;

(B) Cigarette paper; or

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

(2) Except as provided in subdivision (a)(3) of this section, a person who pleads guilty or nolo contendere to or is found guilty of violating subdivision (a)(1) of this section is guilty of a Class A misdemeanor.

(3) An employee or owner of a retail location permitted under § 26-57-215 who violates subdivision (a)(1) of this section while inside the retail location upon conviction is subject to a fine not to exceed one hundred dollars ($100) per violation.

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

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

(i) Tobacco in any form;

(ii) Cigarette papers; or

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

(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 not to be a minor by displaying proof of age that is false, fraudulent, or not actually proof of the minor's age.

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

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

(A) The minor was acting at the direction of an authorized agent of Arkansas Tobacco Control to enforce or ensure compliance with laws relating to the prohibition of the sale of 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 to minors;

(B) The minor was acting at the direction of an authorized agent of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services to compile statistical data relating to the sale of 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 to minors;

(C) The minor was acting at the request of an Arkansas Retail Cigarette, Tobacco, Vapor Product, and Alternative Nicotine Product permit holder or a retail exclusive vapor product and alternative nicotine product store permit holder to assist the permit holder by performing a check on the permit holder's own retail business to see if the permit holder's employees would sell tobacco, 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 to the minor; or

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

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

(A) Display the appearance of a minor;

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

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

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

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

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

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

any component of a vapor product, alternative nicotine product, or e-liquid product or coupon that entitles the holder of the coupon to any free sample of any tobacco product, vapor product, alternative nicotine product, e-liquid product, or any component of a vapor product, alternative nicotine product, or e-liquid product:

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

(2) To any minor.

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

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

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

(ii) Retail tobacco store; or

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

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

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

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

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

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

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

(iii) In which the cigarette product, vapor product, alternative nicotine product, e-liquid product, or any component of a vapor product, alternative nicotine product, or e-liquid product is readily accessible to a customer without the assistance of a salesperson.

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

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

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

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

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

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

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

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

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

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

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

(a) Cash register number;

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

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

(k) Notwithstanding the provisions of subsection (i) of this section, the court shall 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, and e-liquid products to minors;

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

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

(5) That the appearance of the purchaser of the tobacco in any form, vapor product, alternative nicotine product, e-liquid 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.

(l) A person convicted of violating any provision of this section whose permit or license to distribute or sell a tobacco product, vapor product, alternative nicotine product, or e-liquid product is suspended or revoked upon conviction shall surrender to the court any permit or license to distribute or sell a tobacco product, and the court shall transmit the permit or license to distribute or sell a tobacco product, vapor product, alternative nicotine product, or e-liquid product to the Director of Arkansas Tobacco Control:

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

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

(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.

Arkansas Cigarette Fire Safety Standard Act – A.C.A. § 20-27-2101 *et seq.*

A.C.A. § 20-27-2101

Title

This subchapter shall be known and may be cited as the "Arkansas Cigarette Fire Safety Standard Act".

A.C.A. § 20-27-2102

Purpose

The purpose of this subchapter is to make the laws of this state with regard to cigarette fire safety uniform with the laws of those states that have enacted reduced cigarette ignition propensity laws as of January 1, 2010.

A.C.A. § 20-27-2103

Definitions

As used in this subchapter:

(1) "Cigarette" means:

(A) A roll of tobacco wrapped in paper or in a substance not containing tobacco; or

(B) A roll of tobacco wrapped in a substance containing tobacco that because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette as defined in subdivision (1)(A) of this section;

(2) "Manufacturer" means:

(A) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer; or

(B) An entity that is a successor of an entity defined in subdivision (2)(A) of this section;

(3)(A) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing.

(B) A "quality control and quality assurance program" ensures that the testing repeatability remains within the required repeatability values stated in § 20-27-2104(b)(6) for all test trials used to certify cigarettes under this subchapter;

(4) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time;

(5) “Retailer” means a person who purchases tobacco products from a licensed wholesaler for the purpose of selling them over the counter at retail to consumers;

(6)(A) “Sale” means a transfer of title or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means or any agreement for sale.

(B) “Sale” includes the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money;

(7) “Sell” means to sell or to offer to do the same; and

(8) “Wholesaler” means a person who is not a manufacturer or owned or operated by a manufacturer that does business in this state at or from an established place of business that purchases unstamped or untaxed cigarettes or other tobacco products directly from manufacturers that distribute tobacco products in Arkansas and that sells to properly licensed cigarette vendors or retailers.

A.C.A. § 20-27-2104

Test method and performance standard

(a) Except as provided in subsection (h) of this section, cigarettes shall not be offered for sale in this state or offered for sale or sold to persons located in this state unless:

(1) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section;

(2) A written certification has been filed by the manufacturer with the Director of Arkansas Tobacco Control under § 20-27-2105; and

(3) The cigarettes have been marked in accordance with § 20-27-2106.

(b)(1) Testing of cigarettes shall be conducted in accordance with the ASTM International standard E2187-04: Standard Test Method for Measuring the Ignition Strength of Cigarettes.

(2) Testing shall be conducted on ten (10) layers of filter paper.

(3)(A) No more than twenty-five percent (25%) of the cigarettes tested in a test trial under this section shall exhibit full-length burns.

(B) Forty (40) replicate tests shall compose a complete test trial for each cigarette tested.

(4) The performance standard required by this section shall be applied only to a complete test trial.

(5) Written certifications shall be based on testing conducted by a laboratory that has been accredited under standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standard required by the director.

(6)(A) Laboratories conducting testing under this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results.

(B) The repeatability value shall be no greater than nineteen hundredths (0.19).

(7) This section does not require additional testing if cigarettes are tested consistent with this subchapter for any other purposes.

(8) Testing performed or sponsored by the director to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

(c)(1) Each cigarette listed in a certification submitted under § 20-27-2105 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard under this section shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column.

(2) At least one (1) complete band shall be located at least fifteen millimeters (15 mm) from the lighting end of the cigarette.

(3) For cigarettes on which the bands are positioned by design there shall be at least two (2) bands fully located at least fifteen millimeters (15 mm) from the lighting end and ten millimeters (10 mm) from the filter end of the tobacco column or ten millimeters (10 mm) from the labeled end of the tobacco column for nonfiltered cigarettes.

(d)(1) A manufacturer of a cigarette that the director determines cannot be tested by the test method under subdivision (b)(1) of this section shall propose a test method and performance standard for the cigarette to the director.

(2) Upon approval of the proposed test method and determination by the director that the performance standard proposed by the manufacturer is equivalent to the performance standard under subdivision (b)(3) of this section, the manufacturer may employ the test method and performance standard to certify the cigarette under § 20-27-2105.

(3) Unless the director demonstrates a reasonable basis why a proposed alternative test should not be accepted under this subchapter, the director shall authorize a manufacturer to employ an alternative test method and performance standard to certify a cigarette for sale in this state if the director:

(A) Determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this subchapter; and

(B) Finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by

a manufacturer as meeting the fire safety standards of that state's law or rules under a legal provision comparable to this section.

(4) All other applicable requirements of this section shall apply to the manufacturer.

(e)(1) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years and shall make copies of these reports available to the director and the Attorney General upon written request.

(2) A manufacturer who fails to make copies of these reports available within sixty (60) days of receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day after the sixtieth day that the manufacturer does not make the copies available.

(f) The director may adopt a subsequent ASTM International Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by a tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM International standard E2187-04 and the performance standard in subdivision (b)(3) of this section.

(g)(1) The director shall review the effectiveness of this section and report every three (3) years his or her findings and recommendations to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for legislation to improve the effectiveness of this subchapter.

(2) The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(h) The requirement of subsections (a) and (b) of this section shall not prohibit:

(1) A wholesaler or retailer from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesaler or retailer can establish that the inventory was in its possession before January 1, 2010, and the wholesaler or retailer can establish that the inventory was purchased before January 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year; or

(2)(A) The sale of cigarettes solely for the purpose of consumer testing.

(B) For purposes of this subsection, the term “consumer testing” means an assessment of cigarettes that is conducted by a manufacturer or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for assessment.

A.C.A. § 20-27-2105

Certification and product change

(a) A manufacturer shall submit to the Director of Arkansas Tobacco Control a written certification attesting that each cigarette listed in the certification:

(1) Has been tested within the last thirty-six (36) months in accordance with § 20-27-2104; and

(2) Meets the performance standard under § 20-27-2104.

(b) A cigarette listed in the certification shall be described with the following information:

(1) Brand or trade name on the package;

(2) Style, such as light or ultra light;

(3) Length in millimeters;

(4) Circumference in millimeters;

(5) Flavor, such as menthol or chocolate, if applicable;

(6) Filter or nonfilter;

(7) Package description, such as soft pack or box;

(8) Marking under § 20-27-2106;

(9) The name, address, and telephone number of the laboratory if different than the manufacturer that conducted the test; and

(10) The date that the testing occurred.

(c) The director shall make the certifications available to the Attorney General and the Secretary of the Department of Finance and Administration for purposes consistent with this subchapter.

(d) A cigarette certified under this section shall be recertified every three (3) years.

(e)(1)(A) For each brand family of cigarettes listed for certification, a manufacturer shall pay a fee of one thousand dollars ($1,000) to the director.

(B) The fee shall be applied to all cigarettes within the certified brand family and shall include any new cigarette certified within the brand family during the three-year certification period.

(2) The director may adjust annually this fee to ensure it defrays the actual costs of processing, enforcement, and oversight activities required by this subchapter.

(f)(1) If a manufacturer has certified a cigarette under this section and subsequently makes a change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this subchapter, the cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards under § 20-27-2104.

(2) An altered cigarette that does not meet the performance standard in § 20-27-2104 shall not be sold in this state.

A.C.A. § 20-27-2106

Marking of cigarette packaging

(a)(1) Cigarettes that are certified by a manufacturer under § 20-27-2105 shall be marked to indicate compliance with the requirements of § 20-27-2104.

(2) The marking shall be in 8-point type or larger and consist of the letters "FSC", which signifies Fire Standard Compliant, permanently printed, stamped, engraved, or embossed on the package at or near the UPC code.

(b) A manufacturer shall use only one (1) marking and shall apply the marking uniformly for all packages, including without limitation to packs, cartons, and cases, and brands marketed by the manufacturer.

(c)(1) Manufacturers certifying cigarettes under § 20-27-2105 shall provide a copy of the certifications to all wholesalers to which they sell cigarettes.

(2) Wholesalers and retailers shall permit the Director of Arkansas Tobacco Control, the Director of the Department of Finance and Administration, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

A.C.A. § 20-27-2107

Penalties

(a)(1) A manufacturer, wholesaler, or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of § 20-27-2104 is subject to a civil penalty in an amount not to exceed one hundred dollars ($100) for each pack of such cigarettes sold or offered for sale.

(2) The penalty against a person or entity shall not exceed one hundred thousand dollars ($100,000) during any thirty-day period.

(b)(1) A retailer that knowingly sells or offers to sell cigarettes in violation of § 20-27-2104 is subject to a civil penalty in an amount not to exceed one hundred dollars ($100) for each pack of such cigarettes sold or offered for sale.

(2) The penalty against a retailer shall not exceed twenty-five thousand dollars ($25,000) for sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification under § 20-27-2105 is subject to a civil penalty of at least seventy-five thousand dollars ($75,000) and not to exceed two hundred fifty thousand dollars ($250,000) for each false certification.

(d) A person who violates any other provision of this subchapter is subject to a civil penalty for a first offense in an amount not to exceed one thousand dollars ($1,000) and for a subsequent offense in an amount not to exceed five thousand dollars ($5,000) for each violation.

(e) It is a defense in an action for civil penalties that a wholesaler, retailer, or a person in the stream of commerce relied in good faith on a manufacturer's certificate or marking that the cigarettes complied with this subchapter.

(f)(1) An authorized representative of the Secretary of the Department of Finance and Administration or the Director of Arkansas Tobacco Control may seize and take possession of cigarettes:

(A) For which no certification has been filed as required by § 20-27-2105; or

(B) That have not been marked as required by § 20-27-2106.

(2)(A) Cigarettes seized under this section shall be destroyed.

(B) Before the destruction of cigarettes seized under this section, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

(g)(1) In addition to any other remedy provided by law, the Attorney General may file an action in circuit court for a violation of this subchapter, including petitioning:

(A) For preliminary or permanent injunctive relief against a manufacturer, importer, wholesaler, retailer, or any other person or entity to enjoin the person or entity from selling, offering to sell, or affixing tax stamps to cigarettes that do not comply with the requirements of this subchapter; or

(B) To recover costs or damages suffered by the state because of a violation of this subchapter, including enforcement costs relating to the specific violation and attorney's fees.

(2) Each violation of this subchapter or of the rules adopted under this subchapter constitutes a separate civil violation for which the director or the Attorney General may obtain relief.

(3) Upon obtaining judgment for injunctive relief under this section, the director or the Attorney General shall provide a copy of the judgment to all wholesalers to which the cigarettes have been sold.

A.C.A. § 20-27-2108

Implementation

(a) The Director of Arkansas Tobacco Control may promulgate rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to effectuate the purposes of this subchapter.

(b)(1) The Secretary of the Department of Finance and Administration, the director, and their employees, in the regular course of conducting inspections of wholesalers and retailers, as

authorized under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., may inspect cigarettes to determine if the cigarettes are marked as required by § 20-27-2106.

(2) If the secretary discovers cigarettes that are not marked as required, the secretary shall notify the director.

A.C.A. § 20-27-2109

Inspection

(a) To enforce the provisions of this subchapter, the Attorney General, the Secretary of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, and their authorized representatives may examine the books, papers, invoices, and other records of a person in possession, control, or occupancy of premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises.

(b) Every person in possession, control, or occupancy of premises where cigarettes are placed, stored, sold, or offered for sale shall give the Attorney General, the secretary, the director, and their authorized representatives the means, facilities, and opportunity for the examinations authorized by this section.

A.C.A. § 20-27-2110

Sale outside of Arkansas

This subchapter does not prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of § 20-27-2104 if:

(1) The cigarettes:

(A) Are or will be stamped for sale in another state; or

(B) Are packaged for sale outside the United States; and

(2) The person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale in this state.

A.C.A. § 20-27-2111

Preemption

This subchapter shall be repealed if a federal reduced cigarette ignition propensity standard is adopted and becomes effective.

A.C.A. § 20-27-2112

Local regulation

This subchapter preempts any local law, ordinance, or regulation that conflicts with any provision of this subchapter or any policy of the state implemented in accordance with this subchapter and, notwithstanding any other provision of law, a governmental unit of this state may not enact or enforce an ordinance, local law, or regulation that conflicts with or is preempted by this subchapter.

Tobacco Products, Vapor Products, Alternative Nicotine Products, and E-Liquid Products – A.C.A. § 20-65-101 *et seq*.

A.C.A. § 20-65-101

Definitions

As used in this chapter, unless otherwise specified:

(1)(A) "Alternative nicotine product" means a product that consists of or contains nicotine from any source that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means.

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

(i) Tobacco product;

(ii) Vapor product;

(iii) Product that is a drug under 21 U.S.C. § 321(g)(1);

(iv) Product that is a device under 21 U.S.C. § 321(h); or

(v) Product that constitutes a combination drug, device, or biological product as described in 21 U.S.C. § 353(g);

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

(3) "Brand family" means all styles of vapor products, alternative nicotine products, and e-liquid products sold under the same trademark and differentiated from another style by means of additional modifiers or descriptors, and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical to, similar to, or identifiable with a previously known brand of vapor products, alternative nicotine product, or e-liquid products;

(4) "Childcare facility" means the same as provided in § 20-78-202;

(5) "Child-resistant packaging" means packaging that is designed or constructed to be compliant with the Federal Child Nicotine Poisoning Prevention Act, Pub. L. No. 114-116, 15 U.S.C. § 1472a;

(6) “Consumer” means a member of the public at large;

(7) “E-liquid” and “e-liquid product” means a liquid product, which may or may not contain nicotine, that is 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;

(8)(A) “E-liquid container” means a bottle or other container of e-liquid that is sold or provided for mixing at retail and is marketed or intended for use in a vapor product.

(B) “E-liquid container” does not include e-liquid contained 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;

(9) “Healthcare facility” means the same as in § 20-27-1803;

(10)(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 a federally licensed importer and a federally licensed distributor that deals 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 permitted retailers.

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

(11) “School” means:

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

(B) Any off-campus school-sponsored or school-sanctioned events with respect to any public school, open-enrollment public charter school, or private school where children attend classes in kindergarten through grade twelve (K-12);

(12) “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; and

(13) “Vapor product” means an electronic oral device of any size or shape that contains a vapor of nicotine, e-liquid, or any 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.

A.C.A. § 20-65-102

Safety inspections--Child-resistant packaging

(a) To ensure that the citizens of this state receive only tobacco products, vapor products, alternative nicotine products, or e-liquid products that are fresh, uncontaminated, unadulterated, and otherwise free of substances that might cause harm to public health and safety, and to ensure the safety of Arkansas youth, the Director of Arkansas Tobacco Control may:

(1) Inspect or cause to be inspected any tobacco products, vapor product, alternative nicotine product, or e-liquid container in places of storage or distribution authorized under state law;

(2) In addition to any authorization or remedy under law, require any tobacco products, vapor products, alternative nicotine products, or e-liquid containers found to be contaminated, adulterated, damaged, or not fresh be removed from stock and be either returned to the proper wholesaler or manufacturer for disposal according to law or delivered to the director for destruction or disposal;

(3) Prescribe any form, application, certificate, or other documentation or record to be used in the administration and enforcement of this chapter; and

(4) Promulgate rules necessary to implement and effectuate the purposes of this chapter.

(b) All alternative nicotine products and e-liquids sold at retail in this state shall be sold in child-resistant packaging.

A.C.A. § 20-65-103

Prohibition on use in certain settings

It is a violation of this chapter for any person to use a tobacco product, vapor product, alternative nicotine product, or e-liquid product in or on the grounds of any school, childcare facility, or healthcare facility.

A.C.A. § 20-65-104

Advertising prohibitions for vapor product, alternative nicotine product, e-liquid product, or e-liquid container

A person may not advertise, market, or offer for sale in this state any tobacco products, vapor products, alternative nicotine products, e-liquid products, or e-liquid containers by using, in the labeling or design of the product, its packaging, or its advertising or marketing materials, trade dress, trademarks, branding, or other related imagery that:

(1) Imitates or replicates those of food brands or other related products that are commonly marketed to children or minors, including without limitation breakfast cereals, cookies, juice drinks, soft drinks, frozen drinks, ice creams, sorbets, sherbets, and frozen pops;

(2) Depicts or signifies characters or symbols that are known to a reasonable person to appeal primarily to or are commonly associated with children or minors, including without limitation superheroes, cartoons or cartoon characters, anime characters, comic book characters, video game characters, television show characters, movie characters, mythical creatures, or unicorns, or that otherwise incorporates related imagery or scenery; or

(3) Uses the terms “candy”, “candies”, “cake”, “cakes”, “pies”, or “cupcakes” or any variant of these terms when that variant term is used in a manner to market to children or minors or known to a reasonable person to appeal primarily to children or minors, or any other term referencing a type or brand of candy, cakes, pastries, or pies, including types or brands of candies, cakes, pastries, or pies that do not include the words “candy”, “candies”, “cake”, “cakes”, “pies”, or “cupcakes” in their names, labels, or slogans

A.C.A. § 20-65-105

Contaminated or adulterated tobacco products, vapor products, alternative nicotine products, or e-liquid products

(a) It is a violation of this chapter for any person to offer for sale in this state or sell to persons located in this state any contaminated or adulterated tobacco products, vapor product, alternative nicotine product, or e-liquid product.

(b) A tobacco product, vapor product, alternative nicotine product, or e-liquid product in this state is contaminated or adulterated if the product:

(1) Consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) Contains any added poisonous or deleterious substance that may render the product injurious to public health; or

(3) Does not have an approved certification as required in § 20-65-202.

Manufacturer Directory for Vapor Products and E-Liquid Products – A.C.A. § 20-65-201 *et seq.*

A.C.A. § 20-65-201

Definitions

As used in this subchapter:

(1)(A) "E-liquid" and "e-liquid product" means a liquid product containing nicotine from any source that is inhaled when using a vapor product, and that may or may not include without limitation propylene glycol, vegetable glycerin, and flavorings.

(B) "E-liquid" and "e-liquid product" does not include a product that is a nicotine solution sold in a container without a battery or atomizer and that is intended to be refillable or that otherwise makes the nicotine solution accessible to the consumer through customary or reasonably foreseeable handling or use; and

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

(i) 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;

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

(iii) Is manufactured, distributed, marketed, or sold as any type or derivation of a vapor product, e-cigarette containing nicotine from any source, e-cigar containing nicotine from any source, e-pipe containing nicotine from any source, or any other vapor product name or descriptor.

(B) "Vapor product" does not include:

(i) A device that:

(a) Uses removable batteries;

(b) Is sold without e-liquid; and

(c) Is designed to utilized e-liquid in a refillable container; or

(ii) 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.

A.C.A. § 20-65-202

Establishment

(a) The Director of Arkansas Tobacco Control shall develop and maintain a directory listing all manufacturers that have provided certifications that comply with this subchapter and each vapor product and e-liquid product that is listed in those certifications.

(b) The director shall:

(1) Make the directory available for public inspection on Arkansas Tobacco Control's website by November 1, 2025; and

(2) Update the directory to correct mistakes and add or remove manufacturers of a vapor product or e-liquid product consistent with the requirements of this section on a monthly basis.

(c) A person or entity is deemed to have received notice as required under subsection (d) of this section that a vapor product or e-liquid product of a manufacturer is not included in the directory maintained by Arkansas Tobacco Control under this section at the time Arkansas Tobacco Control's website fails to list any vapor product or e-liquid product in the directory or at the time the director removes the vapor product or e-liquid product from the directory.

(d)(1)(A) The director may not remove the manufacturer or its vapor product or e-liquid product from the directory until at least fifteen (15) days after the manufacturer has been given notice of an intended action.

(B) Notice shall be sufficient and be deemed immediately received by a manufacturer if the notice is sent either electronically or by facsimile to an email address or facsimile number, as the case may be, provided by the manufacturer in the manufacturer's most recent certification filed under this subchapter.

(2) The vapor product or e-liquid product manufacturer shall have fifteen (15) days from the date of service of the notice of the director's intended action to establish that the vapor product or e-liquid product manufacturer or its vapor product or e-liquid product should be included in the directory.

(3) If after fifteen (15) days from the date of service of the notice of the director's intended action the manufacturer of the vapor product or e-liquid products remains in noncompliance, and the manufacturer has not requested a hearing before the Arkansas Tobacco Control Board within fifteen (15) days of notice of the director's intended action, the manufacturer and its vapor product or e-liquid product shall be removed from the directory.

(4) Every manufacturer shall provide and update as necessary an email address to the director for

the purpose of receiving any notifications required by this subchapter.

(e)(1) Beginning September 1, 2025, a vapor product or e-liquid product shall not be offered for sale in this state or sold to a person located in this state unless the manufacturer certifies before that date, on a form prescribed by the director, under penalty of perjury, that:

(A) The vapor product or e-liquid product was on the market in the United States as of August 8, 2016, and the manufacturer has applied for a marketing order under 21 U.S.C. § 387j for the vapor product or e-liquid product, whichever is applicable, by submitting a premarket tobacco product application on or before September 9, 2020, and either:

(i) The premarket tobacco application for the vapor product, alternative nicotine product, or e-liquid product remains under review by the United States Food and Drug Administration; or

(ii) The United States Food and Drug Administration has issued a marketing denial order for the vapor product or e-liquid product, whichever is applicable, but the United States Food and Drug Administration or a federal court has issued a stay order or injunction during the pendency of the manufacturer's appeal of the marketing denial order;

(B) The manufacturer has received a marketing granted order under 21 U.S.C. § 387j for the vapor product or e-liquid product from the United States Food and Drug Administration; or

(C) The manufacturer is not required to submit an additional marketing granted order or premarket tobacco product application for the vapor product or e-liquid product because the vapor product or e-liquid product merely reflects changes to the name, brand family, or packaging of a vapor product or e-liquid product that is covered under subdivision (e)(1)(A) or (e)(1)(B) of this section.

(2) In addition to the requirements in subdivision (e)(1) of this section, each manufacturer shall provide to Arkansas Tobacco Control a copy of the cover page of the:

(A) Premarket tobacco application with evidence of receipt of the application by the United States Food and Drug Administration;

(B) Document issued by the United States Food and Drug Administration or by a court confirming that the premarket tobacco product application has received a marketing denial order that has been and remains stayed by the United States Food and Drug Administration or court order, rescinded by the United States Food and Drug Administration, or vacated by a court; or

(C) Marketing granted order issued under 21 U.S.C. § 387j.

(3)(A) The information submitted by the manufacturer under subdivision (e)(2) of this section shall be considered confidential commercial or financial information for purposes of the Freedom of

Information Act of 1967, § 25-19-101 et seq.

(B) The manufacturer may redact certain confidential commercial or financial information provided under subdivision (e)(2) of this section.

(C) The director shall not disclose confidential commercial or financial information except as required or authorized by law.

A.C.A. § 20-65-203

Material change to certification

A manufacturer shall notify the Director of Arkansas Tobacco Control within thirty (30) days of any material change to the information provided in § 20-65-202, including issuance by the United States Food and Drug Administration of:

(1) A marketing granted order issued under 21 U.S.C. § 387j;

(2) An order requiring a manufacturer to remove a vapor product or e-liquid product from the market either temporarily or permanently;

(3) Any notice of action taken by the United States Food and Drug Administration affecting the ability of the new vapor product or e-liquid product to be introduced or delivered into interstate commerce for commercial distribution; or

(4) Any change in policy that results in a vapor product or e-liquid product no longer being exempt from oversight of the United States Food and Drug Administration.

A.C.A. § 20-65-204

Fees—Violations

(a)(1) Each certifying manufacturer shall pay an initial fee of five hundred dollars ($500) for each brand family of vapor products or e-liquid products to offset the costs incurred by Arkansas Tobacco Control for processing the certifications and operating the directory under § 20-65-202.

(2) The Director of Arkansas Tobacco Control shall collect an annual fee of two hundred fifty dollars ($250) for each brand family of vapor products or e-liquid products to offset the costs associated with maintaining the directory and satisfying the requirements of this subchapter.

(3) Any certification fees collected under this section shall be deposited into the Arkansas Tobacco

Control Revenue Fund established under § 19-6-831.

(b)(1) If a manufacturer can demonstrate to the director that the United States Food and Drug Administration has issued a rule, guidance, or any other formal statement that temporarily exempts a vapor product or e-liquid product from the federal premarket tobacco application requirements, the vapor product or e-liquid product may be added to the directory upon request by the manufacturer if the manufacturer provides sufficient evidence that the vapor product or e-liquid product is compliant with the federal rule, guidance, or other formal statement, as applicable.

(2) On and after November 1, 2025, or on the date that Arkansas Tobacco Control first makes the directory available for public inspection on its website as provided in § 20-65-202, whichever is later, a manufacturer who offers for sale a vapor product or e-liquid product that is not listed on the directory is subject to a civil penalty of one thousand dollars ($1,000) for each vapor product or e-liquid product offered for sale in violation of § 20-65-202 until the vapor product or e-liquid product is removed from the market or properly listed on the directory.

(3) In addition to any penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of vapor products or e-liquid products that knowingly makes a false certification under this subchapter is subject to a civil penalty of not less than seventy-five thousand dollars ($75,000) but not more than two hundred fifty thousand dollars ($250,000) for each false certification.

(4) A repeated violation of this section shall constitute a deceptive trade practice under § 4-88-101 et seq.

(5) Beginning on November 1, 2025, or on the date that Arkansas Tobacco Control first makes the directory available for public inspection on its website under this subchapter, whichever is later, and subject to subdivisions (b)(7) and (b)(8) of this section, it is unlawful for any person or entity to sell, offer, or possess in this state, or import for personal consumption in this state, a vapor product or an e-liquid product that the person or entity knows is not included in the directory maintained by the director under this subchapter.

(6) A person or entity is deemed to have received notice that a manufacturer is not included in the directory maintained by Arkansas Tobacco Control at the time Arkansas Tobacco Control's website fails to list any manufacturer in the directory or at the time the director removes the manufacturer from the directory.

(7) If a vapor product or e-liquid product or a manufacturer of a vapor product or e-liquid product is removed from the directory established and maintained by the director under § 20-65-202, each wholesaler shall have sixty (60) days from the date the vapor product or e-liquid product is removed from the directory to remove any vapor product or e-liquid product from the wholesaler's inventory and physical location where the wholesaler takes orders for, receives orders for, or sells the vapor product or e-liquid product.

(8) If a vapor product or e-liquid product or a manufacturer of a vapor product or e-liquid product is removed from the directory established and maintained by the director under § 20-65-202, each retailer shall have one hundred twenty (120) days from the date any vapor product or e-liquid product is removed from the directory to sell or remove the vapor product or e-liquid product from the retailer's inventory and permitted location.

(c)(1) In addition to the other fines and forfeitures, a person who violates this section may be subject to a penalty for vapor products or e-liquid products held, sold, or offered for sale and confiscated by Arkansas Tobacco Control in the amount of:

(A) Twenty-five dollars ($25.00) for each individual vapor product or e-liquid product up to twenty (20) individual vapor products or e-liquid products; and

(B) Fifty dollars ($50.00) for each individual vapor product or e-liquid product in excess of twenty (20) individual vapor products or e-liquid products.

(2) The penalty under subdivision (c)(1) of this section 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 having jurisdiction in this state.

(3) A penalty assessed under this subsection shall be deposited into the Arkansas Tobacco Control Revenue Fund established under § 19-6-831.

A.C.A. § 20-65-205

Enforcement

(a)(1)(A) A nonresident manufacturer that is not registered to do business in the state, as a condition precedent to having its name or its vapor products or e-liquid products listed and retained in the directory created under this subchapter, shall appoint and continually engage without interruption a registered agent in this state for service of process on whom all process and any action or proceeding arising out of the enforcement of this section may be served.

(B) The manufacturer shall provide to the Director of Arkansas Tobacco Control the name, address, and telephone number of its agent for service of process and shall provide any other information relating to its agent as may be requested by the director.

(2)(A) A manufacturer that is located outside of the United States, as an additional condition precedent to having its vapor products or e-liquid products listed or retained in the directory, shall cause each of its importers of any of its vapor products or e-liquid products to be sold in this state to appoint, and continually engage without interruption, an agent in this state in accordance with the provisions of this section.

(B) All obligations of a manufacturer imposed by this section with respect to appointment of its agent shall also apply to importers with respect to appointment of their agents; and

(3)(A) A manufacturer shall provide written notice to the director thirty (30) days before the termination of the authority of an agent appointed under subdivisions (a)(1) and (a)(2) of this section.

(B) No less than five (5) days before the termination of an existing agent appointment, a manufacturer shall provide to the director the name, address, and telephone number of its newly appointed agent for service of process and shall provide any other information relating to the new appointment as may be requested by the director.

(C) In the event an agent terminates an agency appointment, the manufacturer shall notify the director of the termination within five (5) days of the termination and shall include proof to the satisfaction of the director of the appointment of a new agent.

(b)(1) Each retailer and wholesaler that sells or distributes vapor products or e-liquid products in this state may be subject to unannounced compliance checks or inspections for purposes of enforcing this subchapter.

(2) Unannounced follow-up compliance checks or inspections of all noncompliant retailers and wholesalers may be conducted within ninety (90) days after any violation of this subchapter.

(3) The director shall publish the results of all compliance checks or inspections at least annually and shall make the results available to the public on request.

(c) The director may promulgate rules necessary to effect the purposes of this subchapter.

Arkansas Tobacco Products Tax Act – A.C.A. § 26-57-201 *et seq.*

A.C.A. § 26-57-201

Citation

This subchapter shall be known and may be cited as the "Arkansas Tobacco Products Tax Act of 1977."

A.C.A. § 26-57-202

Legislative findings and purpose

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

(1) The Arkansas 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 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 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 permitting of persons to sell 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 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.

A.C.A. § 26-57-203

Definitions

As used in this subchapter:

(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) Tobacco product;

(ii) Vapor product;

(iii) Product that is a drug under 21 U.S.C. § 321(g)(1);

(iv) Product that is a device under 21 U.S.C. § 321(h); or

(v) Product that constitutes a combination drug, device, or biological product as described in 21 U.S.C. § 353(g);

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

(3) “Brand family” means the same as defined in § 26-57-1302;

(4)(A) “Child-resistant packaging” means packaging that is designed or constructed to be:

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

(a) Open; or

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

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

(B) “Child-resistant packaging” does not mean packaging that children cannot open or obtain a toxic or harmful amount within a reasonable time when tested in accordance with the method described in 16 C.F.R. § 1700.20,[3] as it existed on January 1, 2015;

(5) “Cigar” means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette;

(6) “Cigarette” means a cigarette as defined in § 26-57-260 that is subject to federal excise tax;

(7) “Cigarette inputs” means machinery or other component parts typically used in the manufacture of cigarettes, including without limitation tobacco, whether processed or unprocessed, cigarette papers and tubes, cigarette filters and component parts intended for use in the making of cigarette filters, and machinery typically used in the making of cigarettes;

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

(9) “Consumer” means a member of the public at large;

(10) “Days” means calendar days unless otherwise specified;

(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;

(12) “E-liquid” and “e-liquid product” means a liquid product, which may or may not contain nicotine, that is 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;

(13) “First sale” means:

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

(14)(A) “Importer” means a person that:

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

(ii) Removes tobacco products, vapor products, alternative nicotine products, 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;

(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; and

(C) Sufficient to identify the parties to the transaction, including without limitation:

(i) The physical address of the permitted wholesaler or the permitted manufacturer selling the tobacco products, vapor products, alternative nicotine products, or e-liquid products;

(ii) The permit number of the permitted wholesaler or the permitted manufacturer selling the tobacco products, vapor products, alternative nicotine products, or e-liquid products;

(iii) The physical address of the permitted retailer or wholesaler purchasing the tobacco products, vapor products, alternative nicotine products, or e-liquid products; and

(iv) The permit number of the permitted retailer or wholesaler purchasing the tobacco products, vapor products, alternative nicotine products, or e-liquid products;

(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, 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:

(i) 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; or

(ii) In the absence of the information required under subdivision (16)(B)(i) of this section, a similar wholesaler or retailer that sells the same or comparable tobacco products, vapor products, alternative nicotine products, or e-liquid products sells the same or comparable tobacco products, vapor products, alternative nicotine products, or e-liquid products.

(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;

(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 permitted retailers.

(C) "Manufacturer" specifically includes a person that mixes, compounds, repackages, or resizes 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;

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

(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;

(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;

(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;

(25) "Place of business" means the 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;

(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;

(27) "Retailer" means a person that:

(A) Purchases tobacco products, vapor products, alternative nicotine products, or e-liquid products from 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; or

(B) Has a physical presence in Arkansas and purchases cigars from permitted wholesalers for the purpose of the online retail sale of the cigars to buyers inside and outside the state;

(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 a product that is located in that state to the destination in question without regard to where title was transferred;

(29)(A) "Sales entity affiliate" means an entity that:

(i) Sells 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 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;

(30) "Salesperson" means the agent or employee of a wholesaler or a manufacturer that sells or offers for sale to permitted wholesalers or 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;

(31) "Stamps" means the Arkansas cigarette stamps denoting the tax on cigarettes, which when affixed to a container of cigarettes indicate that the tax has been paid;

(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;

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

(34) "Vapor product" means an electronic oral device of any size or shape that contains a vapor of nicotine, e-liquid, or any 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;

(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

(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 tobacco products, vapor products, alternative nicotine products, or e-liquid products from any source;

(C) Distributes or sells the 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 tobacco products, vapor products, alternative nicotine products, or e-liquid products at retail to consumers.

A.C.A. § 26-57-204

Violations

A person who violates any of the sections of this subchapter:

(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.

A.C.A. § 26-57-205

Enforcement of subchapter

It is the duty of all state, county, and city officers to assist Arkansas Tobacco Control in enforcing this subchapter.

A.C.A. § 26-57-206

Rules

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

A.C.A. § 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, 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.

A.C.A. § 26-57-208

Levy of tax--Rates of tax

An excise or privilege tax is levied as follows:

(1) 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; and

(2)(A)(i) An excise or privilege tax is levied on the first sale of tobacco products other than cigarettes at the rate of sixteen percent (16%) of the invoice price, before discounts.

(ii) However, the excise or privilege tax levied under subdivision (2)(A)(i) of this section is subject to the limitation stated in subdivision (2)(B) of this section.

(B)(i) The total amount of the excise or privilege taxes levied under this section and §§ 26-57-803, 26-57-805, and 26-57-807 on cigars shall not exceed fifty cents (50¢) per cigar.

(ii) If the total amount of the excise or privilege taxes levied under this section and §§ 26-57-803, 26-57-805, and 26-57-807 on cigars would exceed fifty cents (50¢) per cigar, the excise or privilege tax rates under this section and §§ 26-57-803, 26-57-805, and 26-57-807 shall be reduced proportionally.

(iii) The Secretary of the Department of Finance and Administration shall adopt rules to implement this subdivision (2)(B).

A.C.A. § 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 permitted under this subchapter.

(b) A person 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.

A.C.A. § 26-57-211

Wholesaler to pay taxes--Reports and remittance of tax

(a)(1)(A) The taxes levied by this subchapter shall be reported and paid by wholesalers 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 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 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 permit 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 Secretary 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.

(b)(1) On or before the fifteenth day of each month, every wholesaler shall file a report for the previous month's tax collections with the secretary.

(2) The report shall provide the information prescribed by the secretary.

(c)(1)(A)(i) When the report under subsection (b) of this section is filed, the wholesaler shall remit to the secretary with the report ninety-eight percent (98%) of the tax due for the previous month.

(ii) The discount of two percent (2%) under subdivision (c)(1)(A)(i) of this section does not apply to taxes due under § 26-57-804 or § 26-57-805.

(B) If the stamps deputy fails to remit the tax on or before the twentieth day of each applicable month, the wholesaler forfeits his or her claim to the discount described in subdivision (c)(1)(A)

of this section, and the wholesaler shall remit to the secretary one hundred percent (100%) of the amount of tax due, plus any penalty or interest due.

(2) If the payment of any tax due becomes delinquent, the taxpayer shall remit the full amount of the tax due plus penalty.

(d)(1) The secretary may add a penalty of ten percent (10%) of the tax due to the tax due for the failure to file a report or for the failure to remit the taxes at the time required, or for both.

(2) If the secretary determines there has been an attempt to evade the tax, a penalty of not more than fifty percent (50%) of the tax due shall be added to the tax due.

(e)(1)(A) In computing the amount of tax due under this subchapter and any act supplemental to this subchapter, a wholesaler may deduct the cost of cigarette tax stamps and tobacco taxes lost through bad debts.

(B) Any deduction taken or refund paid attributable to bad debts shall not include interest.

(C) A bad debt must be deducted within three (3) years of the date of the sale for which the debt was incurred.

(D) If a deduction is taken for a bad debt and the taxpayer subsequently collects the debt in whole or in part, the tax on the amount so collected shall be paid and reported on the next return due after the collection.

(2)(A) As used in this section, "bad debt" means any cigarette or tobacco tax that the wholesaler legally claims as a bad debt deduction for federal income tax purposes.

(B) "Bad debt" includes without limitation a worthless check, a worthless credit card payment, and an uncollectible credit account.

(C) "Bad debt" does not include financing charges or interest, an uncollectible amount on property that remains in the possession of the taxpayer or vendor until the full purchase price is paid, expenses incurred in attempting to collect any debt, a debt sold or assigned to a third party for collection, and repossessed property.

A.C.A. § 26-57-212

Wholesalers and warehouses--Reports, payment of tax, and records

(a) Every 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 Secretary of the Department of Finance and Administration on or before the fifteenth day of each month.

(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 secretary.

(c) All taxes due for the preceding month shall be remitted to the secretary 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 tobacco products, vapor products, alternative nicotine products, e-liquid products, and cigarette papers for distribution within the State of Arkansas by a nonresident 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 tobacco products, vapor products, alternative nicotine products, e-liquid products, or cigarette papers into the State of Arkansas, a nonresident 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 of Finance and Administration and Arkansas Tobacco Control for a period of three (3) years.

(3) Nonresident wholesalers shall also keep a record of all 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 of Finance and Administration and Arkansas Tobacco Control.

A.C.A. § 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 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 Secretary 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 copies of at least the last ninety (90) days of tobacco product, vapor product, alternative nicotine product, or e-liquid product invoices, which the retailer shall provide immediately upon demand;

(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 and manufacturers shall maintain three (3) years of tobacco product, vapor product, alternative nicotine product, 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.

A.C.A. § 26-57-214

Registration and permitting required before doing business

(a)(1) Except as stated in subdivision (a)(2) of this section, 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 first registering with the Director of Arkansas Tobacco Control and obtaining a permit for that purpose.

(2) A person purchasing an existing permitted retail location may, with the permission of the seller and Arkansas Tobacco Control, operate under the selling owner's permit for no more than thirty (30) days from the date of the sale.

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

(c) A manufacturer, wholesaler, vendor, or retailer 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 permit for each place of business.

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

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

A.C.A. § 26-57-215

Permits--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 from the Director of Arkansas Tobacco Control.

(2) A person purchasing an existing permitted retail location may, with the permission of the seller and Arkansas Tobacco Control, operate under the selling owner's permit for no more than thirty (30) days from the date of the sale.

(b)(1) In addition to securing a permit under subsection (a) of this section, a manufacturer whose products are sold in this state shall register with the Secretary of the Department of Finance and Administration.

(2) A wholesaler of tobacco products, vapor products, alternative nicotine products, or e-liquid products shall secure the proper wholesale permit.

(3)(A) Every wholesaler's or manufacturer's salesperson of any tobacco products, vapor product, alternative nicotine product, or e-liquid product who contacts a retailer in this state for the purpose of soliciting, taking, 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 products, vapor product, alternative nicotine product, or e-liquid product to a retailer in this state, shall first secure a salesperson's permit.

(B) Application shall be made by the wholesaler or manufacturer who is the salesperson's employer.

(C) A salesperson's permit is not transferable to another employer and must be surrendered to the director by the employer upon termination of the salesperson's employment.

(4) Every retailer of tobacco products, vapor products, alternative nicotine products, or e-liquid products that operates a place of business shall secure the proper retail permit.

(5) 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).

(6)(A)(i) Every vendor shall obtain a vending machine permit from the director. However, municipal corporations may license and tax the privilege of doing business as a 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' permits under this subchapter.

(ii) If a municipality by ordinance licenses or taxes the privilege of doing business as a vendor, proof that the license is in good standing is a mandatory condition for the issuance of a state permit required under this section.

(B)(i)(a) In addition, every 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 permit number of the vendor operating the machine.

(ii) A stamp shall not be issued for a machine upon which the state gross receipts or state compensating tax has not been paid, and the director 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 are issued as follows:

(A) A permit for a sole proprietorship is issued in the owner's name and in the 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 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:

(A) Shall apply for a new permit under this subchapter;

(B) May be issued a new permit under this subchapter; and

(C) May operate under the selling entity's permit for no more than thirty (30) days from the date of the sale.

(2) 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:

(A) The existing permit issued under this subchapter is void; and

(B) The partnership or limited liability company:

(i) Shall apply for a new permit under this subchapter;

(ii) May be issued a new permit under this subchapter; and

(iii) May operate under the voided permit for no more than thirty (30) days from the date of the change, removal, or replacement.

(3) 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:

(A) The permit issued under this subchapter is void; and

(B) The nonpublicly traded corporation:

(i) Shall apply for a new permit under this subchapter;

(ii) May be issued a new permit under this subchapter; and

(iii) May operate under the voided permit for no more than thirty (30) days from the date of the change, removal, or replacement.

(4) 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:

(A) The permit issued under this subchapter is void; and

(B) The publicly traded corporation:

(i) Shall apply for a new permit under this subchapter;

(ii) May be issued a new permit under this subchapter; and

(iii) May operate under the voided permit for no more than thirty (30) days from the date of the change, removal, or replacement.

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

A.C.A. § 26-57-216

Permits--Number and location--Background check required

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

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

(2)(A) The locations thereof.

(B) However, a retail, wholesale, or manufacturer 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 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.

A.C.A. § 26-57-219

Permits--Annual privilege fees

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

(1) Wholesale Permit (Tobacco Products, Vapor Products, Alternative Nicotine Products, or E-liquid Products) …… $1,000

(2) Vendor Permit …… $100

(3) Vending Machine Permit (per machine) …… $10.00

(4) Retail Permit (Tobacco Products, Vapor Products, Alternative Nicotine Products, or E-liquid Products) ……... $100

(5) Retail Vapor Product and E-liquid Product Only Permit …… $50.00

(6) Wholesaler's Salesperson Permit …… $25.00

(7) Manufacturer's Salesperson Permit …… $25.00

(8)(A) Manufacturer Tobacco Products, Vapor Products, Alternative Nicotine Products, or E-liquid Products Only Permit ……... $500.00

(B) Notwithstanding subdivision (a)(8)(A) of this section, 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 Products, Vapor Products, Alternative Nicotine Products, or E-liquid Products Only Permit to receive the permit at no cost.

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

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

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

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

(c) A permit issued under this subchapter shall not be renewed for a permit holder who is delinquent more than ninety (90) days on a privilege fee, tax relating to the sale or dispensing of tobacco products, vapor products, alternative nicotine products, or e-liquid products, or any other state and local tax due the Secretary 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 issued under this subchapter except upon certification that the permit holder has entered into a repayment agreement with the Department of Finance and Administration and is current on the payments.

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

A.C.A. § 26-57-221

Permits--Not transferable

(a) A permit is not:

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

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

(b) A person purchasing an existing permitted retail location may operate under the selling owner's permit for no more than thirty (30) days from the date of the sale.

A.C.A. § 26-57-222

Permits—Duplicates

When a permit is lost by a permit holder, a duplicate permit 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.

A.C.A. § 26-57-223

Permits--Suspension or revocation

(a) All permits 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 a hearing before the Arkansas Tobacco Control Board at the next regularly scheduled board meeting.

(b) The director may revoke all permits 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, subject to a hearing before the board at the next regularly scheduled board meeting.

A.C.A. § 26-57-224

Vendor to give bond

(a) Every vendor before beginning operation or commencing business in this state shall give bond to the State of Arkansas.

(b) The bond shall be conditioned upon the faithful performance of the duties and obligations imposed by this subchapter and the rules promulgated by the Secretary of the Department of Finance and Administration.

(c) The bond required shall be established by the following table:

(1) Up to 30 machines $2,000

(2) 31 to 60 machines 3,000

(3) 61 to 90 machines 4,000

(4) 91 to 120 machines 5,000

(5) Over 120 machines 6,000

(d) This bond shall be executed by a solvent surety company authorized to do business in this state or other responsible surety approved by the secretary.

A.C.A. § 26-57-226

Penalties

(a) A person within the jurisdiction of this state who is not 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.

A.C.A. § 26-57-227

Operation of vending machine on vendor's premises--Operation of a vending machine without permit a public nuisance--Seizure and sale--Redemption

(a)(1) 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 permit described in this subchapter is declared to be maintaining a public nuisance.

(2) A vending machine 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.

(3) Vending machines that are seized under this subsection may be redeemed 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.

A.C.A. § 26-57-228

Purchases from unregistered, 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 permitted manufacturer, permitted wholesaler, or other permitted retailer.

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

A.C.A. § 26-57-229

Permit holder as wholesaler and retailer

(a)(1) A person who is permitted as a wholesaler and as a retailer shall maintain separate wholesale and retail 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 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 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 Secretary 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.

A.C.A. § 26-57-230

Common carriers

(a) Upon written request by the Secretary 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 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 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 secretary, the director, or their agents.

(c) A person who fails or refuses to give the statement, records, or invoices required by this section or who refuses to allow the secretary or the director to examine the person's records upon conviction is guilty of a Class C misdemeanor.

A.C.A. § 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 allow the Department of Finance and Administration or Arkansas Tobacco Control to examine or inspect the person's 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.

A.C.A. § 26-57-232

Wholesalers' restrictions

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

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

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

(3)(A) 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 Secretary 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 Arkansas Tobacco Control.

(b) Any wholesaler who fails or refuses to affix or cancel the stamps or who fails or refuses to keep the records or who fails or refuses to furnish the statements and information or make the reports as required by this subchapter or as prescribed by the Secretary of the Department of Finance and

Administration and the Director of Arkansas Tobacco Control, or who violates any of the requirements of §§ 26-57-212, 26-57-229, and 26-57-242 is guilty of a violation for the first offense and a Class C misdemeanor for each additional offense.

A.C.A. § 26-57-233

Salesperson--Restrictions--Violations

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 permitted wholesalers, provided that the tobacco products, vapor products, alternative nicotine products, or e-liquid products are consigned or delivered only to permitted manufacturers or 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 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 permitted wholesaler.

A.C.A. § 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 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, when received on the premises, and any other requirements prescribed by the

Secretary 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 secretary or the director 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 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 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 secretary or the director, or who violates any of the requirements of this section, upon conviction is guilty of a Class A misdemeanor.

A.C.A. § 26-57-235

Cigarette stamp purpose--Procedures

(a) The purpose of the stamps is to provide a method for collecting the tax imposed on cigarettes sold in this state.

(b) The Secretary of the Department of Finance and Administration shall prescribe the kind of stamps to be used in the administration of this subchapter.

(c)(1) The secretary shall prepare and maintain an adequate supply of cigarette stamps.

(2) The secretary shall require a printer's certificate with each set of stamps delivered.

(3) The cost of printing the stamps shall be paid from the appropriation made for the administration of the Department of Finance and Administration.

(4)(A) All stamps prescribed by the secretary for affixation to cigarette packages shall be designed and furnished in such a fashion as to permit identification of the person that affixed the stamp to the particular package of cigarettes by means of a number or other mark on the stamp.

(B) The department shall maintain for not less than three (3) years information identifying the person that affixed the tax stamp to each package of cigarettes, which information shall not be confidential or exempt from disclosure to the public.

(d)(1) Cigarettes sold in, into, or from the state shall be in packages of twenty (20) or twenty-five (25) cigarettes.

(2) The purchase or sale of individual cigarettes is prohibited.

A.C.A. § 26-57-236

Stamp deputies--Appointment and revocation of appointment--Reporting

(a) The Secretary of the Department of Finance and Administration shall furnish tax stamps to licensed wholesalers through stamp deputies.

(b)(1) The secretary may appoint and commission stamp deputies to handle the stamps and collect the tax on cigarettes before sales of cigarettes are made to the retailers.

(2) The secretary shall not appoint and commission a person as a stamp deputy unless the person:

(A) Is the owner or officer of a wholesaler licensed under this subchapter;

(B) Certifies each calendar quarter on a form prescribed by the secretary that the person has and will comply with the requirements of this subchapter;

(C) Consents to the jurisdiction of the state to enforce the requirements of this subchapter and waives any claim of sovereign immunity to the contrary;

(D) Provides complete and accurate reports as required by this subchapter;

(E) Waives the confidentiality laws necessary to permit the secretary to:

(i) Create and make available the list described in subdivision (b)(6) of this section; and

(ii) Share information reported under this subchapter and other laws with the taxing authorities or law enforcement authorities of other states or with any other entity permitted by the secretary to aggregate the data;

(F) Has furnished a bond in an amount and in the form prescribed by the secretary; and

(G) If located outside of the state, has appointed an agent in this state to act as agent for the service of process for the purpose of enforcing this subchapter.

(3) An appointment and commission as a stamp deputy by the secretary is effective for one (1) year.

(4) A stamp deputy acting within the scope of the stamp deputy's authority is an agent of the secretary and is accountable as such for any wrongful acts.

(5) A stamp deputy's open account shall not exceed seventy-five percent (75%) of the total amount of the bond provided by the stamp deputy.

(6)(A) The secretary shall list on the website of the Department of Finance and Administration the names of all persons appointed and commissioned as stamp deputies under this section.

(B) Manufacturers, importers, and sales entity affiliates are entitled to rely on the list described in subdivision (b)(6)(A) of this section in selling cigarettes.

(c)(1) A stamp deputy's appointment and commission are subject to revocation if the stamp deputy:

(A) Fails to submit a report required under this subchapter or the Tobacco Products Reporting Act, § 26-57-1401 et seq.;

(B) Files an incomplete or inaccurate report or an inaccurate certification;

(C) Fails to pay taxes due under this subchapter;

(D) Sells cigarettes in or into the state in a package that bears a stamp permitted under this subchapter that is not the correct stamp and provides for a lower level of tax than the correct stamp;

(E) Sells unstamped cigarettes in, into, or from the state or possesses unstamped cigarettes in the state except as permitted under this subchapter;

(F) Purchases, sells in or into the state, or affixes a tax stamp to a package containing cigarettes of a manufacturer or brand family that is not listed on the directory of cigarettes approved for stamping and sale published by the Attorney General under § 26-57-1303, or possesses cigarettes described in this subdivision (c)(1)(F) more than twenty-one (21) days after receiving notice that the manufacturer or brand family is not on the state directory, except as otherwise permitted under this subchapter;

(G) Purchases or sells cigarettes in violation of this subchapter; or

(H) Has his or her appointment and commission or similar license or permit revoked or terminated in any other state based on acts or omissions that would, if done in Arkansas, be grounds for the revocation of the stamp deputy's appointment and commission under this section unless the stamp deputy demonstrates that the revocation or termination in the other state was effected without due process.

(2)(A) If a stamp deputy commits a violation under subdivisions (c)(1)(A)-(D) of this section that was not knowing, the stamp deputy is entitled to cure the violation within thirty (30) days of the violation.

(B) The appointment and commission of a stamp deputy who fully cures the violation under subdivision (c)(2)(A) of this section shall not be revoked as a result of the violation.

(C) A violation that has been cured under this subdivision (c)(2) is not a violation for purposes of subdivision (c)(3) of this section and subsection (d) of this section.

(3)(A) If a stamp deputy commits a knowing violation under subdivision (c)(1) of this section, the stamp deputy is subject to the following civil penalties:

(i) For a first violation, up to one thousand dollars ($1,000); and

(ii) For a second or subsequent violation, up to five thousand dollars ($5,000) per violation.

(B) For violations under subdivisions (c)(1)(E)-(H) of this section, each sale constitutes a separate violation.

(4)(A) The secretary shall:

(i) Promptly remove from the list of stamp deputies maintained under subdivision (b)(6) of this section a stamp deputy whose appointment and commission has been revoked; and

(ii) Publish a notice of the termination on the department's website.

(B) Beginning ten (10) days following the publication of a notice under subdivision (c)(4)(A) of this section, a person shall not sell cigarettes to or purchase cigarettes from a stamp deputy whose appointment and commission have been revoked.

(5) If a stamp deputy whose appointment and commission have been revoked is also the manufacturer of cigarettes, the stamp deputy and its brand families shall be removed from the directory of cigarettes approved for stamping and sale maintained by the Attorney General under § 26-57-1303.

(d) A stamp deputy whose appointment and commission have been revoked under subsection (c) of this section is eligible for reinstatement:

(1) Ninety (90) days following revocation for a first violation under subdivisions (c)(1)(A)-(D) of this section that was not knowing;

(2) One hundred eighty (180) days following revocation for a second failure under subdivisions (c)(1)(A)-(D) of this section that was not knowing;

(3) One (1) year following revocation for a third or subsequent violation under subdivisions (c)(1)(A)-(D) of this section that was not knowing;

(4) One (1) year following revocation for a first knowing violation under subdivision (c)(1) of this section; and

(5) Three (3) years following revocation for a second or subsequent knowing violation under subdivision (c)(1) of this section.

(e)(1)(A) By the fifteenth day of each month, a stamp deputy shall file a report in the form prescribed by the secretary, and the stamp deputy shall certify to the state that the report is complete and accurate.

(B) The report required under subdivision (e)(1)(A) of this section shall contain the following information identified by name and number of cigarettes and the manufacturer and brand family of the cigarettes:

(i) The total number of cigarettes acquired by the stamp deputy during the month for sale in or into the state and for sale from Arkansas into another state;

(ii) The total number of cigarettes sold in or into the state by the stamp deputy during the month;

(iii) The total number of cigarettes held in inventory in the state or for sale into the state by the stamp deputy as of the end of the previous month;

(iv) The total number of stamps the stamp deputy affixed during the month, including the following:

(a) How many of each type of stamp the stamp deputy affixed by number;

(b) The total dollar amount of tax paid; and

(c) The total number of cigarettes contained in the packages to which the stamp deputy affixed each type of tax stamp; and

(v) Any additional information required by the secretary to assist in the enforcement of this chapter, §§ 26-57-260, 27-57-261,1 and 26-57-1301 -- 26-57-1308.

(2) In addition to the reports submitted under this section, the stamp deputy shall submit any information required by the secretary, including without limitation the manufacturer, brand family, and number of the cigarettes on which the reports are submitted.

(3) The secretary may share the information reported under this section with the taxing authorities or law enforcement authorities of Arkansas or another state or with any other entity permitted by the secretary to aggregate the data.

(f)(1) The secretary shall pay a commission to each stamp deputy for the sale of cigarette tax stamps, the affixing of a cigarette tax stamp to each package of cigarettes, and the collection of cigarette taxes.

(2) The commission paid under subdivision (f)(1) of this section shall not be less than three percent (3%) of the total aggregate cigarette tax collected by the stamp deputy.

(g)(1) All deposits held by a bank for a stamp deputy that represent the sales of stamps are trust funds and shall be held as special deposits.

(2) If the bank becomes insolvent, the deposits under subdivision (g)(1) of this section shall be classed and considered as preferred claims of the state.

A.C.A. § 26-57-237

Sale of cigarette stamps

(a) The Secretary of the Department of Finance and Administration or the secretary's stamp deputy may sell or deliver cigarette stamps only to licensed wholesalers.

(b) No person shall have in his or her possession any cigarette stamps except such as have been issued in the regular way in the manner provided for in this subchapter.

(c)(1) Any cigarette or tobacco products wholesaler or any other person required by law to affix cigarette tax stamps to cigarettes sold or offered for sale in this state shall have the option to receive the stamps directly from the secretary or to request that the stamps be shipped to the person in a manner to be selected by the secretary.

(2) When the stamps are shipped to the wholesaler or other person, the shipping and insurance cost shall be borne by the wholesaler. The wholesaler or other person to whom the stamps are shipped shall be liable for payment of the stamps only upon actual receipt thereof.

(3) The receipt of tax stamps by a cigarette or tobacco products wholesaler or other person to whom the stamps are shipped shall be evidenced by a written receipt signed by the person to whom the stamps are shipped or a person designated by him or her.

(4) A wholesaler or other person who chooses a method of shipment other than the method selected by the secretary shall pay the secretary for the stamps prior to shipment.

A.C.A. § 26-57-238

Cigarette stamps--Refund on unsold, returned cigarettes

When cigarettes to which stamps have been affixed are unsold and are returned by the retailer or the wholesaler who paid tax on them to the wholesaler or manufacturer from whom they were originally purchased, refund of the tax paid on the cigarettes may be made in the manner prescribed by the Secretary of the Department of Finance and Administration.

A.C.A. § 26-57-239

Stamps required by consumer

Every consumer shall require when he or she purchases, receives, takes into his or her possession, or has delivered upon his or her premises cigarettes in packages, cartons, or other containers, that the proper stamps be affixed in the manner required by this subchapter to show that the tax has been paid thereon.

A.C.A. § 26-57-240

Counterfeiting of stamps unlawful--Penalty

Upon conviction, a person is guilty of a Class D felony if the person:

(1) Falsely and fraudulently makes, forges, or counterfeits any stamps prescribed for use in the administration of this subchapter;

(2) Knowingly has in his or her possession any false, altered, forged, previously used, or counterfeit stamps prescribed for use in the administration of this subchapter; or

(3) Knowingly utters, publishes, passes, or tenders as true any false, altered, forged, previously used, or counterfeit stamps prescribed for use in the administration of this subchapter.

A.C.A. § 26-57-241

Reuse of containers unlawful--Penalty

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

A.C.A. § 26-57-242

Wholesaler--Transporting cigarettes with stamps affixed outside state for reentry

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

A.C.A. § 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) packs plus one (1) 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) packs;

(2) 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.

A.C.A. § 26-57-244

Possession of untaxed, unstamped products--Notice and prima facie evidence

(a) 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 Secretary of the Department of Finance and Administration by the person in possession of the untaxed tobacco products or unstamped cigarettes.

(b) The absence of the stamps from any container of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.

(c) If tax has been paid to the secretary on any untaxed tobacco products or unstamped cigarettes, a consumer may establish proof of the payment by providing a receipt or any other documentation that clearly indicates that the tax was paid.

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

(e) A retail 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) 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 as levied under this subchapter.

(2) The tax due shall be reported on forms provided by the secretary 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 secretary.

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

(g) The secretary is authorized to directly assess the excise tax due on any untaxed tobacco products or unstamped cigarettes against a consumer who purchases the items and fails to report and remit the excise tax due in a timely manner.

(h) Subsections (f) and (g) of this section are subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(i)(1) A wholesaler may possess unstamped cigarettes for sale in or into the state if the wholesaler:

(A) Is permitted to purchase, sell, and affix a stamp to the package containing the cigarettes under § 26-57-1303(c); and

(B) Provides on at least a monthly basis and on the form prescribed by the secretary a report indicating the following for each brand family:

(i) The number of cigarettes purchased during the reporting period;

(ii) The number of cigarettes on which the wholesaler affixed the tax stamp prescribed by this subchapter;

(iii) The number of cigarettes on which the wholesaler affixed the tax stamp or other similar indicia of taxation prescribed by another state's laws; and

(iv) The number of cigarettes that remain in the wholesaler's inventory.

(2) A wholesaler may possess unstamped cigarettes for sale from Arkansas into another state if the wholesaler:

(A) Is permitted to purchase, sell, and affix a stamp to the package containing the cigarettes under the other state's tobacco legislation or directory law, if any;

(B) Would not violate the law of the other state by selling or affixing the tax stamp; and

(C) Provides on at least a monthly basis and on the form prescribed by the secretary a report indicating the following for each brand family:

(i) The number of cigarettes purchased during the reporting period;

(ii) The number of cigarettes on which the wholesaler affixed the tax stamp prescribed by this subchapter;

(iii) The number of cigarettes on which the wholesaler affixed the tax stamp or other similar indicia of taxation prescribed by another state's laws; and

(iv) The number of cigarettes that remain in the wholesaler's inventory.

(3)(A)(i) Except as provided in § 26-57-242, a wholesaler may transfer, transport, or cause to be transported unstamped cigarettes that the wholesaler owns and is permitted to possess from one (1) of the wholesaler's facilities in Arkansas to another of the wholesaler's facilities.

(ii) If the wholesaler's facility to which the cigarettes are transferred is located in Arkansas, the applicable time period for affixing a stamp remains in effect and continues to run from the date of the wholesaler's original receipt of the cigarettes.

(iii) If the wholesaler's facility to which the cigarettes are transferred is located outside of Arkansas, the wholesaler shall report the quantity and brand of the cigarettes to the secretary, the Attorney General, and the taxing authority of the other state within fifteen (15) days following the end of the month in which the transfer was made.

(B) A stamp deputy may not transfer cigarettes from Arkansas into another state if the transfer would violate the law of the other state.

(j)(1) A common carrier or contract carrier may possess and transport unstamped cigarettes in connection with a sale or other transfer permitted under this subchapter if the common carrier or contract carrier has in its possession:

(A) Documents establishing that title to the unstamped cigarettes remains with the manufacturer, importer, or wholesaler; or

(B) Bills of lading or other shipping documents establishing that the common carrier or contract carrier is delivering the cigarettes on behalf of a person authorized to sell or transfer the unstamped cigarettes under this subchapter.

(2) The documents required under subdivision (j)(1) of this section shall list the name and address of the person to whom the cigarettes are being delivered.

(k) A manufacturer or importer and the contractor, agent, common carrier, or contract carrier of a manufacturer or importer may possess, transport, or cause to be transported unstamped cigarettes in, into, or from the state for use in connection with consumer testing permitted under the laws of the state in which the testing is to be done if the:

(1) Cigarettes are not currently commercially marketed in the United States;

(2) Manufacturer pays applicable state excise taxes on the cigarettes;

(3) Nonparticipating manufacturer, if any, deposits the necessary escrow on the cigarettes under § 26-57-261;

(4) Participating manufacturer, if any, includes the cigarettes in the participating manufacturer's volume for purposes of the Master Settlement Agreement, as defined in § 26-57-260;

(5) Cigarettes are provided at no cost to the consumer testing participants; and

(6) Cigarettes used by a manufacturer or importer for consumer testing do not exceed a reasonable quantity.

A.C.A. § 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 the stamps required by this subchapter or any 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 untaxed tobacco products in violation of subsection (a) of this section constitutes a separate violation.

A.C.A. § 26-57-246

§ 26-57-246. Prima facie evidence of evasion

The possession of tobacco products which have not been handled according to this subchapter by any person shall be prima facie evidence that that person intended to evade the tax thereon in order to cheat and defraud the State of Arkansas.

A.C.A. § 26-57-247

§ 26-57-247. Seizure, forfeiture, and disposition of tobacco products and other property

(a) Cigarettes to which stamps have not been affixed as provided by law are subject to seizure and shall be held as evidence for prosecution.

(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, e-liquid products, consumable hemp products, or intoxicating hemp products found in the possession of a person dealing in, or a consumer of, tobacco products, vapor products, alternative nicotine products, e-liquid products, consumable hemp products, or intoxicating hemp 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 Secretary 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 permit.

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

(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 permit;

(5) Tobacco products, vapor products, alternative nicotine products, or e-liquid products are possessed, sold, or offered for sale in violation of § 20-65-101 et seq; or

(6) Consumable hemp products or intoxicating hemp products are possessed, sold, or offered for sale in violation of § 20-56-501 et seq.

(c) Property, including money, used to facilitate a 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 Arkansas Tobacco Control in the investigation, prosecution, and adjudication of criminal, 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.

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

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

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

(3) Property that is used or intended for use as a container for property described in subdivision (e)(1) or subdivision (e)(2) of this section;

(4)(A) Except as provided in subdivision (e)(4)(B) of this section, a conveyance, including an aircraft, vehicle, or vessel, that is used or intended to be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (e)(1) or subdivision (e)(2) of this section.

(B)(i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this subchapter.

(ii) A conveyance is not subject to forfeiture under this section by reason of an act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent.

(C) Upon a showing described in subdivision (e)(4)(B)(i) of this section by the owner or interest holder of a conveyance, the conveyance may nevertheless be forfeited if the prosecuting attorney establishes that the owner or interest holder either knew or should reasonably have known that the conveyance would be used to transport or in any manner to facilitate the transportation for the

purpose of sale or receipt of property described in subdivision (e)(1) or subdivision (e)(2) of this section.

(D) A conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter;

(5) A book, record, or research product or material, including a formula, microfilm, tape, or data that is used or intended for use in violation of this subchapter;

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

(i) Firearms purchased from the proceeds of the sale of untaxed tobacco products, vapor products, alternative nicotine products, or e-liquid products in violation of this subchapter or used in furtherance of a criminal offense as described in § 26-57-245;

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

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

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

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

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

(8)(A) Except as provided in subdivision (e)(8)(B) of this section, real property if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this subchapter.

(B)(i) Real property is not subject to forfeiture under this section by reason of an act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent.

(ii) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter.

(iii) If the circuit court finds by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order requiring the forfeiture of the real property.

(C) Upon an order of forfeiture of real property, the order shall be filed on the day issued and shall have prospective effect.

(D) A forfeiture of real property does not affect the title of a bona fide purchaser who purchased the real property before the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser.

(E) A lis pendens filed in connection with an action pending under this section that may result in the forfeiture of real property is effective only from the time filed and has no retroactive effect.

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

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

(2) Seizure without process may be made if:

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

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

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

(D) The seizing law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this subchapter.

(h)(1) A state or local law enforcement agency shall not transfer property seized by the state or local agency under this section to a federal entity for forfeiture under federal law unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the property to be transferred to the federal entity.

(2) The transfer shall not be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one (1) state or the nature of the investigation or seizure would be better pursued under federal law.

(i)(1) Property seized for forfeiture under this section is not subject to replevin but is deemed to be in the custody of the seizing law enforcement agency subject only to an order or decree of the circuit court having jurisdiction over the property seized.

(2) Subject to a need to retain the property as evidence, when property is seized under this subchapter, the seizing law enforcement agency may:

(A) Remove the property to a place designated by the circuit court;

(B) Place the property under constructive seizure, posting notice of pending forfeiture on it by:

(i) Giving notice of pending forfeiture to its owners and interest holders; or

(ii) Filing notice of pending forfeiture in an appropriate public record relating to the property;

(C) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money or is not needed for evidentiary purposes, deposit it into an interest-bearing account; or

(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in an appropriate location within the jurisdiction of the court.

(3)(A) In case of transfer of property, a transfer receipt shall be prepared by the transferring agency.

(B) The transfer receipt shall:

(i) List a detailed and complete description of the property being transferred;

(ii) State to whom the property is being transferred and the source or authorization for the transfer; and

(iii) Be signed by both the transferor and the transferee.

(C) Both transferor and transferee shall maintain a copy of the transfer receipt.

(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this subchapter.

(j)(1) Property seized by a state or local law enforcement officer under this section who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to this section.

(2)(A) If property is seized for forfeiture by a law enforcement agency under this section, the seizing law enforcement officer shall prepare and sign a confiscation report.

(B)(i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.

(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.

(C) The original confiscation report shall be:

(i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and

(ii) Maintained in a separate file.

(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.

(3) The confiscation report shall contain the following information:

(A) A detailed description of the property seized including serial or model numbers and odometer or hour reading of vehicles or equipment;

(B) The date of seizure;

(C) The name and address of the party from whom the property was seized;

(D) The reason for the seizure;

(E) The location where the property will be held;

(F) The seizing law enforcement officer's name; and

(G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.

(4) Within three (3) business days after receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the director.

(5)(A) Arkansas Legislative Audit shall notify the director and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive forfeited funds, forfeited property, or grants from the council, if Arkansas Legislative Audit determines by its own investigation or upon written notice from the director that:

(i) The law enforcement agency failed to complete and file the confiscation reports as required by this section;

(ii) The law enforcement agency, prosecuting attorney, or public entity has not properly accounted for the seized property; or

(iii) The prosecuting attorney has failed to comply with the notification requirement set forth in subdivision (m)(2) of this section.

(B) After the notice, the circuit court shall not issue an order distributing seized property to that law enforcement agency, prosecuting attorney, or public entity, nor shall a grant be awarded by the council to that law enforcement agency, prosecuting attorney, or public entity until:

(i) The appropriate officials of the law enforcement agency, prosecuting attorney, or public entity have appeared before the Legislative Joint Auditing Committee; and

(ii) The Legislative Joint Auditing Committee has adopted a motion authorizing subsequent transfers of forfeited property to the law enforcement agency, prosecuting attorney, or public entity.

(C)(i) If a law enforcement agency, prosecuting attorney, or other public entity is ineligible to receive forfeited property, the circuit court shall order money that would have been distributed to

that law enforcement agency, prosecuting attorney, or public entity to be transmitted to the Treasurer of State for deposit into the Special State Assets Forfeiture Fund.

(ii) If the property is not cash, the circuit court shall order the property converted to cash under this section and the proceeds transmitted to the Treasurer of State for deposit into the Special State Assets Forfeiture Fund.

(D) Moneys deposited into the Special State Assets Forfeiture Fund are not subject to recovery or retrieval by an ineligible law enforcement agency, prosecuting attorney, or other public entity.

(6) The director shall establish by rule a standardized confiscation report form to be used by all law enforcement agencies, with specific instructions and guidelines concerning the nature and dollar value of all property, including firearms, to be included in the confiscation report and forwarded to the office of the local prosecuting attorney and the director under this subsection.

(k)(1)(A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed to avoid the distribution requirements set forth in subdivision (l)(1) of this section.

(C) The prosecuting attorney shall mail a copy of the complaint to the director within five (5) calendar days after filing the complaint.

(2)(A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.

(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.

(3)(A) The prosecuting attorney may file the complaint after the expiration of the time only if the complaint is accompanied by a statement of good cause for the late filing.

(B) However, the complaint shall not be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.

(C)(i) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder.

(ii) In addition, items seized but not subject to forfeiture under this section or subject to disposition under law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder.

(iii) If the owner or interest holder cannot be determined, the court may order disposition of the property.

(4) Within the time set forth in the Arkansas Rules of Civil Procedure, the owner or interest holder of the seized property shall file with the circuit clerk a verified answer to the complaint that shall include:

(A) A statement describing the seized property and the owner's interest or interest holder's interest in the seized property with supporting documents to establish the owner's interest or interest holder's interest;

(B) A certification by the owner or interest holder stating that he or she has read the document and that it has not been filed for an improper purpose;

(C) A statement setting forth any defense to forfeiture; and

(D) The address at which the owner or interest holder will accept mail.

(5)(A) If the owner or interest holder fails to file an answer, the prosecuting attorney may move for default judgment under the Arkansas Rules of Civil Procedure.

(B)(i) If a timely answer has been filed, the prosecuting attorney has the burden of proving by a preponderance of the evidence that the seized property should be forfeited.

(ii) After the prosecuting attorney has presented proof, an owner or interest holder of the property seized is allowed to present evidence showing why the seized property should not be forfeited.

(iii) If the circuit court determines that grounds for forfeiting the seized property exist and that a defense to forfeiture has not been established by the owner or interest holder, the circuit court shall enter an order under this section. However, if the circuit court determines either that the prosecuting attorney has failed to establish that grounds for forfeiting the seized property exist or that the owner or interest holder has established a defense to forfeiture, the court shall order that the seized property be immediately returned to the owner or interest holder.

(l)(1) If the circuit court having jurisdiction over the seized property finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this subchapter, the circuit court shall enter an order:

(A) To permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes, subject to the following provisions:

(i)(a) Seized property may not be retained for official use for more than three (3) years, unless the circuit court finds that the seized property has been used for law enforcement or prosecutorial purposes and authorizes continued use for those purposes on an annual basis.

(b) At the end of the retention period, the seized property shall be sold and eighty percent (80%) of the proceeds shall be deposited into the tobacco control fund of the retaining law enforcement agency or prosecuting attorney, and twenty percent (20%) of the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund.

(c) The retaining law enforcement agency or prosecuting attorney may sell the retained seized property during the time allowed for retention. However, the proceeds of the sale shall be distributed as set forth in subdivision (l)(1)(A)(i)(b) of this section;

(ii) If the circuit court determines that retained seized property has been used for personal use or by non-law enforcement personnel for non-law enforcement purposes, the circuit court shall order the seized property to be sold under § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund;

(iii)(a) A law enforcement agency may use forfeited property or money if the circuit court's order specifies that the forfeited property or money is forfeited to the prosecuting attorney, sheriff, chief of police, Division of Arkansas State Police, director, or Arkansas Highway Police Division of the Arkansas Department of Transportation.

(b) After the order, the prosecuting attorney, sheriff, chief of police, Division of Arkansas State Police, director, or Arkansas Highway Police Division of the Arkansas Department of Transportation shall maintain an inventory of the forfeited property or money, be accountable for the forfeited property or money, and be subject to subdivision (j)(5) of this section with respect to the forfeited property or money;

(iv)(a) An aircraft is forfeited to the office of the director and may be used only for tobacco, vapor product, alternative nicotine product, or e-liquid product smuggling interdiction efforts within the discretion of the director.

(b) However, if the director determines that the aircraft should be sold, the proceeds of the sale shall be distributed as set forth in subdivision (l)(1)(A)(i)(b) of this section;

(v) A firearm not retained for official use shall be disposed of in accordance with state and federal law; and

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

(B)(i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (l)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney under § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property under this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days after the entry of the order, the circuit clerk shall forward to the director copies of the confiscation report, the circuit court's order, and other documentation detailing the disposition of the seized property.

(m)(1)(A) Subject to subdivision (j)(5) of this section, the proceeds of sales conducted under this section and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited and distributed in the manner provided in this subsection.

(B) Moneys received from a federal forfeiture for a violation of this subchapter shall be deposited and distributed under this section.

(2)(A) The proceeds of a sale and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

(i) If, during a calendar year, the aggregate amount of moneys deposited into the asset forfeiture fund exceeds twenty thousand dollars ($20,000) per county, the prosecuting attorney, within fourteen (14) days after that time, shall notify the circuit judges in the judicial district and the director;

(ii) Subsequent to the notification set forth in this section, twenty percent (20%) of the proceeds of an additional sale and additional moneys forfeited or obtained by judgment or settlement under this subchapter in the same calendar year shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney;

(iii) Failure by the prosecuting attorney to comply with the notification requirement set forth in this section renders the prosecuting attorney and an entity eligible to receive forfeited moneys or property from the prosecuting attorney ineligible to receive forfeited moneys or property, except as provided in this section; and

(iv) Twenty percent (20%) of moneys in excess of twenty thousand dollars ($20,000) that have been retained but not reported as required by this section are subject to recovery for deposit into the Special State Assets Forfeiture Fund.

(B) The prosecuting attorney shall administer expenditures from the asset forfeiture fund, which is subject to audit by Arkansas Legislative Audit. Moneys distributed from the asset forfeiture fund shall be used only for law enforcement and prosecutorial purposes. Moneys in the asset forfeiture fund shall be distributed in the following order:

(i) For the satisfaction of a bona fide security interest or lien;

(ii) For payment of a proper expense of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(iii) Any balance under three hundred fifty thousand dollars ($350,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of moneys under this subchapter; and

(iv) Any balance over three hundred fifty thousand dollars ($350,000) shall be forwarded to the director to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund for distribution under this section.

(C)(i) For a forfeiture in an amount greater than three hundred fifty thousand dollars ($350,000) from which expenses are paid for a proceeding for forfeiture and sale under this section, an itemized accounting of the expenses shall be delivered to the director within ten (10) calendar days after the distribution of the funds.

(ii) The itemized accounting shall include the expenses paid, to whom paid, and for what purposes the expenses were paid.

(3)(A) Moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture for a violation of this subchapter shall be deposited and maintained in a separate account.

(B) However, a balance over three hundred fifty thousand dollars ($350,000) shall be distributed as required under this section.

(4) Other moneys shall not be maintained in the account except for interest income generated by the account.

(5) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.

(6) The account is subject to audit by Arkansas Legislative Audit.

(7) A balance over three hundred fifty thousand dollars ($350,000) shall be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund in which it shall be maintained separately and distributed consistently with governing federal law and upon the advice of the director.

(n) In personam jurisdiction may be based on a person's presence in the state or on his or her conduct in the state, as set out in § 16-4-101(C), and is subject to the following additional provisions:

(1) A temporary restraining order under this section may be entered ex parte on application of the state upon a showing that:

(A) There is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture under this section; and

(B) Notice of the action would jeopardize the availability of the property for forfeiture;

(2)(A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.

(B) The hearing shall be held at the earliest possible date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is limited to the issues of whether:

(i) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the temporary restraining order will result in the property's being destroyed, conveyed, alienated, encumbered, disposed of, received, removed from the jurisdiction of the circuit court, concealed, or otherwise made unavailable for forfeiture; and

(ii) The need to preserve the availability of property through the entry of the requested temporary restraining order outweighs the hardship on an owner or interest holder against whom the temporary restraining order is to be entered;

(3) The state has the burden of proof by a preponderance of the evidence to show that the defendant's property is subject to forfeiture;

(4)(A) On a determination of liability of a person for conduct giving rise to forfeiture under this section, the circuit court shall enter a judgment of forfeiture of the property subject to forfeiture as alleged in the complaint and may authorize the prosecuting attorney or a law enforcement officer to seize property subject to forfeiture under this section not previously seized or not then under seizure.

(B) The order of forfeiture shall be consistent with subsection (l) of this section.

(C) In connection with the judgment, on application of the state, the circuit court may enter an appropriate order to protect the interest of the state in property ordered forfeited; and

(5) Subsequent to the finding of liability and order of forfeiture, the following procedures apply:

(A) The attorney for the state shall give notice of pending forfeiture in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure to an owner or interest holder who has not previously been given notice;

(B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and

(C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under this section.

(o) The circuit court shall order the forfeiture of other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:

(1) Cannot be located;

(2) Was transferred or conveyed to, sold to, or deposited with a third party;

(3) Is beyond the jurisdiction of the circuit court;

(4) Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;

(5) Was commingled with other property that cannot be divided without difficulty; or

(6) Is subject to interest exempted from forfeiture under this subchapter.

(p)(1) There is created on the books of law enforcement agencies and prosecuting attorneys a tobacco control fund.

(2) The fund shall consist of moneys obtained under this section and other revenue as may be provided by law or ordinance.

(3) Moneys in the tobacco control fund shall be appropriated on a continuing basis and are not subject to the Revenue Stabilization Law, § 19-20-101 et seq.

(4)(A) The fund shall be used for law enforcement and prosecutorial purposes.

(B) Each prosecuting attorney shall submit to the Director of Arkansas Tobacco Control on or before June 30 of each year a report detailing moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

(5) The law enforcement agencies and prosecuting attorneys shall submit to the director on or before June 30 of each year a report detailing any moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

(6) Moneys from the tobacco control fund may not supplant other local, state, or federal funds.

(7) The tobacco control fund is subject to audit by Arkansas Legislative Audit.

A.C.A. § 26-57-248

Possession or sale of products with unpaid taxes--Supplemental penalties

(a) 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 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, 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 tobacco products 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 penalty assessed under this section shall be deposited into the tobacco control fund of Arkansas Tobacco Control established under § 26-57-247(p).

A.C.A. § 26-57-249

Destruction of products upon conviction--Procedure

(a) Upon a criminal conviction of a person charged with a violation of a tobacco product, vapor product, alternative nicotine product, or e-liquid product law or rule 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 Arkansas Tobacco Control or by any state, county, or municipal officer in this state.

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

A.C.A. § 26-57-250

Suit to recover taxes, etc.

(a) When the Secretary of the Department of Finance and Administration finds from investigation that the state has lost tax revenue because of the evasion of any provision of this subchapter, the secretary may bring suit in the proper court to recover the tax and penalties.

(b) The action shall lie against the person evading the tax and against any person who aided, abetted, or assisted in the evasion.

A.C.A. § 26-57-251

§ 26-57-251. Officials to prosecute

(a) All civil actions arising under this subchapter shall be brought by and in the name of the Secretary of the Department of Finance and Administration or the Director of Arkansas Tobacco Control, whichever is appropriate under the provisions of this subchapter.

(b) All criminal actions shall be brought and prosecuted by the proper prosecuting attorney.

A.C.A. § 26-57-252

No bond for costs required

A bond for costs is not required of the Department of Finance and Administration, Arkansas Tobacco Control, or the Arkansas Tobacco Control Board in any court in this state for the prosecution of a violation of this subchapter.

A.C.A. § 26-57-253

Criminal actions--Appeals

(a) In all prosecutions in the district courts, the State of Arkansas shall have the same right of appeal to the circuit courts of this state and upon the same terms as the defendant now has under the law in misdemeanor cases.

(b) When appealed, the cases shall be tried de novo by the circuit court.

A.C.A. § 26-57-255

Arkansas Tobacco Control Board--Creation

(a) There is created the Arkansas Tobacco Control Board to consist of the following eight (8) members appointed by the Governor:

(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, 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 shall be residents of the State of Arkansas and confirmed by the Senate.

(2) The term of office shall be five (5) years.

(d)(1) A minimum of five (5) members is required for a quorum.

(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) 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 shall not be appointed to 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 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, § 20-56-401 et seq., § 20-65-101 et seq., any other federal, state, or local statute, ordinance, rule, or regulation concerning the sale of tobacco products, vapor products, alternative nicotine products, e-liquid products, or hemp-derived 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., § 20-56-401 et seq., § 20-65-101 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)(i) 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., § 20-56-401 et seq., § 20-65-101 et seq., or the rules promulgated by Arkansas Tobacco Control.

(ii) The board shall levy a civil penalty in accordance with the guidelines set out in § 20-65-204 for a violation of § 20-65-204.

(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.

A.C.A. § 26-57-256

Arkansas Tobacco Control--Powers--Definition

(a) Arkansas Tobacco Control 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 permits listed in § 26-57-219 and § 20-56-501 et seq.

(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:

(i) Any applicable taxes or fees imposed on tobacco products;

(ii) Permit fees imposed under this subchapter and § 20-56-501 et seq.; or

(iii) Any other state or local taxes;

(3) Prescribe forms of applications for permits under this subchapter and § 20-56-501 et seq.;

(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, 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 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 to the Secretary 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) Collect civil penalties assessed by the Arkansas Tobacco Control Board under § 26-57-255.

(B) Unless the civil penalty is paid within fifteen (15) days following the date for an appeal from the order, the director shall have the power to institute a civil action in the Pulaski County Circuit Court to recover the civil penalties assessed; and

(6)(A) Provide notice to the retail location of an alleged violation of § 5-27-227 within ten (10) days of the alleged violation.

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

(7) Develop and maintain a directory as described under § 20-65-202.

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

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

A.C.A. § 26-57-257

Director of Arkansas Tobacco Control

(a)(1) The Secretary of the Department of Finance and Administration shall employ a person to serve as the Director of Arkansas Tobacco Control.

(2) The director shall serve at the pleasure of the secretary.

(b) The director or his or her 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, in consultation with the Secretary 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 shall serve at his or her pleasure.

(e)(1) The director may adopt, keep, and use a common seal.

(2) This seal may be used for authentication of the records, process, and proceedings of the director 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 is authorized by law to issue shall be deemed sufficient if signed by the director or authenticated by the seal of the director.

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

(h)(1) The director shall maintain records of all permits issued, suspended, denied, or revoked by the board.

(2) The records shall contain the information as to the identity of the permit holder, including the names of all officers and members of the business entities holding permits and the location of the permitted premises.

(i) The director 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 may deem necessary in the performance of the duties imposed upon him or her by this subchapter.

(j) The director 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.

(k) The director may:

(1) Examine or cause to be examined any person under oath and examine or cause to be examined books and records of any 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, and the court may compel obedience to its order by proceedings for contempt.

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

(m) The director shall exercise other powers, functions, and duties as are or may be imposed or conferred upon him or her by law or the board.

(n) The director shall have other powers, functions, and duties pertaining to the issuance, suspension, and revocation of the permits enumerated in § 26-57-219, except those that are specifically delegated to the Department of Finance and Administration by this subchapter.

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

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

(C) Failure to timely and fully pay any other state and local taxes as reported by the secretary shall also constitute grounds for the nonissuance, suspension, revocation, or nonrenewal of any permits issued by the director.

(2)(A) Each year the secretary shall report to the director all permit holders who are more than ninety (90) days delinquent on any state or local taxes.

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

(p) The enforcement of state laws relating to the prohibition of the barter or sale of tobacco products, vapor products, alternative nicotine products, e-liquid products, or cigarette papers to a minor by multiple state agencies shall be coordinated to avoid duplicative inspections of the same retailer by multiple state agencies.

A.C.A. § 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 promulgated by 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 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 Arkansas Tobacco Control and that has been enacted as of September 1, 2019, is not preempted under this subdivision (a)(2).

(b) This 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 Arkansas Tobacco Control shall not 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 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, provided that the vendor or retailer shall be given a hearing before the board at the board's next regularly scheduled meeting.

A.C.A. § 26-57-260

Definitions

As used in this section and § 26-57-261:

(1) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement;

(2)(A) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(B) Solely for the purposes of the definition of “affiliate”, the term:

(i) “Owns”, “is owned”, and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more; and

(ii) “Person” means an individual, partnership, committee, association, corporation, or any other organization or group of persons;

(3) “Allocable share” means the allocable share as that term is defined in the Master Settlement Agreement;

(4)(A) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) Tobacco in any form that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subdivision (4)(A)(i) of this section.

(B) "Cigarette" includes "roll-your-own", that is, any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(C) For purposes of this definition of "cigarette", nine-hundredths of an ounce (0.09 oz.) of roll-your-own tobacco shall constitute one (1) individual cigarette;

(5) "Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers;

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) when the arrangement requires that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with § 26-57-261(a)(2)(B);

(7) "Released claims" means released claims as that term is defined in the Master Settlement Agreement;

(8) "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement;

(9)(A) "Tobacco product manufacturer" means an entity that, after July 30, 1999, directly and not exclusively through any affiliate:

(i) Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer, except where the importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, who will be responsible for the payments under the Master Settlement Agreement with respect to the cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and who pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of the cigarettes does not market or advertise the cigarettes in the United States;

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) Becomes a successor of an entity described in subdivision (9)(A)(i) or subdivision (9)(A)(ii) of this section.

(B) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer, unless the affiliate itself falls within any of subdivisions (9)(A)(i)-(iii) of this section; and

(10)(A) "Units sold" means the same as defined in § 26-57-1302.

(B) The Department of Finance and Administration shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

A.C.A. § 26-57-261

§ 26-57-261. Requirements

(a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after July 30, 1999, shall do one (1) of the following:

(1) Become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as the amounts are adjusted for inflation:

(i) 1999: $.0094241 per unit sold after July 30, 1999;

(ii) 2000: $.0104712 per unit sold;

(iii) For each of 2001 and 2002: $.0136125 per unit sold;

(iv) For each of 2003 through 2006: $.0167539 per unit sold; and

(v) For each of 2007 and each year thereafter: $.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (a)(2)(A) of this section shall receive the interest or other appreciation on the funds as earned. The funds themselves shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (a)(2)(B)(i):

(a) In the order in which they were placed into escrow; and

(b) Only to the extent and at the time necessary to make payments required under the judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined under section IX(i) of the Master Settlement Agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to the tobacco product manufacturer; or

(iii) To the extent not released from escrow under subdivisions (a)(2)(B)(i) or (a)(2)(B)(ii) of this section, funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(C) Each tobacco product manufacturer who elects to place funds into escrow pursuant to subdivision (a)(2) of this section shall annually certify to the Attorney General that the tobacco product manufacturer is in compliance with subdivision (a)(2) of this section. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(i) Be required within fifteen (15) days to place the funds into escrow as shall bring the tobacco product manufacturer into compliance with this section. The court, upon a finding of a violation of subdivision (a)(2) of this section, may impose a civil penalty to be paid into the General Revenue Fund Account of the State Apportionment Fund in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within fifteen (15) days to place the funds into escrow as shall bring the tobacco product manufacturer into compliance with this section. The court, upon a finding of a knowing violation of subdivision (a)(2) of this section, may impose a civil penalty to be paid into the General Revenue Fund Account of the Apportionment Fund in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary for a period not to exceed two (2) years.

(b) Each failure to make an annual deposit required under this section shall constitute a separate violation.

A.C.A. § 26-57-262

Export cigarettes--Sale

(a) Findings and Purpose.

(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) It is the policy of the state that consumers be adequately informed about the adverse health effects of cigarette smoking by including warning notices on each package of cigarettes.

(3) It is the intent of the General Assembly to align state law with federal laws, regulations, and policies relating to the manufacture, importation, and marketing of cigarettes, and in particular, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq., and 26 U.S.C. § 5754.

(4) The General Assembly finds that consumers and retailers purchasing cigarettes are entitled to be fully informed about any adverse health effects of cigarette smoking by the inclusion of warning notices on each package of cigarettes and to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States.

(b) Definitions. As used in this section:

(1)(A) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) Tobacco, in any form, that is functional in the product which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette; or

(iii) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette described in subdivision (b)(1)(A)(i) of this section.

(B) "Cigarette" includes "roll your own", which is any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(C) For purposes of this definition of "cigarette", nine one-hundredths of an ounce (0.09 oz.) of "roll your own" tobacco shall constitute one (1) individual "cigarette"; and

(2) "Package" means a pack, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed or intended for distribution to consumers.

(c) Tax Stamps.

(1) No tax stamp may be affixed to or made upon any package of cigarettes if:

(A) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331 et seq., for the placement of labels, warnings, or any other information upon a package of cigarettes that is manufactured, packaged, or imported for sale, distribution, or use within the United States;

(B) The package is labeled "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording indicating that the manufacturer did not intend that the product be sold in the United States;

(C) The cigarettes in the package do not comply with any other applicable requirements imposed pursuant to federal law and federal implementing regulations;

(D) The package in any way violates federal trademark or copyright laws;

(E) The package or a package containing individually stamped packages has been altered by adding or deleting the wording, labels, or warnings described in this subdivision (c)(1); or

(F) With respect to the cigarettes, any person is not in compliance with 15 U.S.C. § 1335a relating to submission of ingredient information to federal authorities, 19 U.S.C. §§ 1681-1681b relating to imports of certain cigarettes, 26 U.S.C. § 5754, relating to previously exported tobacco products, or any other federal law or implementing federal regulations.

(2) Any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section shall be subject to the penalties prescribed in subdivision (c)(5) of this section.

(3) The Arkansas Tobacco Control Board may revoke a wholesale or retail license of any person who sells or holds for sale cigarette packages to which is affixed a tax stamp in violation of this section.

(4) The Department of Finance and Administration or the Director of Arkansas Tobacco Control may seize and destroy or sell to the manufacturer only for export packages that do not comply with this section.

(5) A violation of this section is a deceptive act or practice and shall constitute a Class A misdemeanor.

(6) On or before the fifteenth business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Secretary of the Department of Finance and Administration for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month copies of the customs certificates with respect to the cigarettes required to be submitted by 19 U.S.C. § 1681a(c).

(7) Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of this section may bring an action in good faith for appropriate injunctive relief.

A.C.A. § 26-57-263

Cigarette inputs--Cigarette rolling machines

(a)(1) It is unlawful for a person to sell cigarettes or cigarette inputs to, or purchase cigarettes from, a person in another state if the sale or purchase would violate the law of the other state.

(2) A cigarette input sold, possessed, transported, caused to be transported, or purchased in violation of this section is contraband and is subject to seizure and forfeiture to the state.

(b)(1) A person licensed, permitted, appointed, or commissioned under this subchapter and a person that directly or indirectly controls a person licensed, permitted, appointed, or commissioned under this subchapter shall not possess or otherwise utilize a cigarette rolling machine.

(2) A person that knowingly violates subdivision (b)(1) of this section shall be subject to the following civil penalties:

(A) The revocation or termination of any license, permit, appointment, or commission under this subchapter; and

(B)(i) A civil penalty of up to fifty thousand dollars ($50,000) in any action brought by the Secretary of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, or the Attorney General.

(ii) Civil penalties collected under this subdivision (b)(2)(B) shall be general revenues of the state.

(3) A person that violates subdivision (b)(1) of this section shall also be guilty of a criminal offense that is:

(A) A Class C felony if the tax value of any cigarettes produced by means of the cigarette rolling machine is one hundred dollars ($100) or more; or

(B) A Class A misdemeanor if the tax value of any cigarettes produced by means of the cigarette rolling machine is less than one hundred dollars ($100).

(4)(A) This subsection does not apply to cigarette rolling machines intended and designed for use by individual consumers who do not intend to offer the resulting product for resale.

(B) A cigarette rolling machine that has the capability to roll two hundred (200) cigarettes in less than fifteen (15) minutes is presumed to be for commercial use.

A.C.A. § 26-57-264

Attorney General

(a) Upon request of the Attorney General, any information provided to the Secretary of the Department of Finance and Administration or the Director of Arkansas Tobacco Control shall be provided to the Attorney General.

(b) The Attorney General may enforce § 26-57-245(b) and §§ 26-57-248 and 26-57-250 by filing a civil action in the Pulaski County Circuit Court.

A.C.A. § 26-57-265

Reports by wholesalers to Arkansas Tobacco Control

(a) Each wholesaler shall file with the Director of Arkansas Tobacco Control a monthly report of the wholesaler's deliveries to retailers and other wholesalers in this state and the wholesaler's deliveries from within this state to retailers and other wholesalers outside of this state.

(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 tobacco products, vapor products, alternative nicotine products, or e-liquid products;

(3) The address of each retailer or wholesaler that obtained 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 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.

(c) A wholesaler shall file the report required under subsection (a) of this section on or before the tenth day of each month.

(d)(1) Except as provided under this section, a wholesaler shall electronically file the report required under subsection (a) of this section with the director.

(2) The director may establish procedures for allowing an alternative method of filing for a wholesaler that demonstrates to the director that it is not reasonably feasible to comply with the primary electronic reporting method adopted.

(3) If the director determines that another method of filing the report is more efficient than electronic filing, the director may promulgate rules requiring the use of another method by wholesalers.

(e)(1)(A) Except for information that has been submitted as evidence in a concluded investigation resulting in an administrative violation or criminal charge, information contained in a report required to be filed under this section is confidential and not subject to release.

(B) Before information contained in a report required to be filed under this section is disclosed or transmitted in a manner in which the information may become available to the public or a competitor of the reporting wholesaler, including in an administrative violation or criminal charge, the director shall provide sufficient advance notice to the reporting wholesaler to allow the reporting wholesaler to seek an order protecting any confidentially sensitive information.

(2)(A) Information contained in a report required to be filed under this section may be transmitted or otherwise provided to:

(i) The appropriate taxing authority in a state to which deliveries shown on the report were made;

(ii) A requesting law enforcement agency; and

(iii) The Attorney General.

(B) The person or entity receiving information under subdivision (e)(2)(A) of this section shall agree to maintain the confidentiality of the information before the information may be transmitted to the person or entity.

(C) Information provided to a taxing authority or law enforcement agency under subdivision (e)(2)(A) of this section shall remain confidential and not subject to release.

(f) The director may promulgate rules to implement this section.

(g) The report required to be filed under this section shall fulfill the reporting required to the state under the Prevent All Cigarette Trafficking Act of 2009, Pub. L. No. 111-154.1

(h)(1) The director shall provide the information reported under this section to the Attorney General.

(2) The director's action under subdivision (h)(1) of this section satisfies the wholesaler's reporting obligations under § 26-57-1406.

A.C.A. § 26-57-266

Enforcement agents--Selection--Qualifications--Authority

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

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

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

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

(2) Have statewide law enforcement authority.

A.C.A. § 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, alternative nicotine products, or e-liquid products that is more restrictive than this act or the rules promulgated by Arkansas Tobacco Control.

A.C.A. § 26-57-268

Retailer's failure to pay--Reporting, prevention, and penalty

(a) A permitted manufacturer or wholesaler shall sell or deliver any tobacco products, vapor products, alternative nicotine products, or e-liquids to a permitted retailer in this state only in exchange for cash or on established payment terms.

(b)(1)(A) If a retailer's payment under subsection (a) of this section is past due or is returned for insufficient funds, the permitted manufacturer or wholesaler shall, within five (5) business days of the payment being past due or returned for insufficient funds, notify Arkansas Tobacco Control of the retailer's failure to timely pay.

(B) Upon receipt of notice under subdivision (b)(1) of this section, Arkansas Tobacco Control shall promptly notify other wholesalers and manufacturers permitted under this subchapter that the retailer:

(i) Has failed to promptly remit payment for tobacco products, vapor products, alternative nicotine products, or e-liquids; and

(ii) Is therefore prohibited from continuing to purchase tobacco products, vapor products, alternative nicotine products, or e-liquids.

(2)(A) If the retailer satisfies a debt with the permitted manufacturer or wholesaler, the permitted manufacturer or wholesaler shall promptly notify Arkansas Tobacco Control that the debt has been paid.

(B) If Arkansas Tobacco Control receives notice that the retailer has paid the debt, Arkansas Tobacco Control shall promptly notify all permitted wholesalers and manufacturers that they may resume sales to the permitted retailer.

(3)(A) If the retailer fails to pay the debt in full within thirty (30) days from the date the debt became due, the Director of Arkansas Tobacco Control may suspend the retailer's permit until the debt has been paid.

(B) If a new owner acquires the permitted retail location and the debt has not been paid before the change in ownership, the new owner is responsible for the debt.

(c)(1) If a retailer fails to pay under subsection (a) of this section, Arkansas Tobacco Control may:

(A) Suspend the retailer's permit:

(i) For up to seven (7) days for the first offense; and

(ii) For between ten (10) days and thirty (30) days for each subsequent offense that occurs within a period of forty-eight (48) months from the date of the most recent violation; and

(B) Require the retailer to pay cash for all future purchases of tobacco products from permitted wholesales and manufacturers.

(2) A retailer's failure to pay the debt within the suspension period under subdivision (c)(1)(A) is a subsequent offense.

(d) The Director of Arkansas Tobacco Control and the Arkansas Tobacco Control Board may adopt rules necessary to implement this section.

Cigarette Certification, Directory, and Tax Stamps

A.C.A. § 26-57-1303

(a) Certification.

(1) No later than April 30 each year, every tobacco product manufacturer whose cigarettes are sold in the state, whether directly or through a wholesaler, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Attorney General a certification to the Attorney General certifying under penalty of perjury that as of the date of the certification the tobacco product manufacturer either:

(A) Is a participating manufacturer; or

(B) Is in full compliance with §§ 26-57-260 and 26-57-261, including all quarterly installment payments that may be required under § 26-57-1305(e).

(2)(A) A participating manufacturer shall include in its certification a list of its brand families.

(B) The participating manufacturer shall update the list required under subdivision (a)(2)(A) of this section thirty (30) calendar days before an addition to or modification of the participating manufacturer's brand families by executing and delivering a supplemental certification to the Attorney General.

(3) A nonparticipating manufacturer shall include in its certification:

(A) An electronic mail address and fax number to which notices from the Attorney General may be sent and a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; and

(B) A list of the nonparticipating manufacturer's brand families that have been sold in the state at any time during the current calendar year:

(i) Indicating by an asterisk any brand family sold in the state during the preceding calendar year but that is no longer being sold in the state as of the date of the certification; and

(ii) Identifying by name and address any other manufacturer of the brand families in the preceding or current calendar year.

(4) The nonparticipating manufacturer shall update the list required under subdivision (a)(3) of this section thirty (30) calendar days before an addition to or modification of the nonparticipating manufacturer's brand families by executing and delivering a supplemental certification to the Attorney General.

(5) The certification for a nonparticipating manufacturer shall further certify:

(A) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by § 26-57-1304;

(B) That the nonparticipating manufacturer:

(i) Has established and continues to maintain a qualified escrow fund; and

(ii) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund;

(C) That the nonparticipating manufacturer is in full compliance with §§ 26-57-260 and 26-57-261, this subchapter, and the rules promulgated under §§ 26-57-260 and 26-57-261 and this subchapter;

(D) The name, address, and telephone number of the financial institution with which the nonparticipating manufacturer has established the qualified escrow fund required under §§ 26-57-260 and 26-57-261 and the rules promulgated under §§ 26-57-260 and 26-57-261;

(E) The account number of the qualified escrow fund and any subaccount number for the state;

(F) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and the evidence or verification the Attorney General deems necessary to confirm the requirements of this subsection;

(G) The amount and date of each withdrawal or transfer of funds the nonparticipating manufacturer made from the fund or from any other qualified escrow fund into which it made escrow payments under §§ 26-57-260 and 26-57-261 and the rules promulgated under §§ 26-57-260 and 26-57-261;

(H)(i) That the nonparticipating manufacturer consents to be sued in the courts of the state for purposes of the Attorney General's enforcing §§ 26-57-260 and 26-57-261, this subchapter, or the rules promulgated under §§ 26-57-260 and 26-57-261.

(ii) The consent to suit under subdivision (a)(5)(H)(i) of this section shall be demonstrated by the execution and submission of a consent-to-suit form prepared by the Attorney General, with proof of authority to consent and execute the form;

(I)(i) In the case of a nonparticipating manufacturer located outside of the United States, that it has provided a declaration on a form prescribed by the Attorney General from each of its importers into the United States of any of its brand families to be sold in the state that the importer accepts joint and several liability with the nonparticipating manufacturer for all escrow deposits due under § 26-57-261 and for all penalties assessed under § 26-57-261.

(ii) A declaration under subdivision (a)(5)(I)(i) of this section shall appoint for the declarant a resident agent for service of process in Arkansas under § 26-57-1304; and

(J) That the nonparticipating manufacturer has posted the bond required by § 26-57-1308 and provided proof to the Attorney General of the posting of the bond required by § 26-57-1308.

(6) A tobacco product manufacturer may not include a brand family in its certification unless:

(A) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined under the Master Settlement Agreement; and

(B) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is its cigarettes for purposes of §§ 26-57-260 and 26-57-261.

(7) Subdivision (a)(6) of this section does not limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of §§ 26-57-260 and 26-57-261.

(8) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five (5) years unless otherwise required by law to maintain them for a greater period of time.

(9) A tobacco product manufacturer shall include in its certification a statement that it holds a valid permit under 26 U.S.C. § 5713, as it existed on January 1, 2011, and shall provide a copy of the permit to the Attorney General upon request.

(10) A tobacco product manufacturer shall certify that it is in compliance with all applicable requirements imposed under federal law and federal regulations related to the manufacturer and distribution of cigarettes.

(11)(A) It is unlawful for a person to submit a certification required by this section that asserts the truth of any material matter that the person knows to be false or inaccurate.

(B) In addition to any other provision of law, the Attorney General may seek a civil penalty in an amount not to exceed ten thousand dollars ($10,000) against a person that violates this subsection.

(C) A civil penalty collected under this section is general revenue of the state.

(b) Directory of Cigarettes Approved for Stamping and Sale.

(1) Not later than the last business day of May of each year, the Attorney General shall develop and make available for public inspection and shall publish on the Attorney General's website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) of this section and all brand families that are listed in the certifications except as provided in this section.

(2) The Attorney General shall not include or retain in the directory described in this subsection the name or brand families of any manufacturer that has failed to provide the required certification or whose certification the Attorney General determines is not in compliance with subsection (a) of this section unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General.

(3) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory described in this subsection if the Attorney General concludes in the case of a nonparticipating manufacturer that:

(A) An escrow payment required under §§ 26-57-260 and 26-57-261 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a

qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General;

(B) An outstanding final judgment, including interest on the judgment, for a violation of §§ 26-57-260 and 26-57-261 has not been fully satisfied for the brand family or the manufacturer; or

(C) The total nationwide reported sales of cigarettes on which federal excise tax is paid exceeds the sum of its nationwide reports under 15 U.S.C. § 376, as it existed on January 1, 2011, and any interstate reports by more than five percent (5%) of its total sales unless the nonparticipating manufacturer cures or satisfactorily explains the discrepancy within thirty (30) days after receiving notice of the discrepancy.

(4) A tobacco product manufacturer or brand family shall not be maintained in the directory described in this subsection if the Attorney General concludes that:

(A) The tobacco product manufacturer knowingly sold cigarettes to a stamp deputy whose appointment and commission has been revoked by the Secretary of the Department of Finance and Administration under § 26-57-236;

(B) The tobacco product manufacturer or any of the tobacco product manufacturer's affiliates, sales entity affiliates, officers, or directors has pleaded guilty or nolo contendere to or been found guilty of a felony crime relating to the sale or taxation of cigarettes or tobacco products; or

(C)(i) The tobacco product manufacturer or the tobacco product manufacturer's brand families, whether or not listed by the nonparticipating manufacturer, have been removed, excluded, or are otherwise ineligible for listing from the directory of another state based on acts or omissions that would, if done in this state, serve as a basis for removal from the directory maintained by the Attorney General under this section, unless the tobacco product manufacturer demonstrates that the removal from the other state's directory was effected without due process.

(ii) A tobacco product manufacturer that is removed or excluded from the state directory, or is otherwise ineligible for listing in the state directory under this subsection may be eligible for relisting in the directory described in this subsection upon the curing of the violation.

(5) The Attorney General shall update the directory described in this subsection as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this subchapter.

(6) Every wholesaler shall provide and update as necessary an electronic mail address to the Attorney General for the purpose of receiving any notifications as may be required by this subchapter.

(7)(A) The Attorney General may not remove the manufacturer or its brand families from the directory until at least fifteen (15) days after the manufacturer has been given notice of an intended action.

(B) Notice under subdivision (b)(7)(A) of this section shall be sufficient and be deemed immediately received by a manufacturer if the notice is sent either electronically or by facsimile

to an electronic mail address or facsimile number, as the case may be, provided by the manufacturer in its most recent certification filed under subsection (a) of this section.

(c) Prohibition Against Stamping, Sale, or Import of Cigarettes Not in Directory.

(1) It is unlawful for any person or entity to:

(A) Affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family that the person or entity knows is not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section; or

(B) Sell, offer, or possess in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family that the person or entity knows is not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section.

(2) Persons and entities are deemed to have received notice that cigarettes of a tobacco product manufacturer or a brand family are not included in the directory maintained by the Attorney General pursuant to subsection (b) of this section at the time the Attorney General's website fails to list any such cigarettes in the directory or at the time the Attorney General removes the cigarettes from the directory.

(3) A person or entity purchasing cigarettes for resale shall not be in violation of this subchapter if:

(A) At the time of purchase the manufacturer and brand families of the cigarettes are included in the directory maintained by the Attorney General pursuant to subsection (b) of this section and the cigarettes are lawfully stamped and sold within twenty-one (21) days of the date the manufacturer and brand families were removed from the directory; or

(B)(i) In the case of a retailer, the cigarettes are sold or delivered to retail customers within twenty-one (21) days after receipt of delivery of the cigarettes from a wholesaler so long as the cigarettes in question were lawfully purchased from the same wholesaler and the twenty-one-day period has not expired.

(ii) Possession of cigarettes after the twenty-one-day period in subdivision (c)(3)(B)(i) of this section has expired is a violation of subdivision (c)(1) of this section.

(4) No brand families may be purchased by or delivered to a wholesaler once the manufacturer and brand families are removed from the directory.

(5) Any manufacturer, wholesaler, or retailer selling cigarettes for resale of a manufacturer or brand family that has been removed from the directory maintained by the Attorney General pursuant to subsection (b) of this section shall notify the purchaser of the cigarettes of that fact at the time of delivery of the cigarettes.

(6)(A) Unless otherwise provided by contract or purchase agreement, a purchaser shall be entitled to a refund of the purchase price from the manufacturer, wholesaler, or retailer from whom the cigarettes were purchased of any cigarettes that are the product of a manufacturer or a brand family

that has been removed from the directory maintained by the Attorney General pursuant to subsection (b) of this section.

(B) The Department of Finance and Administration may by rule provide for a refund of the price of tax stamps that have been lawfully affixed to cigarettes that may not be sold under this subsection.