House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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CHAPTER 311

SENATE BILL 1280

AN ACT

AMENDING SECTION 13-3622, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-798.06; AMENDING SECTIONS 42-1102, 42-1124 AND 42-2003, ARIZONA REVISED STATUTES; REPEALING SECTION 42-3006, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 278, SECTION 8; AMENDING SECTIONS 42-3008 AND 42-3201, ARIZONA REVISED STATUTES; REPEALING SECTION 42-3202.03, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 38, SECTION 2; REPEALING SECTION 42-3203, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 222, SECTION 11; AMENDING SECTIONS 42-3208 AND 44-7111, ARIZONA REVISED STATUTES; REPEALING LAWS 2006, CHAPTER 278, SECTION 34; REPEALING LAWS 2007, CHAPTER 222, SECTION 18; REPEALING LAWS 2008, CHAPTER 38, SECTION 3; RELATING TO TOBACCO.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-3622, Arizona Revised Statutes, is amended to read:

13-3622. Furnishing of tobacco product to minor; minor accepting or receiving tobacco product; illegally obtaining tobacco product by underage person; classification; definitions

A. A person who knowingly sells, gives or furnishes ~~cigars, cigarettes or cigarette papers or smoking or chewing tobacco~~ A TOBACCO PRODUCT to a minor, and a minor who buys, or has in his possession or knowingly accepts or receives from any person, ~~cigars, cigarettes or cigarette papers or smoking or chewing tobacco of any kind~~ A TOBACCO PRODUCT, is guilty of a petty offense.

B. A ~~person who is under eighteen years of age and~~ MINOR who misrepresents the ~~person's~~ MINOR'S age to any person by means of a written instrument of identification with the intent to induce the person to sell, give or furnish ~~cigars, cigarettes or cigarette papers or smoking or chewing tobacco~~ A TOBACCO PRODUCT in violation of subsection A OF THIS SECTION is guilty of a petty offense and, notwithstanding section 13-802, shall pay a fine of not more than five hundred dollars.

C. FOR THE PURPOSES OF THIS SECTION, "TOBACCO PRODUCT" MEANS ANY OF THE FOLLOWING:

1. CIGARS.
2. CIGARETTES.
3. CIGARETTE PAPERS OF ANY KIND.
4. SMOKING TOBACCO OF ANY KIND.
5. CHEWING TOBACCO OF ANY KIND.

Sec. 2. Title 36, chapter 6, article 14, Arizona Revised Statutes, is amended by adding section 36-798.06, to read:

36-798.06. Delivery sales prohibited; common carriers; civil penalty; forfeiture; unlawful practice; application; violation; classification; definitions

A. A PERSON SHALL NOT DO EITHER OF THE FOLLOWING:

1. CAUSE A TOBACCO PRODUCT TO BE ORDERED OR PURCHASED BY ANYONE OTHER THAN A LICENSED PERSON OR A RETAILER WHO ORDERS OR PURCHASES FROM A LICENSED PERSON, INCLUDING BY ORDERING OR PURCHASING A TOBACCO PRODUCT.

2. KNOWINGLY PROVIDE SUBSTANTIAL ASSISTANCE TO A PERSON WHO VIOLATES THIS SECTION.

B. A COMMON CARRIER SHALL NOT KNOWINGLY TRANSPORT A TOBACCO PRODUCT FOR A PERSON WHO IS IN VIOLATION OF THIS SECTION.

C. EACH ORDER OR PURCHASE OF A TOBACCO PRODUCT IN VIOLATION OF SUBSECTION A, PARAGRAPH 1 OF THIS SECTION CONSTITUTES A SEPARATE VIOLATION UNDER THIS SECTION.

D. IN ADDITION TO ANY OTHER PENALTY, A PERSON WHO VIOLATES THIS SECTION IS SUBJECT TO ALL OF THE FOLLOWING:

1. A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH VIOLATION.

2. AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF THIS SECTION.

3. RECOVERY BY THIS STATE FOR:

(a) THE COSTS OF ANY INVESTIGATION RELATED TO A VIOLATION OF THIS SECTION.

(b) THE COST OF EXPERT WITNESS FEES IN ANY ACTION RELATED TO A VIOLATION OF THIS SECTION.

(c) THE COST OF THE ACTION RELATED TO A VIOLATION OF THIS SECTION.

(d) REASONABLE ATTORNEY FEES.

4. ALL STATE TOBACCO TAXES DUE UNDER TITLE 42, CHAPTER 3 AND ALL TRANSACTION PRIVILEGE OR USE TAXES DUE UNDER TITLE 42, CHAPTER 5, INCLUDING ANY PENALTIES AND INTEREST.

E. ALL TOBACCO PRODUCTS THAT ARE SEIZED FOR A VIOLATION OF THIS SECTION SHALL BE FORFEITED TO THE STATE AND DESTROYED PURSUANT TO SECTION 42-1124.

F. A VIOLATION OF THIS SECTION IS AN UNLAWFUL PRACTICE UNDER SECTION 44-1522 AND IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES AND PENALTIES THAT ARE AVAILABLE TO THIS STATE. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE APPROPRIATE ACTION PURSUANT TO TITLE 44, CHAPTER 10, ARTICLE 7.

G. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

1. THE SHIPMENT OF A TOBACCO PRODUCT TO A FOREIGN TRADE ZONE THAT IS ESTABLISHED UNDER 19 UNITED STATES CODE SECTION 81 AND TITLE 44, CHAPTER 18 AND THAT IS LOCATED IN THIS STATE IF THE TOBACCO PRODUCT IS FROM OUTSIDE OF THIS COUNTRY, WAS ORDERED BY A DISTRIBUTOR IN ANOTHER STATE AND IS NOT DISTRIBUTED IN THIS STATE.

2. A GOVERNMENT EMPLOYEE WHO IS ACTING IN THE COURSE OF THE EMPLOYEE'S OFFICIAL DUTIES.

H. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

I. FOR THE PURPOSES OF THIS SECTION:

1. "LICENSED PERSON" MEANS A PERSON WHO IS REQUIRED TO BE LICENSED UNDER SECTION 42-3201.

2. "ORDER OR PURCHASE" MEANS ANY OF THE FOLLOWING:

(a) BY MAIL OR DELIVERY SERVICE.

(b) THROUGH THE INTERNET OR A COMPUTER NETWORK.

(c) BY TELEPHONE.

(d) THROUGH ANY OTHER ELECTRONIC METHOD.

3. "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP, JOINT VENTURE OR OTHER ENTITY.

4. "RETAILER" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-5001.

5. "TOBACCO PRODUCT" MEANS ALL LUXURIES INCLUDED IN SECTION 42-3052, PARAGRAPHS 5, 6 AND 7. TOBACCO PRODUCT DOES NOT INCLUDE PIPE TOBACCO OR CIGARS.

Sec. 3. Section 42-1102, Arizona Revised Statutes, is amended to read:

42-1102. Taxpayer bonds; definition

A. If the department deems it necessary to protect the revenues to be collected under this title and title 43, it may require a person liable for the tax to file a bond to secure the payment of the tax, penalty or interest which may become due from that person. The bond shall be:

1. Issued by a surety company authorized to transact business in this state and approved by the director of insurance of this state as to solvency and responsibility or composed of securities or cash ~~which~~ THAT are deposited with, and kept in the custody of, the department.

2. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, in the amount which the department prescribes by administrative rule to secure the payment of any tax, penalty or interest which may become due from the person.

B. FOR THE PURPOSES OF LICENSES TO SELL TOBACCO PRODUCTS ISSUED UNDER SECTION 42-3201, THE AMOUNT OF THE BOND REQUIRED UNDER THIS SECTION IS THE GREATER OF FIVE HUNDRED DOLLARS OR FOUR TIMES THE AVERAGE MONTHLY TAX LIABILITY. FOR THE PURPOSES OF DETERMINING THE BOND AMOUNT, THE AVERAGE MONTHLY TAX LIABILITY IS EQUAL TO THE AVERAGE MONTHLY TAX DUE FROM THE APPLICANT FOR THE PRECEDING SIX CONSECUTIVE MONTHS. IF AN APPLICANT DOES NOT HAVE A SIX MONTH PAYMENT HISTORY, THE BOND AMOUNT IS A MINIMUM OF FIVE HUNDRED DOLLARS. IF AN APPLICANT PROVIDES A SURETY BOND AND THE BOND LAPSES, THE APPLICANT SHALL DEPOSIT WITH THE DEPARTMENT CASH OR OTHER SECURITY IN AN AMOUNT EQUAL TO THE LAPSED SURETY BOND WITHIN FIVE BUSINESS DAYS AFTER THE APPLICANT'S RECEIPT OF WRITTEN NOTIFICATION BY THE DEPARTMENT. THE BOND AMOUNT MAY BE INCREASED OR DECREASED AS NECESSARY BASED ON ANY REASON LISTED IN SUBSECTION D OF THIS SECTION OR A CHANGE IN THE APPLICANT'S PREVIOUS FILING PERIOD, FILING COMPLIANCE RECORD OR PAYMENT HISTORY. IF THE BOND AMOUNT IS INCREASED ABOVE THE AMOUNT COMPUTED UNDER THIS SUBSECTION, THE APPLICANT MAY REQUEST A HEARING PURSUANT TO SUBSECTION C OF THIS SECTION TO SHOW WHY THE ORDER INCREASING THE BOND AMOUNT IS IN ERROR.

~~B.~~ C. If the department determines that a person is to file such a bond it shall notify him to that effect, specifying the amount of the bond required. The person shall file the bond within five days after the giving of notice unless within that time he requests in writing a hearing before the department at which time the department shall determine the necessity, propriety and amount of the bond. The determination is final unless within

fifteen days after the giving of notice of the determination the person appeals the determination to the state board of tax appeals. The board shall decide on the appeal within fifteen days of its receipt. The bond ~~may~~, at any time without notice, MAY be applied to any tax, penalties or interest due, and for that purpose the securities may be sold at public or private sale without notice to the depositor.

~~C.~~ D. For purposes of this section a bond may be required if:

1. After investigation of financial status, the department determines that an applicant for a new license would be unable to timely remit amounts due.

2. An applicant for a new license held a license for a prior business, and the remittance record for the prior business falls within one of the conditions in paragraph 5.

3. The department experienced collection problems while the applicant was engaged in business under a prior license.

4. The applicant is substantially similar to a person who would have been required to post a bond under paragraph 5 OF THIS SUBSECTION or the person had a previous license ~~which~~ THAT was revoked. An applicant is substantially similar if it is owned or controlled by persons who owned or controlled a previous licensee.

5. An existing licensee has had two or more delinquencies in remitting tax during the preceding twenty-four months if filing on a quarterly or less frequent basis or four or more delinquencies during the preceding twenty-four months if filing on a monthly or more frequent basis.

~~D.~~ E. If a licensee who is required to post a bond or security maintains a good filing and payment record for a period of two years, the licensee may request that the department waive the continued bond or security requirement.

~~E.~~ F. In this section "person" includes a firm, partnership, joint venture, association, corporation, sole proprietorship or any other business or governmental entity subject to a tax administered by this article but does not include an individual subject to individual income tax.

Sec. 4. Section 42-1124, Arizona Revised Statutes, is amended to read:

42-1124. <u>Failure to affix stamps or pay or account for tax; forfeiture of commodity; sale of forfeited commodity; effect of seizure and sale; request for administrative hearing; definitions</u>

A. If the department or its authorized agents or representatives discover any luxury subject to tax under chapter 3 of this title to which official stamps have not been affixed as required or on which the tax has not been paid or accounted for, the department or its agent or representative may seize and take possession of the luxury, and it is deemed forfeited to this state. Except as provided in subsection D or E of this section, the department shall within a reasonable time thereafter, pursuant to a notice posted on the premises or by publication in a newspaper of general

1 circulation in the county where the sale is to take place, not fewer than
2 five days before the date of sale, offer for sale and sell the forfeited
3 luxuries. The department shall pay the proceeds of the sale into the state
4 general fund. The sale shall take place in the county which is most
5 convenient and economical. The department need not offer any property for
6 sale if, in its opinion, the probable cost of sale exceeds the value of the
7 property.
8 B. The seizure and sale do not relieve any person from the penalties
9 provided for violating this title.
10 C. The department of revenue may enter into an interagency agreement
11 with the department of transportation for the purpose of carrying out tobacco
12 enforcement under chapter 3 of this title at ports of entry.
13 D. All cigarettes that are seized for violations under this title
14 shall be forfeited to this state. All cigarettes that are forfeited to this
15 state pursuant to section 36-798.06 OR 42-3210 or section 44-7111, section
16 6(b) shall be destroyed. If a cigarette distributor defrauds this state by
17 knowingly and intentionally failing to keep or make any record, return,
18 report or inventory pertaining to cigarettes, by refusing to pay any luxury
19 tax for cigarettes subject to tax under chapter 3 of this title or by
20 attempting to evade or defeat any requirement of this title, the cigarette
21 distributor shall forfeit to this state all fixtures, equipment and all other
22 materials and personal property that are located on the premises of the
23 cigarette distributor. Alternatively, at the request of the department, the
24 cigarette distributor may be enjoined by an action commenced by the attorney
25 general or a county attorney in the name of the state from engaging or
26 continuing in any business for which a tax is imposed by this chapter until
27 the tax has been paid and until such person has complied with this title.
28 E. The department may sell or otherwise dispose of any cigarettes
29 forfeited to this state on such conditions as it deems most advantageous and
30 just under the circumstances, unless such cigarettes are forfeited pursuant
31 to section 36-798.06 OR 42-3210 or section 44-7111, section 6(b). The
32 department shall deposit the proceeds of any sales made pursuant to this
33 subsection in the state general fund.
34 F. The department shall give notice of the seizure and forfeiture of
35 cigarettes described in this section by personal service or by certified mail
36 to all persons known by the department to have any right, title or interest
37 in the property. Notice shall include a description of the cigarettes
38 seized, the reason for the seizure and the time and place of the seizure.
39 The following apply to the notice under this subsection:
40 1. Except as provided in paragraph 2 of this subsection, the
41 department shall post and maintain an on-line notice of seizure and
42 forfeiture on its web site for a period of at least six months, beginning no
43 later than ten business days after the date of the personal service of the
44 notice to a person or the date of the mailing of the notice. The on-line

notice shall display the date on which the department posts the notice to the web site, which shall serve as the date of publication of the notice.

2. An on-line notice is not required if the amount of cigarettes seized is less than sixty-one cartons of two hundred cigarettes each.

G. Any person whose legal rights, duties or privileges are determined by the notice of seizure and forfeiture may file a request for an administrative hearing with the department on a form prescribed by the department. The request for an administrative hearing shall contain a statement of the petitioner's interest in the cigarettes and an explanation of why the release or recovery of the cigarettes is warranted on the ground that the cigarettes were erroneously or illegally seized.

H. The seizure and forfeiture of cigarettes or other tobacco products by the department is an appealable agency action as defined in section 41-1092 and is governed by title 41, chapter 6, article 10 and section 42-1251, except that:

1. A request for an administrative hearing that is filed under subsection G of this section is deemed to be timely filed if the request is filed with the department within ten days after the date of personal service on the petitioner or the date of mailing the notice to the petitioner. Any person not served personally or by mail shall file the request within ten days after the date of publication of the notice. The failure of a person to file a timely request constitutes a bar to that person's right to any interest in the cigarettes or other tobacco products, except insofar as the rights of that person may be established in an action filed by the department under this chapter.

2. If a request for an administrative hearing is not filed with the department at the expiration of ten days after the notice has been personally served, mailed or published, the department's determination is final. If a timely request for an administrative hearing has been filed with the department, the department shall request a hearing by the office of administrative hearings and the department shall suspend action until the final order of the department has been issued. An order that is issued by the office of administrative hearings shall be the final order of the department thirty days after the petitioner receives the decision unless a decision by the director is issued pursuant to section 42-1251. If the director issues a decision, that decision is the final order of the department.

I. For the purposes of this section, "cigarette" and "cigarette distributor" have the same meanings prescribed in section 42-3001.

Sec. 5. Section 42-2003, Arizona Revised Statutes, is amended to read:

42-2003. <u>Authorized disclosure of confidential information</u>

A. Confidential information relating to:

1. A taxpayer may be disclosed to the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the

1 taxpayer. A principal corporate officer of a parent corporation may execute
2 a written authorization for a controlled subsidiary.
3 2. A corporate taxpayer may be disclosed to any principal officer, any
4 person designated by a principal officer or any person designated in a
5 resolution by the corporate board of directors or other similar governing
6 body.
7 3. A partnership may be disclosed to any partner of the partnership.
8 This exception does not include disclosure of confidential information of a
9 particular partner unless otherwise authorized.
10 4. An estate may be disclosed to the personal representative of the
11 estate and to any heir, next of kin or beneficiary under the will of the
12 decedent if the department finds that the heir, next of kin or beneficiary
13 has a material interest which will be affected by the confidential
14 information.
15 5. A trust may be disclosed to the trustee or trustees, jointly or
16 separately, and to the grantor or any beneficiary of the trust if the
17 department finds that the grantor or beneficiary has a material interest
18 which will be affected by the confidential information.
19 6. Any taxpayer may be disclosed if the taxpayer has waived any rights
20 to confidentiality either in writing or on the record in any administrative
21 or judicial proceeding.
22 7. The name and taxpayer identification numbers of persons issued
23 direct payment permits may be publicly disclosed.
24 B. Confidential information may be disclosed to:
25 1. Any employee of the department whose official duties involve tax
26 administration.
27 2. The office of the attorney general solely for its use in
28 preparation for, or in an investigation which may result in, any proceeding
29 involving tax administration before the department or any other agency or
30 board of this state, or before any grand jury or any state or federal court.
31 3. The department of liquor licenses and control for its use in
32 determining whether a spirituous liquor licensee has paid all transaction
33 privilege taxes and affiliated excise taxes incurred as a result of the sale
34 of spirituous liquor, as defined in section 4-101, at the licensed
35 establishment and imposed on the licensed establishments by this state and
36 its political subdivisions.
37 4. Other state tax officials whose official duties require the
38 disclosure for proper tax administration purposes if the information is
39 sought in connection with an investigation or any other proceeding conducted
40 by the official. Any disclosure is limited to information of a taxpayer who
41 is being investigated or who is a party to a proceeding conducted by the
42 official.
43 5. The following agencies, officials and organizations, if they grant
44 substantially similar privileges to the department for the type of
45 information being sought, pursuant to statute and a written agreement between

1 the department and the foreign country, agency, state, Indian tribe or
2 organization:
3 (a) The United States internal revenue service, alcohol and tobacco
4 tax and trade bureau of the United States treasury, United States bureau of
5 alcohol, tobacco, firearms and explosives of the United States department of
6 justice, United States drug enforcement agency and federal bureau of
7 investigation.
8 (b) A state tax official of another state.
9 (c) An organization of states, federation of tax administrators or
10 multistate tax commission that operates an information exchange for tax
11 administration purposes.
12 (d) An agency, official or organization of a foreign country with
13 responsibilities that are comparable to those listed in subdivision (a), (b)
14 or (c) of this paragraph.
15 (e) An agency, official or organization of an Indian tribal government
16 with responsibilities comparable to the responsibilities of the agencies,
17 officials or organizations identified in subdivision (a), (b) or (c) of this
18 paragraph.
19 6. The auditor general, in connection with any audit of the department
20 subject to the restrictions in section 42-2002, subsection D.
21 7. Any person to the extent necessary for effective tax administration
22 in connection with:
23 (a) The processing, storage, transmission, destruction and
24 reproduction of the information.
25 (b) The programming, maintenance, repair, testing and procurement of
26 equipment for purposes of tax administration.
27 (c) The collection of the taxpayer's civil liability.
28 8. The office of administrative hearings relating to taxes
29 administered by the department pursuant to section 42-1101, but the
30 department shall not disclose any confidential information:
31 (a) Regarding income tax, withholding tax or estate tax.
32 (b) On any tax issue relating to information associated with the
33 reporting of income tax, withholding tax or estate tax.
34 9. The United States treasury inspector general for tax administration
35 for the purpose of reporting a violation of internal revenue code section
36 7213A (26 United States Code section 7213A), unauthorized inspection of
37 returns or return information.
38 10. The financial management service of the United States treasury
39 department for use in the treasury offset program.
40 11. The United States treasury department or its authorized agent for
41 use in the state income tax levy program and in the electronic federal tax
42 payment system.

12. The Arizona commerce authority for its use in:

(a) Qualifying motion picture production companies for the tax incentives provided for motion picture production under chapter 5 of this title and sections 43-1075 and 43-1163.

(b) Qualifying applicants for the motion picture infrastructure project tax credits under sections 43-1075.01 and 43-1163.01.

(c) Qualifying renewable energy operations for the tax incentives under sections 42-12006, 43-1083.01 and 43-1164.01.

(d) Fulfilling its annual reporting responsibility pursuant to section 41-1511, subsections U and V and section 41-1517, subsections S and T.

13. A prosecutor for purposes of section 32-1164, subsection C.

14. The state fire marshal for use in determining compliance with and enforcing title 41, chapter 16, article 3.1.

15. The department of transportation for its use in administering taxes and surcharges prescribed by title 28.

C. Confidential information may be disclosed in any state or federal judicial or administrative proceeding pertaining to tax administration pursuant to the following conditions:

1. One or more of the following circumstances must apply:

(a) The taxpayer is a party to the proceeding.

(b) The proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability, with respect to any tax imposed under this title or title 43.

(c) The treatment of an item reflected on the taxpayer's return is directly related to the resolution of an issue in the proceeding.

(d) Return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer and directly affects the resolution of an issue in the proceeding.

2. Confidential information may not be disclosed under this subsection if the disclosure is prohibited by section 42-2002, subsection C or D.

D. Identity information may be disclosed for purposes of notifying persons entitled to tax refunds if the department is unable to locate the persons after reasonable effort.

E. The department, upon the request of any person, shall provide the names and addresses of bingo licensees as defined in section 5-401, verify whether or not a person has a privilege license and number, a distributor's license and number or a withholding license and number or disclose the information to be posted on the department's website or otherwise publicly accessible pursuant to section 42-1124, subsection F and section 42-3201, subsection A.

F. A department employee, in connection with the official duties relating to any audit, collection activity or civil or criminal investigation, may disclose return information to the extent that disclosure is necessary to obtain information which is not otherwise reasonably

available. These official duties include the correct determination of and liability for tax, the amount to be collected or the enforcement of other state tax revenue laws.

G. If an organization is exempt from this state's income tax as provided in section 43-1201 for any taxable year, the name and address of the organization and the application filed by the organization upon which the department made its determination for exemption together with any papers submitted in support of the application and any letter or document issued by the department concerning the application are open to public inspection.

H. Confidential information relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy tax may be disclosed to any county, city or town tax official if the information relates to a taxpayer who is or may be taxable by the county, city or town. Any taxpayer information released by the department to the county, city or town:

1. May only be used for internal purposes.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The county, city or town shall agree in writing with the department that any release of confidential information that violates the confidentiality standards adopted by the department will result in the immediate suspension of any rights of the county, city or town to receive taxpayer information under this subsection.

I. The department may disclose statistical information gathered from confidential information if it does not disclose confidential information attributable to any one taxpayer. The department may disclose statistical information gathered from confidential information, even if it discloses confidential information attributable to a taxpayer, to:

1. The state treasurer in order to comply with the requirements of section 42-5029, subsection A, paragraph 3.

2. The joint legislative income tax credit review committee and the joint legislative budget committee staff in order to comply with the requirements of section 43-221.

J. The department may disclose the aggregate amounts of any tax credit, tax deduction or tax exemption enacted after January 1, 1994. Information subject to disclosure under this subsection shall not be disclosed if a taxpayer demonstrates to the department that such information would give an unfair advantage to competitors.

K. Except as provided in section 42-2002, subsection C, confidential information, described in section 42-2001, paragraph 2, subdivision (a), item (iii), may be disclosed to law enforcement agencies for law enforcement purposes.

L. The department may provide transaction privilege tax license information to property tax officials in a county for the purpose of identification and verification of the tax status of commercial property.

M. The department may provide transaction privilege tax, luxury tax, use tax, property tax and severance tax information to the ombudsman-citizens aide pursuant to title 41, chapter 8, article 5.

N. Except as provided in section 42-2002, subsection D, a court may order the department to disclose confidential information pertaining to a party to an action. An order shall be made only upon a showing of good cause and that the party seeking the information has made demand upon the taxpayer for the information.

O. This section does not prohibit the disclosure by the department of any information or documents submitted to the department by a bingo licensee. Before disclosing the information the department shall obtain the name and address of the person requesting the information.

P. If the department is required or permitted to disclose confidential information, it may charge the person or agency requesting the information for the reasonable cost of its services.

Q. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the department of economic security pursuant to section 42-1122 or 46-291. Information disclosed under this subsection is limited to the same type of information that the United States internal revenue service is authorized to disclose under section 6103(l)(6) of the internal revenue code.

R. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the courts and clerks of the court pursuant to section 42-1122.

S. To comply with the requirements of section 42-5031, the department may disclose to the state treasurer, to the county stadium district board of directors and to any city or town tax official that is part of the county stadium district confidential information attributable to a taxpayer's business activity conducted in the county stadium district.

T. The department shall release confidential information as requested by the attorney general for purposes of determining compliance with and enforcing section 44-7101, the master settlement agreement referred to therein and subsequent agreements to which the state is a party that amend or implement the master settlement agreement. Information disclosed under this subsection is limited to luxury tax information relating to tobacco manufacturers, distributors, wholesalers and retailers and information collected by the department pursuant to section 44-7101(2)(j).

U. For proceedings before the department, the office of administrative hearings, the board of tax appeals or any state or federal court involving penalties that were assessed against a return preparer, an electronic return preparer or a payroll service company pursuant to section 42-1103.02, 42-1125.01 or 43-419, confidential information may be disclosed only before

the judge or administrative law judge adjudicating the proceeding, the parties to the proceeding and the parties' representatives in the proceeding prior to its introduction into evidence in the proceeding. The confidential information may be introduced as evidence in the proceeding only if the taxpayer's name, the names of any dependents listed on the return, all social security numbers, the taxpayer's address, the taxpayer's signature and any attachments containing any of the foregoing information are redacted and if either:

1. The treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding.

2. Such return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

3. The method of payment of the taxpayer's withholding tax liability or the method of filing the taxpayer's withholding tax return is an issue for the period.

V. The department may disclose to the attorney general confidential information received under section 44-7111 and requested by the attorney general for purposes of determining compliance with and enforcing section 44-7111. The department and attorney general shall share with each other the information received under section 44-7111, and may share the information with other federal, state or local agencies only for the purposes of enforcement of section 36-798.06, 44-7101, ~~section~~ 44-7111 or corresponding laws of other states.

W. The department may provide the name and address of qualifying hospitals and qualifying health care organizations, as defined in section 42-5001, to a business classified and reporting transaction privilege tax under the utilities classification.

X. THE DEPARTMENT MAY DISCLOSE TO THE ATTORNEY GENERAL CONFIDENTIAL INFORMATION REQUESTED BY THE ATTORNEY GENERAL FOR THE PURPOSES OF DETERMINING COMPLIANCE WITH AND ENFORCING SECTION 36-798.06.

Sec. 6. Repeal

Section 42-3006, Arizona Revised Statutes, as amended by Laws 2006, chapter 278, section 8, is repealed.

Sec. 7. Section 42-3008, Arizona Revised Statutes, is amended to read:

42-3008. Refunds

A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, the tax imposed by this chapter upon any articles or substances shall be refunded when the amount of the tax has been paid and when either:

1. Proof is made to the department that the articles or substances were exported from this state or that the stamps have been affixed to articles or substances upon which stamps are not required.

2. The luxury becomes unfit for sale due to breakage or spoilage.

B. The manner of making proof shall be in accordance with rules adopted by the department.

C. THE DEPARTMENT SHALL NOT REFUND THE TAX FOR STAMPS THAT ARE AFFIXED TO ARTICLES OR SUBSTANCES THAT ARE DEEMED CONTRABAND UNDER THIS CHAPTER.

Sec. 8. Section 42-3201, Arizona Revised Statutes, is amended to read:

42-3201. Licenses

A. Every distributor acquiring or possessing for the purpose of making the initial sale or distribution in this state of any tobacco products on which a tax is imposed by this chapter shall obtain from the department a license to sell tobacco products. The application for the license shall be in the form provided by the department and shall be accompanied by a fee of twenty-five dollars. The form shall state that the identity of the applicant may be posted to the department's web site for public inspection. The application for a license shall include the applicant's name and address, the applicant's principal place of business, locations where the applicant's business is conducted in this state and any other information required by the department. If the applicant is a firm, partnership, limited liability company, limited liability partnership or association, the applicant shall list the name and address of each of the applicant's members. If the applicant is a corporation, the application shall list the name and address of the applicant's officers and any person who directly or indirectly owns an aggregate amount of ten per cent or more of the ownership interest in the corporation. If a licensee changes its business location, the licensee under this subsection shall notify the department within thirty days after a change in location.

B. The department shall issue a license authorizing the applicant to acquire or possess tobacco products in this state upon the condition that the applicant complies with this chapter and the rules of the department. The license:

1. Shall be nontransferable.

2. Shall be valid for one year unless earlier revoked by the department.

3. Shall, for an applicant selling or offering for sale tobacco, cigarettes and cigars, be displayed in the applicant's place of business.

C. EXCEPT FOR CIGARETTES THAT ARE DESCRIBED IN SUBSECTION I OF THIS SECTION, an individual who acquires or possesses unstamped cigarettes solely for that individual's own use or consumption in this state must register with the department on a form and in a manner prescribed by the department to remit taxes imposed by this chapter and chapter 5, article 4 of this title. The registration is free of charge. On registration, the individual must pay all applicable taxes imposed by this chapter and chapter 5, article 4 of this title and file on a form and in a manner prescribed by the department within ten calendar days after receipt of unstamped cigarettes.

D. An individual must be licensed as a cigarette distributor if the individual acquires or possesses unstamped cigarettes in this state for sale, barter or exchange or for any other purpose besides or in addition to that individual's own use or consumption.

E. A person who is convicted of an offense described in section 42-1127, subsection E is permanently ineligible to hold a license issued under this section.

F. The department may not issue or renew a license to an applicant and may revoke a license issued under subsection B of this section if any of the following ~~apply~~ APPLIES:

1. The applicant owes one thousand dollars or more in delinquent cigarette taxes that are not under protest or subject to a payment agreement.

2. The department has revoked any license held by the applicant within the previous two years.

3. The applicant has been convicted of a crime that relates to stolen or counterfeit cigarettes.

4. The applicant has imported cigarettes into the United States for sale or distribution in violation of 19 United States Code section 1681a.

5. The applicant has imported cigarettes into the United States for sale or distribution without fully complying with the federal cigarette labeling and advertising act (P.L. 89-92; 79 Stat. 282; 15 United States Code section 1331).

6. THE APPLICANT IS IN VIOLATION OF SECTION 36-798.06, SUBSECTION A.

7. PURSUANT TO SECTION 44-7111, SECTION 6(a), THE APPLICANT IS IN VIOLATION OF SECTION 44-7111, SECTION 3(c).

G. In addition to any other civil or criminal penalty AND EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, the department may suspend or revoke a license issued under subsection B of this section if the person violates any requirement under this title more than two times within a three-year period. A suspension or revocation under this subsection shall comply with section 41-1092.11, subsection B.

H. The department shall publish on its ~~web site~~ WEBSITE the names of each person who is issued a license under subsection B of this section. The department shall update the published names at least once each month.

I. TOBACCO PRODUCTS THAT ARE IN VIOLATION OF SECTION 36-798.06 OR 42-3210 OR SECTION 44-7111, SECTION 3(c) OR ANY OTHER STATUTE FOR WHICH THE TOBACCO PRODUCTS ARE SUBJECT TO SEIZURE AND DESTRUCTION ARE DEEMED CONTRABAND FOR WHICH TAXES THAT ARE IMPOSED UNDER THIS CHAPTER CANNOT BE REPORTED AND REMITTED.

Sec. 9. Repeal

A. Section 42-3202.03, Arizona Revised Statutes, as amended by Laws 2008, chapter 38, section 2, is repealed.

B. Section 42-3203, Arizona Revised Statutes, as amended by Laws 2007, chapter 222, section 11, is repealed.

Sec. 10. Section 42-3208, Arizona Revised Statutes, is amended to read:

42-3208. Return and payment by distributors of tobacco products other than cigarettes

A. EXCEPT FOR TOBACCO PRODUCTS DESCRIBED IN SUBSECTION F OF THIS SECTION, every distributor of cigars or tobacco products other than cigarettes shall pay the tax imposed by this chapter on all those products received within the state and shall add the amount of the tax to the sales price.

B. The distributor shall pay the tax to the department monthly on or before the twentieth day of the month next succeeding the month in which the tax accrues.

C. On or before that date the distributor shall prepare a sworn return for the month in which the tax accrues in the form prescribed by the department, showing:

1. The amount of cigars or tobacco products other than cigarettes received in this state during the month in which the tax accrues.

2. The amount of tax for the period covered by the return.

3. Any other information the department deems necessary for the proper administration of this chapter.

D. The distributor shall deliver the return, together with a remittance of the amount of the tax due, to the department.

E. A taxpayer who fails to pay the tax within ten days of the date on which the payment becomes due is subject to and shall pay a penalty determined under section 42-1125 plus interest at the rate determined pursuant to section 42-1123 from the time the tax was due and payable until paid.

F. TOBACCO PRODUCTS THAT ARE IN VIOLATION OF SECTION 36-798.06 OR 42-3210 OR SECTION 44-7111, SECTION 3(c) OR ANY OTHER STATUTE FOR WHICH THE TOBACCO PRODUCTS ARE SUBJECT TO SEIZURE AND DESTRUCTION ARE DEEMED CONTRABAND FOR WHICH TAXES THAT ARE IMPOSED UNDER THIS CHAPTER CANNOT BE REPORTED AND REMITTED.

Sec. 11. Section 44-7111, Arizona Revised Statutes, is amended to read:

44-7111. Tobacco; nonparticipating manufacturers; civil penalty; violation; classification

This state enacts the model nonparticipating manufacturers legislation as follows:

Section 1. Findings and Purpose.

The legislature finds that violations of section 44-7101 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state and the public health. The legislature finds that enacting procedural enhancements will aid the enforcement of section 44-7101 and thereby safeguard the master settlement agreement, the fiscal soundness of the state and the public health.

1 Section 2. Definitions.
2 (a) "Brand family" means all styles of cigarettes sold under the same
3 trade mark and differentiated from one another by means of additional
4 modifiers or descriptors, including, but not limited to, "menthol", "lights",
5 "kings" and "100s", and includes any brand name (alone or in conjunction with
6 any other word), trademark, logo, symbol, motto, selling message,
7 recognizable pattern of colors or any other indicia of product identification
8 identical or similar to, or identifiable with, a previously known brand of
9 Cigarettes.
10 (b) "Cigarette" has the same meaning prescribed in section 44-7101.
11 (c) "Department" means the department of revenue.
12 (d) "Director" means the director of the department.
13 (e) "Distributor" has the same meaning prescribed in section 42-3001.
14 (f) "Master settlement agreement" has the same meaning prescribed in
15 section 44-7101.
16 (g) "Nonparticipating manufacturer" means any tobacco product
17 manufacturer that is not a participating manufacturer.
18 (h) "Participating manufacturer" has the meaning given that term in
19 section II(jj) of the master settlement agreement and all amendments thereto.
20 (i) "Qualified escrow fund" has the same meaning prescribed in section
21 44-7101.
22 (j) "Tobacco product manufacturer" has the same meaning prescribed in
23 section 44-7101.
24 (k) "Units sold" has the same meaning prescribed in section 44-7101.
25 Section 3. Certifications; Directory; Tax Stamps.
26 (a) Certification. Every tobacco product manufacturer whose
27 Cigarettes are sold in this state, whether directly or through a distributor,
28 retailer or similar intermediary or intermediaries, shall execute and deliver
29 on a form prescribed by the attorney general a certification to the director
30 and attorney general not later than the thirtieth day of April each year,
31 certifying that, as of the date of the certification, the tobacco product
32 manufacturer either is a participating manufacturer or is in full compliance
33 with section 44-7101, section 3(b), including all quarterly installment
34 payments required by regulations as may be promulgated by the attorney
35 general pursuant to section 5(f) of this article.
36 (1) A participating manufacturer shall include in its certification a
37 list of its brand families. The participating manufacturer shall update the
38 list thirty days prior to any addition to or modification of its brand
39 families by executing and delivering a supplemental certification to the
40 attorney general and Director.
41 (2) A nonparticipating manufacturer shall include in its certification
42 (i) a list of all of its brand families and the number of units sold for each
43 brand family that were sold in the state during the preceding calendar year,
44 (ii) a list of all of its brand families that have been sold in the state at
45 any time during the current calendar year, (iii) indicating by an asterisk,

1 any brand family sold in the state during the preceding calendar year that is
2 no longer being sold in the state as of the date of the certification and
3 (iv) identifying by name and address any other manufacturer of the brand
4 families in the preceding or current calendar year. The nonparticipating
5 manufacturer shall update the list thirty calendar days prior to any addition
6 to or modification of its brand families by executing and delivering a
7 supplemental certification to the attorney general and director.
8 (3) In the case of a nonparticipating manufacturer, the certification
9 shall further certify:
10 (a) That the nonparticipating manufacturer is registered to do
11 business in the state or has appointed a resident agent for service of
12 process and provided notice thereof as required by section 4.
13 (b) That the nonparticipating manufacturer (i) has established and
14 continues to maintain a qualified escrow fund and (ii) has executed a
15 qualified escrow agreement that has been reviewed and approved by the
16 attorney general and that governs the qualified escrow fund.
17 (c) That the nonparticipating manufacturer is in full compliance with
18 section 44-7101, section (3)(b) and this article, and any regulations
19 promulgated pursuant thereto;
20 (d) (i) The name, address and telephone number of the financial
21 institution where the nonparticipating manufacturer has established the
22 qualified escrow fund required pursuant to section 44-7101, section 3(b) and
23 all regulations promulgated pursuant thereto, (ii) the account number of the
24 qualified escrow fund and any subaccount number for the state, (iii) the
25 amount the nonparticipating manufacturer placed in the fund for cigarettes
26 sold in the state during the preceding calendar year, the date and amount of
27 each deposit and such evidence or verification as may be deemed necessary by
28 the attorney general to confirm the foregoing and (iv) the amount of and date
29 of any withdrawal or transfer of funds the nonparticipating manufacturer made
30 at any time from the fund or from any other qualified escrow fund into which
31 it ever made escrow payments pursuant to section 44-7101, section 3(b) and
32 all regulations promulgated pursuant thereto.
33 (4) A tobacco product manufacturer may not include a brand family in
34 its certification unless (i) in the case of a participating manufacturer, the
35 participating manufacturer affirms that the brand family is to be deemed to
36 be its cigarettes for purposes of calculating its payments under the master
37 settlement agreement for the relevant year, in the volume and shares
38 determined pursuant to the master settlement agreement, and (ii) in the case
39 of a nonparticipating manufacturer, the nonparticipating manufacturer affirms
40 that the brand family is to be deemed to be its cigarettes for purposes of
41 section 44-7101, section 3(b). Nothing in this section shall be construed as
42 limiting or otherwise affecting the state's right to maintain that a brand
43 family constitutes cigarettes of a different tobacco product manufacturer for
44 purposes of calculating payments under the master settlement agreement or for
45 purposes of section 44-7101.

(5) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(b) Directory of cigarettes approved for stamping and sale. Not later than ninety days after the effective date of this article, the attorney general shall develop and publish on the attorney general's web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of section 3(a) and all brand families that are listed in those certifications (the "directory"), except as noted below.

(1) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with sections 3(a)(2) and (3), unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that (i) any escrow payment required pursuant to section 44-7101, section 3(b) 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, or (ii) any outstanding final judgment, including interest thereon, for a violation of section 44-7101 has not been fully satisfied for the brand family or the manufacturer.

(3) The attorney general shall update the directory 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 article.

(4) A distributor that has lawfully affixed stamps to cigarettes and subsequently is unable to sell those cigarettes lawfully because the cigarettes have been removed from the directory pursuant to section 3(b)(2) of this article, may apply to the department for a refund of the cost of such stamps.

(5) Every distributor shall provide and update as necessary an electronic mail address to the director and attorney general for the purpose of receiving any notifications as may be required by this article.

(6) A tobacco product manufacturer included in the directory may request that a new brand family be added to the directory by executing and delivering a supplemental certification with the necessary information to the attorney general and the director. Not later than forty-five business days after receiving such a request, and at such earlier time as is reasonable to do so, the attorney general shall either (i) certify the new brand family or

(ii) deny the request. However, in cases where the attorney general reasonably determines that it needs additional information to ascertain whether the requestor is the tobacco product manufacturer of the new brand family, the attorney general may take whatever additional time is reasonably needed to process the request, to locate and assemble information or documents needed to process the request, and to notify persons or agencies affected by the request.

(c) Prohibition against stamping or sale of cigarettes not in the directory. It shall be unlawful for any person (1) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or (2) to sell, offer or possess for sale, in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

Section 4. Agent for Service of Process.

(a) Requirement for agent for service of process. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this article and section 44-7101, may be served in any manner authorized by law. Such service on the agent constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of the agent to and to the satisfaction of the attorney general.

(b) The nonparticipating manufacturer shall provide notice to the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent not less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

(c) Any nonparticipating manufacturer whose cigarettes are sold in this state and who has not appointed and engaged an agent as herein required shall be deemed to have appointed the secretary of state as the agent and may be proceeded against in courts of this state by service of process upon the secretary of state; provided, however, that the appointment of the secretary of state as the agent shall not satisfy the condition precedent to having the brand families of the nonparticipating manufacturer included or retained in the directory.

1 Section 5. Reporting of Information; Escrow Installments.
2 (a) Reporting by distributors. Not later than twenty calendar days
3 after the end of each calendar quarter, and more frequently if so directed by
4 the director, each distributor shall submit such information as the director
5 requires to facilitate compliance with this article, including, but not
6 limited to, a list by brand family of the total number of cigarettes or, in
7 the case of roll your own, the equivalent stick count, for which the
8 distributor affixed stamps during the previous calendar quarter or otherwise
9 paid the tax due for the cigarettes. The distributor shall maintain, and
10 make available to the director and the attorney general, all invoices and
11 documentation of sales of all nonparticipating manufacturer cigarettes and
12 any other information relied upon in reporting to the director for a period
13 of five years.
14 (b) Disclosure of information. The department is authorized to
15 disclose to the attorney general any information received under this article
16 and requested by the attorney general for purposes of determining compliance
17 with and enforcing the provisions of this article. The department and
18 attorney general shall share with each other the information received under
19 this article, and may share the information with other federal, state or
20 local agencies only for purposes of enforcement of this article, section
21 44-7101 or corresponding laws of other states.
22 (c) If a tobacco product manufacturer required to establish a
23 qualified escrow fund under section 44-7101, section 3(b) disputes the
24 attorney general's determination of the amount that the manufacturer is
25 required to deposit into escrow and the attorney general determines that the
26 dispute can likely be resolved by information contained in reports submitted
27 by distributors to the department indicating sales or purchases of the
28 manufacturer's cigarettes, then the attorney general shall produce the
29 relevant portions of the reports to the manufacturer. However, before
30 disclosing the foregoing information, the attorney general may require the
31 manufacturer to provide all records related to its sales of the cigarettes in
32 dispute. The disclosure provided by the attorney general to a tobacco
33 product manufacturer pursuant to this subsection shall be limited to
34 information concerning the cigarettes alleged by the state to be subject to
35 the requirements of section 44-7101, section 3(b), may be used by the
36 manufacturer only for the limited purpose of determining the appropriate
37 escrow deposit, and may not be disclosed by the manufacturer to any third
38 parties.
39 (d) Verification of qualified escrow fund. The attorney general may
40 require at any time from the nonparticipating manufacturer, proof from the
41 financial institution in which the manufacturer has established a qualified
42 escrow fund for the purpose of compliance with section 44-7101, section 3(b)
43 of the amount of money in the fund, exclusive of interest, the amount and the
44 date of each deposit to the fund, and the amount and date of each withdrawal
45 from the fund.

(e) Requests for additional information. In addition to the information required to be submitted pursuant to this article, the director and attorney general may require a distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this article.

(f) Quarterly escrow installments. To promote compliance with the provisions of this article, the attorney general may promulgate regulations requiring tobacco product manufacturers subject to the requirements of section 3(a)(2) to make the escrow deposits required in quarterly installments during the year in which the sales covered by the deposits are made:

(1) In circumstances where the attorney general reasonably concludes that a manufacturer may not fully and timely comply with section 44-7101, section 3(b).

(2) Where manufacturers have not made escrow deposits pursuant to section 44-7101, section 3(b) during the preceding calendar year.

The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

(g) A TOBACCO PRODUCT MANUFACTURER THAT IS SUBJECT TO THE REQUIREMENTS OF SECTION 3(a)(2) SHALL MAKE THE REQUIRED ESCROW DEPOSITS IN QUARTERLY INSTALLMENTS DURING THE YEAR IN WHICH THE SALES COVERED BY THE DEPOSITS ARE MADE. THE ATTORNEY GENERAL MAY REQUIRE THE PRODUCTION OF INFORMATION THAT IS SUFFICIENT TO ENABLE THE ATTORNEY GENERAL TO DETERMINE THE ADEQUACY OF THE AMOUNT OF THE INSTALLMENT DEPOSIT.

Section 6. Penalties and Other Remedies.

(a) License revocation and civil penalty. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a distributor has violated section 3(c) or any regulation adopted pursuant to this article, the director may revoke or suspend the license of the distributor in the manner provided by title 41, chapter 6, article 10 for contested cases. Each stamp affixed and each sale or offer to sell cigarettes in violation of section 3(c) shall constitute a separate violation. The director may also impose a civil penalty in an amount not to exceed the greater of five hundred per cent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of section 3(c) or any regulations promulgated pursuant thereto. The penalty shall be imposed in the manner provided by title 41, chapter 6, article 10 for contested cases.

(b) Contraband and seizure. Any cigarettes that have been sold, offered for sale or possessed for sale in this state in violation of section 3(c) shall be deemed contraband and the cigarettes shall be subject

1 to seizure by the department and forfeiture, and all the cigarettes so seized
2 and forfeited shall be destroyed and not resold.
3 (c) Injunction. The attorney general, on behalf of the director, may
4 seek an injunction to restrain a threatened or actual violation of
5 section 3(c), 5(a) or 5(d) by a distributor and to compel the distributor to
6 comply with those sections. In any action brought pursuant to this section,
7 the state shall be entitled to recover the costs of investigation, costs of
8 the action and reasonable attorney fees.
9 (d) Unlawful sale and distribution. It shall be unlawful for a person
10 to (i) sell or distribute cigarettes, or (ii) acquire, hold, own, possess,
11 transport, import or cause to be imported cigarettes, that the person knows
12 or should know are intended for distribution or sale in the state in
13 violation of section 3(c). A violation of this section is a class 1
14 misdemeanor.
15 (e) Deceptive trade practice. A person who violates section 3(c)
16 engages in an unlawful practice in violation of section 44-1522. Standing to
17 bring an action to enforce title 44, chapter 10, article 7 for violation of
18 section 3(c) shall lie solely with the attorney general.
19 Section 7. Miscellaneous Provisions.
20 (a) Notice and review of determination. A determination of the
21 attorney general to not include or to remove from the directory a brand
22 family or tobacco product manufacturer shall be subject to review as an
23 appealable agency action in the manner prescribed by title 41, chapter 6,
24 article 10.
25 (b) Dates. For the year 2003, the first report of distributors
26 required by section 5(a) shall be due thirty calendar days after the
27 effective date of this article. The certifications by a tobacco product
28 manufacturer described in section 3(a) shall be due forty-five calendar days
29 after the effective date and the directory described in section 3(b) shall be
30 published or made available within ninety calendar days after the effective
31 date.
32 (c) Promulgation of regulations. The department and the attorney
33 general may promulgate regulations necessary to effect the purposes of this
34 article.
35 (d) Recovery of costs and fees by attorney general. In any action
36 brought by the state to enforce this article, the state shall be entitled to
37 recover the costs of investigation, expert witness fees, costs of the action
38 and reasonable attorney fees.
39 (e) Disgorgement of profits for violations of article. If a court
40 determines that a person has violated this article, the court shall order any
41 profits, gain, gross receipts or other benefit from the violation to be
42 disgorged and paid to the state general fund. Unless otherwise expressly
43 provided, the remedies or penalties provided by this article are cumulative
44 to each other and to the remedies or penalties available under all other laws
45 of this state.

1 (f) Construction and severability. If a court of competent
2 jurisdiction finds that the provisions of this article and section 44-7101
3 conflict and cannot be harmonized, then the provisions of section 44-7101
4 shall control. If any section, subsection, subdivision, paragraph, sentence,
5 clause or phrase of this article causes section 44-7101 to no longer
6 constitute a qualifying or model statute, as those terms are defined in the
7 master settlement agreement, then that portion of this article shall not be
8 valid. If any section, subsection, subdivision, paragraph, sentence, clause
9 or phrase of this article is for any reason held to be invalid, unlawful or
10 unconstitutional, the decision shall not affect the validity of the remaining
11 portions of this article or any part thereof.
12 Sec. 12. Exemption from rule making
13 For the purposes of this act, the attorney general and the department
14 of revenue are exempt from the rule making requirements of title 41, chapter
15 6, Arizona Revised Statutes, for one year after the effective date of this
16 act.
17 Sec. 13. Repeal
18 A. Laws 2006, chapter 278, section 34 is repealed.
19 B. Laws 2007, chapter 222, section 18 is repealed.
20 C. Laws 2008, chapter 38, section 3 is repealed.

APPROVED BY THE GOVERNOR MAY 9, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2012.

Passed the House April 16, 2012,

by the following vote: 36 Ayes,

20 Nays, 3 Not Voting 1 vacant

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 27, 2012,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1280

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 24, **20** 12

by the following vote: 23 **Ayes,**

5 **Nays,** 2 **Not Voting**

Steve Pierce LV

President of the Senate

Chairman Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1 **day of** May, **20** 12

at 9:30 **o'clock** A **M.**

mikhail

Secretary to the Governor

Approved this 9th **day of**

May

at 4:35 **o'clock** P. **M.**

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 10th **day of** May, **20** 12

at 8:27 **o'clock** a **M.**

Ken Bennett

Secretary of State

S.B. 1280