

House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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CHAPTER 222

SENATE BILL 1312

AN ACT

AMENDING TITLE 13, CHAPTER 37, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3711; AMENDING SECTIONS 42-1124, 42-2003, 42-3201, 42-3208, 44-7101 AND 44-7111, ARIZONA REVISED STATUTES; RELATING TO TOBACCO.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 37, Arizona Revised Statutes, is amended
3 by adding section 13-3711, to read:

4 13-3711. Unlawful commercial use of cigarette machines; civil
5 penalties; forfeiture; classification

6 A. IT IS UNLAWFUL TO POSSESS, USE OR MAKE AVAILABLE FOR USE FOR
7 COMMERCIAL PURPOSES A TOBACCO PRODUCT ROLLING VENDING MACHINE. A TOBACCO
8 PRODUCT ROLLING VENDING MACHINE LOCATED IN A NONRESIDENTIAL PREMISES IS
9 PRESUMED TO BE POSSESSED, USED OR AVAILABLE FOR USE FOR COMMERCIAL PURPOSES
10 UNLESS THE MACHINE IS FOR SALE. THIS SUBSECTION DOES NOT APPLY TO:

11 1. A TOBACCO PRODUCT ROLLING VENDING MACHINE THAT IS TO BE USED
12 EXCLUSIVELY FOR THE OWNER'S PERSONAL CONSUMPTION OR USE IF THE MACHINE IS NOT
13 LOCATED ON A RETAIL OR OTHER BUSINESS PREMISES.

14 2. TOBACCO PRODUCT MANUFACTURERS WHO HAVE OBTAINED A CURRENT FEDERAL
15 MANUFACTURER OF TOBACCO PRODUCTS PERMIT ISSUED BY THE FEDERAL ALCOHOL AND
16 TOBACCO TAX AND TRADE BUREAU TO OPERATE AS A TOBACCO PRODUCT MANUFACTURER.

17 B. THE DEPARTMENT OF REVENUE IS AUTHORIZED TO SEIZE THE MACHINE AND
18 ALL RELATED TUBES, PAPERS, TOBACCO PRODUCTS AND MATERIALS, WHICH SHALL BE
19 FORFEITED TO THIS STATE FOLLOWING THE PROCESS PRESCRIBED IN SECTION 42-1124.
20 ALL FORFEITED TOBACCO PRODUCTS SHALL ALSO BE DESTROYED PURSUANT TO SECTION
21 42-1124 AND DEEMED CONTRABAND UNDER SECTION 42-3201, SUBSECTION I.

22 C. A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A CLASS 3
23 MISDEMEANOR AND IS ALSO SUBJECT TO THE FOLLOWING:

24 1. THE REVOCATION OR TERMINATION OF A LICENSE ISSUED PURSUANT TO
25 SECTION 42-3201.

26 2. A CIVIL PENALTY NOT TO EXCEED FIFTY THOUSAND DOLLARS FOR EACH
27 VIOLATION.

28 3. AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF THIS
29 SECTION.

30 4. RECOVERY BY THIS STATE FOR THE COSTS OF ENFORCING THIS SECTION OR
31 OF ANY ACTION OR PROCEEDING PERTAINING TO A VIOLATION OF THIS SECTION,
32 INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEY FEES IN THE
33 TRIAL AND APPELLATE COURTS. PAYMENTS SHALL BE DEPOSITED INTO THE STATE
34 GENERAL FUND.

35 Sec. 2. Section 42-1124, Arizona Revised Statutes, is amended to read:

36 42-1124. Failure to affix stamps or pay or account for tax;
37 forfeiture of commodity; sale of forfeited
38 commodity; effect of seizure and sale; request for
39 administrative hearing; definitions

40 A. If the department or its authorized agents or representatives
41 discover any luxury subject to tax under chapter 3 of this title to which
42 official stamps have not been affixed as required or on which the tax has not
43 been paid or accounted for, the department or its agent or representative may
44 seize and take possession of the luxury, and it is deemed forfeited to this
45 state. Except as provided in subsection D or E of this section, the

1 department shall within a reasonable time thereafter, pursuant to a notice
2 posted on the premises or by publication in a newspaper of general
3 circulation in the county where the sale is to take place, not fewer than
4 five days before the date of sale, offer for sale and sell the forfeited
5 luxuries. The department shall pay the proceeds of the sale into the state
6 general fund. The sale shall take place in the county which is most
7 convenient and economical. The department need not offer any property for
8 sale if, in its opinion, the probable cost of sale exceeds the value of the
9 property.

10 B. The seizure and sale do not relieve any person from the penalties
11 provided for violating this title.

12 C. The department of revenue may enter into an interagency agreement
13 with the department of transportation for the purpose of carrying out tobacco
14 enforcement under chapter 3 of this title at ports of entry.

15 D. All cigarettes that are seized for violations under this title
16 shall be forfeited to this state. All cigarettes that are forfeited to this
17 state pursuant to section 13-3711, 36-798.06 or 42-3210 or section 44-7111,
18 section 6(b) shall be destroyed. If a cigarette distributor defrauds this
19 state by knowingly and intentionally failing to keep or make any record,
20 return, report or inventory pertaining to cigarettes, by refusing to pay any
21 luxury tax for cigarettes subject to tax under chapter 3 of this title or by
22 attempting to evade or defeat any requirement of this title, the cigarette
23 distributor shall forfeit to this state all fixtures, equipment and all other
24 materials and personal property that are located on the premises of the
25 cigarette distributor. Alternatively, at the request of the department, the
26 cigarette distributor may be enjoined by an action commenced by the attorney
27 general or a county attorney in the name of the state from engaging or
28 continuing in any business for which a tax is imposed by this chapter until
29 the tax has been paid and until such person has complied with this title.

30 E. The department may sell or otherwise dispose of any cigarettes
31 forfeited to this state on such conditions as it deems most advantageous and
32 just under the circumstances, unless such cigarettes are forfeited pursuant
33 to section 13-3711, 36-798.06 or 42-3210 or section 44-7111, section
34 6(b). The department shall deposit the proceeds of any sales made pursuant
35 to this subsection in the state general fund.

36 F. The department shall give notice of the seizure and forfeiture of
37 cigarettes described in this section by personal service or by certified mail
38 to all persons known by the department to have any right, title or interest
39 in the property. Notice shall include a description of the cigarettes
40 seized, the reason for the seizure and the time and place of the seizure.
41 The following apply to the notice under this subsection:

42 1. Except as provided in paragraph 2 of this subsection, the
43 department shall post and maintain an on-line notice of seizure and
44 forfeiture on its web site for a period of at least six months, beginning no
45 later than ten business days after the date of the personal service of the

1 notice to a person or the date of the mailing of the notice. The on-line
2 notice shall display the date on which the department posts the notice to the
3 web site, which shall serve as the date of publication of the notice.

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

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

13 H. The seizure and forfeiture of cigarettes or other tobacco products
14 by the department is an appealable agency action as defined in section
15 41-1092 and is governed by title 41, chapter 6, article 10 and section
16 42-1251, except that:

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

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

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

41 Sec. 3. Section 42-2003, Arizona Revised Statutes, is amended to read:
42 42-2003. Authorized disclosure of confidential information

43 A. Confidential information relating to:

44 1. A taxpayer may be disclosed to the taxpayer, its successor in
45 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 that
18 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 that 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 or withholding tax.

32 (b) On any tax issue relating to information associated with the
33 reporting of income tax or withholding 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.

43 12. The Arizona commerce authority for its use in:

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

1 (b) Qualifying businesses with a qualified facility for income tax
2 credits under sections 43-1083.03 and 43-1164.04.

3 (c) Fulfilling its annual reporting responsibility pursuant to section
4 41-1511, subsections U and V and section 41-1512, subsections U and V.

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

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

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

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

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

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

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

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

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

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

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

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

36 F. A department employee, in connection with the official duties
37 relating to any audit, collection activity or civil or criminal
38 investigation, may disclose return information to the extent that disclosure
39 is necessary to obtain information that is not otherwise reasonably
40 available. These official duties include the correct determination of and
41 liability for tax, the amount to be collected or the enforcement of other
42 state tax revenue laws.

43 G. If an organization is exempt from this state's income tax as
44 provided in section 43-1201 for any taxable year, the name and address of the
45 organization and the application filed by the organization on which the

1 department made its determination for exemption together with any papers
2 submitted in support of the application and any letter or document issued by
3 the department concerning the application are open to public inspection.

4 H. Confidential information relating to transaction privilege tax, use
5 tax, severance tax, jet fuel excise and use tax and ~~and~~ any other tax
6 collected by the department on behalf of the county may be disclosed to any
7 county, city or town tax official if the information relates to a taxpayer
8 who is or may be taxable by the county, city or town. Any taxpayer
9 information released by the department to the county, city or town:

10 1. May only be used for internal purposes.

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

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

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

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

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

33 K. Except as provided in section 42-2002, subsection C, confidential
34 information, described in section 42-2001, paragraph 1, subdivision (a), item
35 (ii), may be disclosed to law enforcement agencies for law enforcement
36 purposes.

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

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

43 N. Except as provided in section 42-2002, subsection D, a court may
44 order the department to disclose confidential information pertaining to a
45 party to an action. An order shall be made only upon a showing of good cause

1 and that the party seeking the information has made demand upon the taxpayer
2 for the information.

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

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

10 Q. Except as provided in section 42-2002, subsection D, the department
11 of revenue shall release confidential information as requested by the
12 department of economic security pursuant to section 42-1122 or 46-291.
13 Information disclosed under this subsection is limited to the same type of
14 information that the United States internal revenue service is authorized to
15 disclose under section 6103(1)(6) of the internal revenue code.

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

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

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

32 U. For proceedings before the department, the office of administrative
33 hearings, the board of tax appeals or any state or federal court involving
34 penalties that were assessed against a return preparer, an electronic return
35 preparer or a payroll service company pursuant to section 42-1103.02,
36 42-1125.01 or 43-419, confidential information may be disclosed only before
37 the judge or administrative law judge adjudicating the proceeding, the
38 parties to the proceeding and the parties' representatives in the proceeding
39 prior to its introduction into evidence in the proceeding. The confidential
40 information may be introduced as evidence in the proceeding only if the
41 taxpayer's name, the names of any dependents listed on the return, all social
42 security numbers, the taxpayer's address, the taxpayer's signature and any
43 attachments containing any of the foregoing information are redacted and if
44 either:

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

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

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

10 V. The department may disclose to the attorney general confidential
11 information received under section 44-7111 and requested by the attorney
12 general for purposes of determining compliance with and enforcing section
13 44-7111. The department and attorney general shall share with each other the
14 information received under section 44-7111, and may share the information
15 with other federal, state or local agencies only for the purposes of
16 enforcement of section 13-3711, 36-798.06, 44-7101, OR 44-7111 or
17 corresponding laws of other states.

18 W. The department may provide the name and address of qualifying
19 hospitals and qualifying health care organizations, as defined in section
20 42-5001, to a business classified and reporting transaction privilege tax
21 under the utilities classification.

22 X. The department may disclose to the attorney general confidential
23 information requested by the attorney general for the purposes of determining
24 compliance with and enforcing section 13-3711 OR 36-798.06.

25 Y. The department may disclose to an official of any city, town or
26 county in a current agreement or considering a prospective agreement with the
27 department as described in section 42-5032.02, subsection F any information
28 relating to amounts subject to distribution required by section 42-5032.02.
29 Information disclosed by the department under this subsection:

30 1. May only be used by the city, town or county for internal purposes.

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

37 Sec. 4. Section 42-3201, Arizona Revised Statutes, is amended to read:

38 42-3201. Licenses

39 A. Every distributor acquiring or possessing for the purpose of making
40 the initial sale or distribution in this state of any tobacco products on
41 which a tax is imposed by this chapter shall obtain from the department a
42 license to sell tobacco products. The application for the license shall be
43 in the form provided by the department and shall be accompanied by a fee of
44 twenty-five dollars. The form shall state that the identity of the applicant
45 may be posted to the department's web site for public inspection. The

1 application for a license shall include the applicant's name and address, the
2 applicant's principal place of business, locations where the applicant's
3 business is conducted in this state and any other information required by the
4 department. If the applicant is a firm, partnership, limited liability
5 company, limited liability partnership or association, the applicant shall
6 list the name and address of each of the applicant's members. If the
7 applicant is a corporation, the application shall list the name and address
8 of the applicant's officers and any person who directly or indirectly owns an
9 aggregate amount of ten per cent or more of the ownership interest in the
10 corporation. If a licensee changes its business location, the licensee under
11 this subsection shall notify the department within thirty days after a change
12 in location.

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

17 1. Shall be nontransferable.

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

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

22 C. Except for cigarettes that are described in subsection I of this
23 section, an individual who acquires or possesses unstamped cigarettes solely
24 for that individual's own use or consumption in this state must register with
25 the department on a form and in a manner prescribed by the department to
26 remit taxes imposed by this chapter and chapter 5, article 4 of this title.
27 The registration is free of charge. On registration, the individual must pay
28 all applicable taxes imposed by this chapter and chapter 5, article 4 of this
29 title and file on a form and in a manner prescribed by the department within
30 ten calendar days after receipt of unstamped cigarettes.

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

35 E. A person who is convicted of an offense described in section
36 42-1127, subsection E is permanently ineligible to hold a license issued
37 under this section.

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

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

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

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

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

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

9 6. The applicant is in violation of section 13-3711 OR 36-798.06,
10 subsection A.

11 7. Pursuant to section 44-7111, section 6(a), the applicant is in
12 violation of section 44-7111, section 3(c).

13 G. In addition to any other civil or criminal penalty and except as
14 otherwise provided in this section, the department may suspend or revoke a
15 license issued under subsection B of this section if the person violates any
16 requirement under this title more than two times within a three-year period.
17 A suspension or revocation under this subsection shall comply with section
18 41-1092.11, subsection B.

19 H. The department shall publish on its website the names of each
20 person who is issued a license under subsection B of this section. The
21 department shall update the published names at least once each month.

22 I. Tobacco products that are ORDERED, PURCHASED OR TRANSPORTED in A
23 violation of section 13-3711, 36-798.06 or 42-3210 or section 44-7111,
24 section 3(c) or any other statute for which the tobacco products are subject
25 to seizure and destruction are deemed contraband for which taxes that are
26 imposed under this chapter cannot be reported and remitted.

27 Sec. 5. Section 42-3208, Arizona Revised Statutes, is amended to read:

28 42-3208. Return and payment by distributors of tobacco products
29 other than cigarettes

30 A. Except for tobacco products described in subsection F of this
31 section, every distributor of cigars or tobacco products other than
32 cigarettes shall pay the tax imposed by this chapter on all those products
33 received within the state and shall add the amount of the tax to the sales
34 price.

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

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

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

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

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

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

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

8 F. Tobacco products that are ORDERED, PURCHASED OR TRANSPORTED in A
9 violation of section 13-3711, 36-798.06 or 42-3210 or section 44-7111,
10 section 3(c) or any other statute for which the tobacco products are subject
11 to seizure and destruction are deemed contraband for which taxes that are
12 imposed under this chapter cannot be reported and remitted.

13 Sec. 6. Section 44-7101, Arizona Revised Statutes, is amended to read:
14 44-7101. Tobacco product manufacturers escrow accounts; model
15 statute

16 This state enacts the model statute described in the master settlement
17 agreement entered into on November 23, 1998 between this state and certain
18 United States tobacco product manufacturers as exhibit T as follows:

19 Section 1. Findings and Purpose.

20 (a) Cigarette smoking presents serious public health concerns to the
21 state and to the citizens of the state. The surgeon general has determined
22 that smoking causes lung cancer, heart disease and other serious diseases,
23 and that there are hundreds of thousands of tobacco-related deaths in the
24 United States each year. These diseases most often do not appear until many
25 years after the person in question begins smoking.

26 (b) Cigarette smoking also presents serious financial concerns for the
27 state. Under certain health-care programs, the state may have a legal
28 obligation to provide medical assistance to eligible persons for health
29 conditions associated with cigarette smoking, and those persons may have a
30 legal entitlement to receive such medical assistance.

31 (c) Under these programs, the state pays millions of dollars each year
32 to provide medical assistance for these persons for health conditions
33 associated with cigarette smoking.

34 (d) It is the policy of the state that financial burdens imposed on
35 the state by cigarette smoking be borne by tobacco product manufacturers
36 rather than by the state to the extent that such manufacturers either
37 determine to enter into a settlement with the state or are found culpable by
38 the courts.

39 (e) On November 23, 1998, leading United States tobacco product
40 manufacturers entered into a settlement agreement, entitled the "master
41 settlement agreement," with the state. The master settlement agreement
42 obligates these manufacturers, in return for a release of past, present and
43 certain future claims against them as described therein, to pay substantial
44 sums to the state (tied in part to their volume of sales); to fund a national
45 foundation devoted to the interests of public health; and to make substantial

1 changes in their advertising and marketing practices and corporate culture,
2 with the intention of reducing underage smoking.

3 (f) It would be contrary to the policy of the state if tobacco product
4 manufacturers who determine not to enter into such a settlement could use a
5 resulting cost advantage to derive large, short-term profits in the years
6 before liability may arise without ensuring that the state will have an
7 eventual source of recovery from them if they are proven to have acted
8 culpably. It is thus in the interest of the state to require that such
9 manufacturers establish a reserve fund to guarantee a source of compensation
10 and to prevent such manufacturers from deriving large, short-term profits and
11 then becoming judgment-proof before liability may arise.

12 Section 2. Definitions.

13 (a) "Adjusted for inflation" means increased in accordance with the
14 formula for inflation adjustment set forth in exhibit C to the master
15 settlement agreement.

16 (b) "Affiliate" means a person who directly or indirectly owns or
17 controls, is owned or controlled by, or is under common ownership or control
18 with, another person. Solely for purposes of this definition, the terms
19 "owns," "is owned" and "ownership" mean ownership of an equity interest, or
20 the equivalent thereof, of ten percent or more, and the term "person" means
21 an individual, partnership, committee, association, corporation or any other
22 organization or group of persons.

23 (c) "Allocable share" means allocable share as that term is defined in
24 the master settlement agreement.

25 (d) "Cigarette" means any product that contains nicotine, is intended
26 to be burned or heated under ordinary conditions of use, and consists of or
27 contains (1) any roll of tobacco wrapped in paper or in any substance not
28 containing tobacco; or (2) tobacco, in any form, that is functional in the
29 product, which, because of its appearance, the type of tobacco used in the
30 filler, or its packaging and labeling, is likely to be offered to, or
31 purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in
32 any substance containing tobacco which, because of its appearance, the type
33 of tobacco used in the filler, or its packaging and labeling, is likely to be
34 offered to, or purchased by, consumers as a cigarette described in clause (1)
35 of this definition. The term "cigarette" includes "roll-your-own" (i.e., any
36 tobacco which, because of its appearance, type, packaging, or labeling is
37 suitable for use and likely to be offered to, or purchased by, consumers as
38 tobacco for making cigarettes). For purposes of this definition of
39 "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one
40 individual "cigarette."

41 (e) "Master settlement agreement" means the settlement agreement (and
42 related documents) entered into on November 23, 1998 by the state and leading
43 United States tobacco product manufacturers.

44 (f) "Qualified escrow fund" means an escrow arrangement with a
45 federally or state chartered financial institution having no affiliation with

1 any tobacco product manufacturer and having assets of at least \$1,000,000,000
2 where such arrangement requires that such financial institution hold the
3 escrowed funds' principal for the benefit of releasing parties and prohibits
4 the tobacco product manufacturer placing the funds into escrow from using,
5 accessing or directing the use of the funds' principal except as consistent
6 with section 3(B)(2) of this act.

7 (g) "Released claims" means released claims as that term is defined in
8 the master settlement agreement.

9 (h) "Releasing parties" means releasing parties as that term is
10 defined in the master settlement agreement.

11 (i) "Tobacco product manufacturer" means an entity that after the date
12 of enactment of this act directly (and not exclusively through any
13 affiliate):

14 (1) Manufactures cigarettes anywhere that such manufacturer intends to
15 be sold in the United States, including cigarettes intended to be sold in the
16 United States through an importer (except where such importer is an original
17 participating manufacturer (as that term is defined in the master settlement
18 agreement) that will be responsible for the payments under the master
19 settlement agreement with respect to such cigarettes as a result of the
20 provisions of subsection II(MM) of the master settlement agreement and that
21 pays the taxes specified in subsection II(Z) of the master settlement
22 agreement, and provided that the manufacturer of such cigarettes does not
23 market or advertise such cigarettes in the United States);

24 (2) Is the first purchaser anywhere for resale in the United States of
25 cigarettes manufactured anywhere that the manufacturer does not intend to be
26 sold in the United States; or

27 (3) Becomes a successor of an entity described in paragraph (1) or
28 (2).

29 The term "tobacco product manufacturer" shall not include an affiliate
30 of a tobacco product manufacturer unless such affiliate itself falls within
31 any of (1)-(3) above.

32 (j) "TRIBAL LUXURY TAXES" MEANS THOSE TAXES REFERENCED IN SECTION
33 42-3302, SUBSECTION C.

34 ~~(j)~~ (k) "Units sold" means the number of individual cigarettes sold
35 in the state by the applicable tobacco product manufacturer (whether directly
36 or through a distributor, retailer or similar intermediary or intermediaries)
37 during the year in question, as measured by ~~excise taxes collected by the~~
38 ~~state on packs (or "roll your own" tobacco containers) bearing the excise tax~~
39 ~~stamp of the state.~~ STATE TOBACCO EXCISE TAXES COLLECTED OR PRECOLLECTED BY
40 THE STATE AND TRIBAL LUXURY TAXES COLLECTED OR PRECOLLECTED BY AN INDIAN
41 TRIBE. The department of revenue shall promulgate such regulations as are
42 necessary to ascertain the amount of ~~state excise tax paid~~ ANY SUCH TAX
43 COLLECTED OR PRECOLLECTED on the cigarettes of such tobacco product
44 manufacturer for each year. THE TERM UNITS SOLD DOES NOT INCLUDE CIGARETTES
45 DESCRIBED IN SECTION 42-3304, SUBSECTION A, PARAGRAPHS 2 AND 3.

1 Section 3. Requirements.

2 Any tobacco product manufacturer selling cigarettes to consumers within
3 the state (whether directly or through a distributor, retailer or similar
4 intermediary or intermediaries) after the date of enactment of this act shall
5 do one of the following:

6 (a) Become a participating manufacturer (as that term is defined in
7 section II(jj) of the master settlement agreement) and generally perform its
8 financial obligations under the master settlement agreement; or

9 (b) (1) place into a qualified escrow fund by April 15 of the year
10 following the year in question the following amounts (as such amounts are
11 adjusted for inflation):

12 2000: \$.0104712 per unit sold after the date of enactment of this act;

13 For each of 2001 and 2002: \$.0136125 per unit sold;

14 For each of 2003 through 2006: \$.0167539 per unit sold;

15 For each of 2007 and each year thereafter: \$.0188482 per unit sold.

16 (2) A tobacco product manufacturer that places funds into escrow
17 pursuant to paragraph (1) shall receive the interest or other appreciation on
18 such funds as earned. Such funds themselves shall be released from escrow
19 only under the following circumstances:

20 (a) To pay a judgment or settlement on any released claim brought
21 against such tobacco product manufacturer by the state or any releasing party
22 located or residing in the state. Funds shall be released from escrow under
23 this subparagraph (i) in the order in which they were placed into escrow and
24 (ii) only to the extent and at the time necessary to make payments required
25 under such judgment or settlement;

26 (b) To the extent that a tobacco product manufacturer establishes that
27 the amount it was required to place into escrow on account of units sold in
28 the state in a particular year was greater than the master settlement
29 agreement payments, as determined pursuant to section IX(i) of that agreement
30 including after final determination of all adjustments, that such
31 manufacturer would have been required to make on account of such units sold
32 had it been a participating manufacturer, the excess shall be released from
33 escrow and revert back to such tobacco product manufacturer; or

34 (c) To the extent not released from escrow under subparagraphs (a) or
35 (b), funds shall be released from escrow and revert back to such tobacco
36 product manufacturer twenty-five years after the date on which they were
37 placed into escrow.

38 (3) Each tobacco product manufacturer that elects to place funds into
39 escrow pursuant to this subsection shall annually certify to the attorney
40 general that it is in compliance with this subsection. The attorney general
41 may bring a civil action on behalf of the state against any tobacco product
42 manufacturer that fails to place into escrow the funds required under this
43 section. Any tobacco product manufacturer that fails in any year to place
44 into escrow the funds required under this section shall:

1 (a) Be required within 15 days to place such funds into escrow as
2 shall bring it into compliance with this section. The court, upon a finding
3 of a violation of this subsection, may impose a civil penalty to be paid to
4 the general fund of the state in an amount not to exceed 5 percent of the
5 amount improperly withheld from escrow per day of the violation and in a
6 total amount not to exceed 100 percent of the original amount improperly
7 withheld from escrow;

8 (b) In the case of a knowing violation, be required within 15 days to
9 place such funds into escrow as shall bring it into compliance with this
10 section. The court, upon a finding of a knowing violation of this
11 subsection, may impose a civil penalty to be paid to the general fund in an
12 amount not to exceed 15 percent of the amount improperly withheld from escrow
13 per day of the violation and in a total amount not to exceed 300 percent of
14 the original amount improperly withheld from escrow; and

15 (c) In the case of a second knowing violation, be prohibited from
16 selling cigarettes to consumers within the state (whether directly or through
17 a distributor, retailer or similar intermediary) for a period not to exceed 2
18 years.

19 Each failure to make an annual deposit required under this section
20 shall constitute a separate violation and the violator shall pay to the
21 attorney general the costs and attorney fees incurred during a successful
22 prosecution under paragraph (3).

23 (c) NOTWITHSTANDING SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION, A
24 TOBACCO PRODUCT MANUFACTURER THAT ELECTS TO PLACE FUNDS INTO ESCROW PURSUANT
25 TO SUBPARAGRAPH (b), PARAGRAPH 1 OF THIS SECTION MAY MAKE AN IRREVOCABLE
26 ASSIGNMENT OF ITS INTEREST IN THE FUNDS TO THE BENEFIT OF THIS STATE. THE
27 ASSIGNMENT SHALL BE PERMANENT AND APPLY TO ALL FUNDS IN THE ESCROW ACCOUNT OR
28 THAT MAY SUBSEQUENTLY COME INTO THE ACCOUNT, INCLUDING THOSE FUNDS DEPOSITED
29 INTO THE ESCROW ACCOUNT BEFORE THE ASSIGNMENT IS EXECUTED, THOSE FUNDS
30 DEPOSITED INTO THE ESCROW ACCOUNT AFTER THE ASSIGNMENT IS EXECUTED AND
31 INTEREST OR OTHER APPRECIATION ON THE FUNDS. THE TOBACCO PRODUCT
32 MANUFACTURER, THE ATTORNEY GENERAL AND THE FINANCIAL INSTITUTION WHERE THE
33 ESCROW ACCOUNT IS MAINTAINED MAY MAKE AMENDMENTS TO THE QUALIFIED ESCROW
34 ACCOUNT AGREEMENT AS MAY BE NECESSARY TO EFFECTUATE AN ASSIGNMENT OF RIGHTS
35 EXECUTED PURSUANT TO THIS SUBPARAGRAPH OR A WITHDRAWAL OF MONIES FROM THE
36 ESCROW ACCOUNT PURSUANT TO SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION. AN
37 ASSIGNMENT OF RIGHTS EXECUTED PURSUANT TO THIS SUBPARAGRAPH SHALL BE IN
38 WRITING, SHALL BE SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE TOBACCO
39 PRODUCT MANUFACTURER MAKING THE ASSIGNMENT AND SHALL BECOME EFFECTIVE ON
40 DELIVERY OF THE ASSIGNMENT TO THE ATTORNEY GENERAL AND THE FINANCIAL
41 INSTITUTION WHERE THE ESCROW ACCOUNT IS MAINTAINED. AN ASSIGNMENT OF ESCROW
42 FUNDS SHALL NOT BE MADE BY A TOBACCO PRODUCT MANUFACTURER UNLESS AND UNTIL
43 THE ATTORNEY GENERAL PROVIDES WRITTEN APPROVAL TO THE TOBACCO PRODUCT
44 MANUFACTURER.

1 (d) NOTWITHSTANDING SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION, ANY
2 ESCROW FUNDS ASSIGNED TO THE STATE PURSUANT TO SUBPARAGRAPH (c) OF THIS
3 SECTION SHALL BE WITHDRAWN BY THE STATE ON THE APPROVAL OF THE ATTORNEY
4 GENERAL. ANY FUNDS WITHDRAWN PURSUANT TO THIS SUBPARAGRAPH SHALL BE
5 DEPOSITED IN THE CONSUMER PROTECTION-CONSUMER FRAUD REVOLVING FUND
6 ESTABLISHED BY SECTION 44-1531.01 AND SHALL BE CALCULATED ON A
7 DOLLAR-FOR-DOLLAR BASIS AS A CREDIT AGAINST ANY JUDGMENT OR SETTLEMENT
8 DESCRIBED IN SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION THAT MAY BE
9 OBTAINED AGAINST THE TOBACCO PRODUCT MANUFACTURER THAT HAS ASSIGNED THE FUNDS
10 IN THE ESCROW ACCOUNT. THIS SECTION DOES NOT RELIEVE A TOBACCO PRODUCT
11 MANUFACTURER FROM ANY PAST, CURRENT OR FUTURE OBLIGATIONS THAT THE
12 MANUFACTURER MAY HAVE PURSUANT TO THIS SECTION OR SECTION 44-7111.

13 Section 4. Effect of judicial action.

14 If section 3, subparagraph (b), paragraph 2, subdivision (b) is held by
15 a court of competent jurisdiction to be unconstitutional, the following
16 provisions apply in its place:

17 To the extent that a tobacco product manufacturer establishes
18 that the amount it was required to place into escrow in a
19 particular year was greater than the state's allocable share of
20 the total payments that such manufacturer would have been
21 required to make in that year under the master settlement
22 agreement (as determined pursuant to section IX(i)(2) of the
23 master settlement agreement, and before any of the adjustments
24 or offsets described in section IX(i)(3) of that agreement other
25 than the inflation adjustment) had it been a participating
26 manufacturer, the excess shall be released from escrow and
27 revert back to such tobacco product manufacturer; or

28 Any holding of unconstitutionality or the repeal of section 3,
29 subparagraph (b), paragraph 2, subdivision (b) of this statute does not
30 impair or invalidate any other portion of this statute or the application of
31 this statute to any other person or circumstance and the remaining portions
32 of this statute continue in full force and effect.

33 Sec. 7. Section 44-7111, Arizona Revised Statutes, is amended to read:
34 44-7111. Tobacco; nonparticipating manufacturers; civil
35 penalty; violation; classification

36 This state enacts the model nonparticipating manufacturers legislation
37 as follows:

38 Section 1. Findings and Purpose.

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

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

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

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

18 (2) Neither a tobacco product manufacturer nor brand family shall be
19 included or retained in the directory if the attorney general concludes, in
20 the case of a nonparticipating manufacturer, that (i) any escrow payment
21 required pursuant to section 44-7101, section 3(b) for any period for any
22 brand family, whether or not listed by the nonparticipating manufacturer, has
23 not been fully paid into a qualified escrow fund governed by a qualified
24 escrow agreement that has been approved by the attorney general, or (ii) any
25 outstanding final judgment, including interest thereon, for a violation of
26 section 44-7101 has not been fully satisfied for the brand family or the
27 manufacturer.

28 (3) The attorney general shall update the directory as necessary in
29 order to correct mistakes and to add or remove a tobacco product manufacturer
30 or brand family to keep the directory in conformity with the requirements of
31 this article.

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

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

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

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

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

14 (d) A NONPARTICIPATING MANUFACTURER SHALL POST A BOND FOR THE
15 EXCLUSIVE BENEFIT OF THIS STATE IF (i) ITS CIGARETTES WERE NOT SOLD IN THE
16 STATE DURING ANY ONE OF THE FOUR PRECEDING CALENDAR QUARTERS, (ii) IT OR ANY
17 PERSON AFFILIATED WITH IT FAILED TO MAKE A FULL AND TIMELY ESCROW DEPOSIT DUE
18 UNDER SECTION 44-7101 DURING ANY OF THE FIVE PRECEDING CALENDAR YEARS, UNLESS
19 THE FAILURE WAS NOT KNOWING OR RECKLESS AND WAS PROMPTLY CURED ON NOTICE OR
20 (iii) IT OR ANY PERSON AFFILIATED WITH IT, OR ANY OF ITS BRANDS OR BRANDS OF
21 A PERSON AFFILIATED WITH IT, WERE REMOVED FROM THE STATE DIRECTORY OF ANY
22 STATE DURING ANY OF THE FIVE PRECEDING CALENDAR YEARS, UNLESS THE REMOVAL WAS
23 DETERMINED TO HAVE BEEN ERRONEOUS OR ILLEGAL. ENTITIES ARE AFFILIATED WITH
24 EACH OTHER IF ONE DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES
25 CONTROLS OR IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH THE OTHER.

26 (e) THE BOND SHALL BE POSTED AT LEAST TEN DAYS IN ADVANCE OF EACH
27 CALENDAR QUARTER AS A CONDITION TO THE NONPARTICIPATING MANUFACTURER AND ITS
28 BRAND FAMILIES BEING INCLUDED IN THE STATE DIRECTORY FOR THAT QUARTER. THE
29 AMOUNT OF THE BOND SHALL BE THE GREATER OF (i) THE GREATEST REQUIRED ESCROW
30 AMOUNT DUE FROM THE NONPARTICIPATING MANUFACTURER OR ITS PREDECESSOR FOR ANY
31 OF THE TWELVE PRECEDING CALENDAR QUARTERS OR (ii) FIFTY THOUSAND DOLLARS.

32 (f) IF A NONPARTICIPATING MANUFACTURER THAT POSTED A BOND HAS FAILED
33 TO MAKE OR HAVE MADE ON ITS BEHALF DEPOSITS EQUAL TO THE FULL AMOUNT OWED FOR
34 A QUARTER WITHIN FIFTEEN DAYS FOLLOWING THE DUE DATE OF THE QUARTER UNDER
35 SECTION 5, SUBPARAGRAPH (g), THE STATE MAY EXECUTE ON THE BOND IN THE AMOUNT
36 EQUAL TO ANY REMAINING AMOUNT OF THE ESCROW DUE. AMOUNTS THAT THE STATE
37 COLLECTS ON A BOND SHALL BE DEPOSITED INTO THE STATE TREASURY AND SHALL
38 REDUCE THE AMOUNT OF ESCROW DUE FROM THAT NONPARTICIPATING MANUFACTURER IN
39 THE DOLLAR AMOUNT COLLECTED. ESCROW OBLIGATIONS ABOVE THE AMOUNT COLLECTED
40 ON THE BOND REMAIN DUE FROM THAT NONPARTICIPATING MANUFACTURER AND, AS
41 PROVIDED IN ANY JOINT AND SEVERAL PROVISION IN THIS SECTION, FROM THE
42 IMPORTERS THAT SOLD ITS CIGARETTES DURING THAT CALENDAR QUARTER.

43 (g) THE OFFICE OF THE ATTORNEY GENERAL SHALL ADOPT RULES NECESSARY TO
44 IMPLEMENT SUBPARAGRAPHS (d), (e) AND (f) OF THIS SECTION.

1 (h) NONPARTICIPATING MANUFACTURERS LOCATED OUTSIDE THE UNITED STATES
2 MUST PROVIDE A DECLARATION IN A FORM PRESCRIBED BY THE ATTORNEY GENERAL FROM
3 EACH OF ITS IMPORTERS INTO THE UNITED STATES OF ANY OF ITS BRAND FAMILIES,
4 THAT THE IMPORTER ACCEPTS JOINT AND SEVERAL LIABILITY WITH THE
5 NONPARTICIPATING MANUFACTURER FOR ALL ESCROW DEPOSITS DUE PURSUANT TO SECTION
6 44-7101 AS WELL AS ALL PENALTIES AND OTHER RELIEF AVAILABLE TO THE STATE
7 PURSUANT TO SECTION 44-7101 AND THIS SECTION. THE DECLARATION SHALL APPOINT
8 A RESIDENT AGENT FOR SERVICE OF PROCESS IN THIS STATE PURSUANT TO SECTION 4.
9 THE DECLARATIONS SHALL BE SUBMITTED AS PART OF THE CERTIFICATIONS REQUIRED
10 PURSUANT TO THIS SECTION AND UPDATED AT LEAST THIRTY DAYS BEFORE ANY OTHER
11 IMPORTER BEGINS THE IMPORTATION OF THE MANUFACTURER'S CIGARETTES. FAILURE TO
12 COMPLY WITH THIS SUBPARAGRAPH IS GROUNDS FOR REMOVAL FROM THE DIRECTORY. FOR
13 THE PURPOSES OF THIS SUBPARAGRAPH, "IMPORTER" HAS THE SAME MEANING AS IN
14 27 CODE OF FEDERAL REGULATIONS SECTION 41.11 (2012).

15 (i) THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO NOT RETAIN OR
16 REFUSE TO INCLUDE IN THE DIRECTORY ANY NONPARTICIPATING MANUFACTURER OR THE
17 MANUFACTURER'S BRAND FAMILIES, THAT (i) DOES NOT CERTIFY THAT IT IS SUBJECT
18 TO THE ENFORCEMENT OF SECTION 44-7101, THIS SECTION AND SECTION 36-798.06
19 WITHOUT ANY IMMUNITY, (ii) PROVIDES INCORRECT, FALSE OR MISLEADING STATEMENTS
20 IN ANY CERTIFICATION SUBMITTED TO THIS STATE PURSUANT TO SECTION 44-7101 OR
21 THIS SECTION WITH REGARD TO ANY YEAR OR (iii) WAS PREVIOUSLY OR IS CURRENTLY
22 NOT IN COMPLIANCE WITH ANY OTHER FEDERAL OR STATE LAWS, INCLUDING ANOTHER
23 STATE'S QUALIFYING STATUTE AS DEFINED IN THE MASTER SETTLEMENT AGREEMENT OR
24 IF THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT THE TOBACCO PRODUCT
25 MANUFACTURER WILL NOT COMPLY WITH THE LAWS.

26 (j) THE ATTORNEY GENERAL HAS THE AUTHORITY TO REQUIRE ANY
27 NONPARTICIPATING MANUFACTURER TO SUBMIT ALL INFORMATION, CERTIFICATIONS,
28 AFFIDAVITS AND OTHER MATERIALS THAT THE ATTORNEY GENERAL DEEMS APPROPRIATE TO
29 DETERMINE COMPLIANCE WITH THIS SECTION AND OTHER RELATED LAWS, INCLUDING THE
30 GROUNDS FOR NOT RETAINING OR NOT INCLUDING IN THE DIRECTORY ANY
31 NONPARTICIPATING MANUFACTURER OR THE MANUFACTURER'S BRAND FAMILIES.

32 Section 4. Agent for Service of Process.

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

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

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

18 Section 5. Reporting of Information; Escrow Installments.

19 (a) Reporting by distributors. Not later than twenty calendar days
20 after the end of each calendar quarter, and more frequently if so directed by
21 the director, each distributor shall submit such information as the director
22 requires to facilitate compliance with this article, including, but not
23 limited to, a list by brand family of the total number of cigarettes or, in
24 the case of roll your own, the equivalent stick count, for which the
25 distributor affixed stamps during the previous calendar quarter or otherwise
26 paid the tax due for the cigarettes. The distributor shall maintain, and
27 make available to the director and the attorney general, all invoices and
28 documentation of sales of all nonparticipating manufacturer cigarettes and
29 any other information relied upon in reporting to the director for a period
30 of five years.

31 (b) Disclosure of information. The department is authorized to
32 disclose to the attorney general any information received under this article
33 and requested by the attorney general for purposes of determining compliance
34 with and enforcing the provisions of this article. The department and
35 attorney general shall share with each other the information received under
36 this article, and may share the information with other federal, state or
37 local agencies only for purposes of enforcement of this article, section
38 44-7101 or corresponding laws of other states.

39 (c) If a tobacco product manufacturer required to establish a
40 qualified escrow fund under section 44-7101, section 3(b) disputes the
41 attorney general's determination of the amount that the manufacturer is
42 required to deposit into escrow and the attorney general determines that the
43 dispute can likely be resolved by information contained in reports submitted
44 by distributors to the department indicating sales or purchases of the
45 manufacturer's cigarettes, then the attorney general shall produce the

1 relevant portions of the reports to the manufacturer. However, before
2 disclosing the foregoing information, the attorney general may require the
3 manufacturer to provide all records related to its sales of the cigarettes in
4 dispute. The disclosure provided by the attorney general to a tobacco
5 product manufacturer pursuant to this subsection shall be limited to
6 information concerning the cigarettes alleged by the state to be subject to
7 the requirements of section 44-7101, section 3(b), may be used by the
8 manufacturer only for the limited purpose of determining the appropriate
9 escrow deposit, and may not be disclosed by the manufacturer to any third
10 parties.

11 (d) Verification of qualified escrow fund. The attorney general may
12 require at any time from the nonparticipating manufacturer, proof from the
13 financial institution in which the manufacturer has established a qualified
14 escrow fund for the purpose of compliance with section 44-7101, section 3(b)
15 of the amount of money in the fund, exclusive of interest, the amount and the
16 date of each deposit to the fund, and the amount and date of each withdrawal
17 from the fund.

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

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

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

34 (2) Where manufacturers have not made escrow deposits pursuant to
35 section 44-7101, section 3(b) during the preceding calendar year.
36 The attorney general may require production of information sufficient to
37 enable the attorney general to determine the adequacy of the amount of the
38 installment deposit.

39 (g) A tobacco product manufacturer that is subject to the requirements
40 of section 3(a)(2) shall make the required escrow deposits in quarterly
41 installments during the year in which the sales covered by the deposits are
42 made. The attorney general may require the production of information that is
43 sufficient to enable the attorney general to determine the adequacy of the
44 amount of the installment deposit.

1 Section 6. Penalties and Other Remedies.

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

15 (b) Contraband and seizure. Any cigarettes that have been sold,
16 offered for sale or possessed for sale in this state in violation of
17 section 3(c) shall be deemed contraband and the cigarettes shall be subject
18 to seizure by the department and forfeiture, and all the cigarettes so seized
19 and forfeited shall be destroyed and not resold.

20 (c) Injunction. The attorney general, on behalf of the director, may
21 seek an injunction to restrain a threatened or actual violation of
22 section 3(c), 5(a) or 5(d) by a distributor and to compel the distributor to
23 comply with those sections. In any action brought pursuant to this section,
24 the state shall be entitled to recover the costs of investigation, costs of
25 the action and reasonable attorney fees.

26 (d) Unlawful sale and distribution. It shall be unlawful for a person
27 to (i) sell or distribute cigarettes, or (ii) acquire, hold, own, possess,
28 transport, import or cause to be imported cigarettes, that the person knows
29 or should know are intended for distribution or sale in the state in
30 violation of section 3(c). A violation of this section is a class 1
31 misdemeanor.

32 (e) Deceptive trade practice. A person who violates section 3(c)
33 engages in an unlawful practice in violation of section 44-1522. Standing to
34 bring an action to enforce title 44, chapter 10, article 7 for violation of
35 section 3(c) shall lie solely with the attorney general.

36 Section 7. Miscellaneous Provisions.

37 (a) Notice and review of determination. A determination of the
38 attorney general to not include or to remove from the directory a brand
39 family or tobacco product manufacturer shall be subject to review as an
40 appealable agency action in the manner prescribed by title 41, chapter 6,
41 article 10.

42 (b) Dates. For the year 2003, the first report of distributors
43 required by section 5(a) shall be due thirty calendar days after the
44 effective date of this article. The certifications by a tobacco product
45 manufacturer described in section 3(a) shall be due forty-five calendar days

1 after the effective date and the directory described in section 3(b) shall be
2 published or made available within ninety calendar days after the effective
3 date.

4 (c) Promulgation of regulations. The department and the attorney
5 general may promulgate regulations necessary to effect the purposes of this
6 article.

7 (d) Recovery of costs and fees by attorney general. In any action
8 brought by the state to enforce this article, the state shall be entitled to
9 recover the costs of investigation, expert witness fees, costs of the action
10 and reasonable attorney fees.

11 (e) Disgorgement of profits for violations of article. If a court
12 determines that a person has violated this article, the court shall order any
13 profits, gain, gross receipts or other benefit from the violation to be
14 disgorged and paid to the state general fund. Unless otherwise expressly
15 provided, the remedies or penalties provided by this article are cumulative
16 to each other and to the remedies or penalties available under all other laws
17 of this state.

18 (f) Construction and severability. If a court of competent
19 jurisdiction finds that the provisions of this article and section 44-7101
20 conflict and cannot be harmonized, then the provisions of section 44-7101
21 shall control. If any section, subsection, subdivision, paragraph, sentence,
22 clause or phrase of this article causes section 44-7101 to no longer
23 constitute a qualifying or model statute, as those terms are defined in the
24 master settlement agreement, then that portion of this article shall not be
25 valid. If any section, subsection, subdivision, paragraph, sentence, clause
26 or phrase of this article is for any reason held to be invalid, unlawful or
27 unconstitutional, the decision shall not affect the validity of the remaining
28 portions of this article or any part thereof.

29 Sec. 8. Exemption from rulemaking

30 For the purposes of implementing sections 44-7101 and 44-7111, Arizona
31 Revised Statutes, as amended by this act, the Attorney General is exempt from
32 the rule making requirements of title 41, chapter 6, Arizona Revised
33 Statutes, for one year after the effective date of this act.

APPROVED BY THE GOVERNOR JUNE 19, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 19, 2013.

Passed the House May 8, 2013,

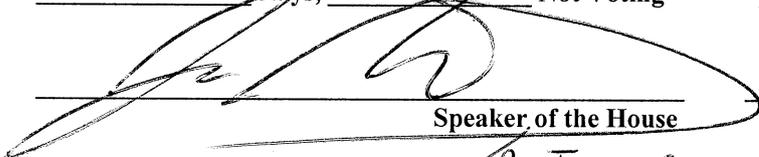
Passed the Senate March 4, 2013,

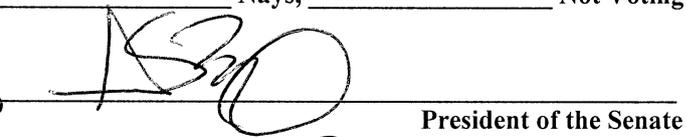
by the following vote: 53 Ayes,

by the following vote: 28 Ayes,

5 Nays, 2 Not Voting

0 Nays, 2 Not Voting





Speaker of the House

President of the Senate

Cheryl Laube
Pro Tempore
Chief Clerk of the House

Chaiment Bellinger
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. 1312

SENATE CONCURS IN HOUSE.
AMENDMENTS AND FINAL PASSAGE

Passed the Senate June 13, 2013

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

[Signature]
President of the Senate

Cherrin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

13 day of June, 2013

at 4:25 o'clock P M.

Michaels Howard
Secretary to the Governor

Approved this 17th day of

June

at 1:45 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 19th day of June, 2013

at 4:53 o'clock P M.

[Signature]
Secretary of State

S.B. 1312