Senate Engrossed House Bill

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KEN BENNETT
SECRETARY OF STATE

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CHAPTER 160

HOUSE BILL 2674

AN ACT

AMENDING SECTIONS 13-3711 AND 42-1125, ARIZONA REVISED STATUTES; AMENDING SECTION 42-2003, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, FIRST SPECIAL SESSION, CHAPTER 9, SECTION 3 AND LAWS 2013, FIRST REGULAR SESSION, CHAPTER 40, SECTION 2, CHAPTER 114, SECTION 6 AND CHAPTER 222, SECTION 3; AMENDING SECTION 42-2003, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 255, SECTION 2; AMENDING SECTIONS 42-3001, 42-3006, 42-3008, 42-3010, 42-3053, 42-3151 AND 42-3201, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3201.02; AMENDING SECTIONS 42-3202, 42-3202.01, 42-3203, 42-3205, 42-3206, 42-3207, 42-3208, 42-3209, 42-3211, 42-3212 AND 42-3301, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 3, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 42-3303.01 AND 42-3308; AMENDING SECTIONS 44-7101 AND 44-7111, ARIZONA REVISED STATUTES; RELATING TO TOBACCO TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-3711, Arizona Revised Statutes, is amended to read:

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

A. It is unlawful to possess, use or make available for use for commercial purposes a tobacco product rolling vending machine. A tobacco product rolling vending machine located in a nonresidential premises is presumed to be possessed, used or available for use for commercial purposes unless the machine is for sale. This subsection does not apply to:

1. A tobacco product rolling vending machine that is to be used exclusively for the owner's personal consumption or use if the machine is not located on a retail or other business premises.

2. Tobacco product manufacturers who have obtained a current federal manufacturer of tobacco products permit issued by the federal alcohol and tobacco tax and trade bureau to operate as a tobacco product manufacturer.

B. The department of revenue is authorized to seize the machine and all related tubes, papers, tobacco products and materials, which shall be forfeited to this state following the process prescribed in section 42-1124. All forfeited tobacco products shall also be destroyed pursuant to section 42-1124 and deemed contraband under section 42-3201, subsection ~~I~~ K.

C. A person who knowingly violates this section is guilty of a class 3 misdemeanor and is also subject to the following:

1. The revocation or termination of a license issued pursuant to section 42-3201.

2. A civil penalty not to exceed fifty thousand dollars for each violation.

3. An injunction to restrain a threatened or actual violation of this section.

4. Recovery by this state for the costs of enforcing this section or of any action or proceeding pertaining to a violation of this section, including the costs of investigation and reasonable attorney fees in the trial and appellate courts. Payments shall be deposited into the state general fund.

Sec. 2. Section 42-1125, Arizona Revised Statutes, is amended to read:

42-1125. Civil penalties; definition

A. If a taxpayer fails to make and file a return for a tax administered pursuant to this article on or before the due date of the return or the due date as extended by the department, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, four and one-half per cent of the tax required to be shown on such return shall be added to the tax for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five per cent of the tax found to be remaining due. The penalty so added to the tax is due and payable on notice and demand from

the department. For the purpose of computing the penalty imposed under this subsection, the amount required to be shown as tax on a return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return. If the amount required to be shown as tax on a return is less than the amount shown as tax on such return the penalty described in this subsection shall be applied by substituting such lower amount.

B. If a taxpayer fails or refuses to file a return on notice and demand by the department, the taxpayer shall pay a penalty of twenty-five per cent of the tax, which is due and payable on notice and demand by the department, in addition to any penalty prescribed by subsection A of this section, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. This penalty is payable on notice and demand from the department.

C. If a taxpayer fails or refuses to furnish any information requested in writing by the department, the department may add a penalty of twenty-five per cent of the amount of any deficiency tax assessed by the department concerning the assessment of which the information was required, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.

D. If a person fails to pay the amount shown as tax on any return within the time prescribed, a penalty of one-half of one per cent, not to exceed a total of ten per cent, shall be added to the amount shown as tax for each month or fraction of a month during which the failure continues, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. If the department determines that the person's failure to pay was due to reasonable cause and not due to wilful neglect and that a payment agreement pursuant to section 42-2057 is appropriate, the department shall not impose the penalty unless the taxpayer fails to comply with the payment agreement. If the taxpayer is also subject to a penalty under subsection A of this section for the same tax period, the total penalties under subsection A of this section and this subsection shall not exceed twenty-five per cent. For the purpose of computing the penalty imposed under this subsection:

1. The amount shown as tax on a return shall be reduced by the amount of any part of the tax that is paid on or before the beginning of that month and by the amount of any credit against the tax that may be claimed on the return.

2. If the amount shown as tax on a return is greater than the amount required to be shown as tax on that return, the penalty shall be applied by substituting the lower amount.

E. If a person fails to pay any amount required to be shown on any return that is not so shown within twenty-one calendar days after the date of notice and demand, a penalty of one-half of one per cent, not to exceed a total of ten per cent, shall be added to the amount of tax for each month or

fraction of a month during which the failure continues, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. If the taxpayer is also subject to penalty under subsection A of this section for the same tax period, the total penalties under subsection A of this section and this subsection shall not exceed twenty-five per cent. For the purpose of computing the penalty imposed under this subsection, any amount required to be shown on any return shall be reduced by the amount of any part of the tax that is paid on or before the beginning of that month and by the amount of any credit against the tax that may be claimed on the return.

F. In the case of a deficiency, for which a determination is made of an additional amount due, which is due to negligence but without intent to defraud, the person shall pay a penalty of ten per cent of the amount of the deficiency.

G. If part of a deficiency is due to fraud with intent to evade tax, fifty per cent of the total amount of the tax, in addition to the deficiency, interest and other penalties provided in this section, shall be assessed, collected and paid as if it were a deficiency.

H. If the amount, whether determined by the department or the taxpayer, required to be withheld by the employer pursuant to title 43, chapter 4 is not paid to the department on or before the date prescribed for its remittance, the department may add a penalty of twenty-five per cent of the amount required to be withheld and paid, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.

I. A person who, with or without intent to evade any requirement of this article or any lawful administrative rule of the department of revenue under this article, fails to file a return or to supply information required under this article or who, with or without such intent, makes, prepares, renders, signs or verifies a false or fraudulent return or statement or supplies false or fraudulent information shall pay a penalty of not more than one thousand dollars. This penalty shall be recovered by the department of law in the name of this state by an action in any court of competent jurisdiction.

J. If the taxpayer files what purports to be a return of any tax administered pursuant to this article but that is frivolous or that is made with the intent to delay or impede the administration of the tax laws, that person shall pay a penalty of five hundred dollars.

K. If ~~a taxpayer~~ ANY PERSON who is required to file or provide an information return under this title or title 43 OR WHO IS REQUIRED TO FILE OR PROVIDE A RETURN OR REPORT UNDER CHAPTER 3 OF THIS TITLE fails to file the return OR REPORT at the prescribed time OR IN THE MANNER REQUIRED, or files a return OR REPORT that fails to show the information required, that ~~taxpayer~~ PERSON shall pay a penalty of one hundred dollars for each month or fraction of a month during which the failure continues unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The total

penalties FOR EACH RETURN OR REPORT under this subsection shall not exceed five hundred dollars.

L. If it appears to the superior court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position is frivolous or groundless, the court may award damages in an amount not to exceed one thousand dollars to this state. Damages so awarded shall be collected as a part of the tax.

M. A person who is required under section 43-413 to furnish a statement to an employee and who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement required by section 43-413, is for each such failure subject to a penalty of fifty dollars.

N. A person who is required to collect or truthfully account for and pay a tax administered pursuant to this article, including any luxury privilege tax, and who wilfully fails to collect the tax or truthfully account for and pay the tax, or wilfully attempts in any manner to evade or defeat the tax or its payment, is, in addition to other penalties provided by law, liable for a penalty equal to the total amount of the tax evaded, not collected or not accounted for and paid. Except as provided in subsections T, U and V of this section, no other penalty under this section relating to failure to pay tax may be imposed for any offense to which this subsection applies.

O. For reporting periods beginning from and after February 28, 2011, if a taxpayer who is required under section 42-1129 to make payment by electronic funds transfer fails to do so, that taxpayer shall pay a penalty of five per cent of the amount of the payment not made by electronic funds transfer unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. FOR THE REPORTING PERIODS BEGINNING ON JULY 1, 2015, THE PENALTY IN THIS SUBSECTION APPLIES TO ANY TAXPAYER WHO IS REQUIRED UNDER SECTION 42-3053 TO MAKE PAYMENT BY ELECTRONIC FUNDS TRANSFER AND FAILS TO DO SO UNLESS IT IS SHOWN THAT THE FAILURE IS DUE TO REASONABLE CAUSE AND NOT DUE TO WILFUL NEGLECT.

P. Unless due to reasonable cause and not to wilful neglect:

1. A person who fails to provide that person's taxpayer identification number in any return, statement or other document as required by section 42-1105, subsection A shall pay a penalty of five dollars for each such failure.

2. A person, when filing any return, statement or other document for compensation on behalf of a taxpayer, who fails to include that person's own taxpayer identification number and the taxpayer's identification number shall pay a penalty of fifty dollars for each such failure.

3. A person, when filing any return, statement or other document without compensation on behalf of a taxpayer, who fails to include that person's own taxpayer identification number and the taxpayer's identification number is not subject to a penalty.

No other penalty under this section may be imposed if the only violation is failure to provide taxpayer identification numbers.

Q. If a taxpayer fails to pay the full amount of estimated tax required by title 43, chapter 5, article 6, a penalty is assessed equal to the amount of interest that would otherwise accrue under section 42-1123 on the amount not paid for the period of nonpayment, not exceeding ten per cent of the amount not paid. The penalty prescribed by this subsection is in lieu of any other penalty otherwise prescribed by this section and in lieu of interest prescribed by section 42-1123.

R. The department of law, with the consent of the department of revenue, may compromise any penalty for which it may bring an action under this section.

S. Penalties shall not be assessed under subsection D of this section on additional amounts of tax paid by a taxpayer at the time the taxpayer voluntarily files an amended return. This subsection does not apply if:

1. The taxpayer is under audit by the department.

2. The amended return was filed on demand or request by the department.

3. The total additional tax paid and due for the tax period represents a substantial understatement of tax liability. For the purposes of this paragraph, there is a substantial understatement of tax for any tax period if the amount of the understatement for the tax period exceeds the greater of ten per cent of the actual tax liability for the tax period or two thousand dollars.

T. In addition to other penalties provided by law, a person who knowingly and intentionally does not comply with any requirement under chapter 3, article 5 of this title relating to cigarettes shall pay a penalty of one thousand dollars. A person who knowingly and intentionally does not pay any luxury tax that relates to cigarettes imposed by chapter 3 of this title shall pay a penalty that is equal to ten per cent of the amount of the unpaid tax.

U. A cigarette manufacturer, cigarette importer or cigarette distributor, as defined in section 42-3001, who knowingly and intentionally sells or possesses cigarettes with false manufacturing labels or cigarettes with counterfeit tax stamps, or who obtains cigarettes through the use of a counterfeit license, shall pay the following penalties:

1. For a first violation involving two thousand or more cigarettes, one thousand dollars.

2. For a subsequent violation involving two thousand or more cigarettes, five thousand dollars.

V. The civil penalties in this section are in addition to any civil penalty under chapter 3, article 5 of this title.

W. For the purposes of this section, and only as applied to the taxes imposed by chapter 5, articles 1 through 6 and chapter 6, articles 1, 2 and 3 of this title, "reasonable cause" means a reasonable basis for the taxpayer

to believe that the tax did not apply to the business activity or the storage, use or consumption of the taxpayer's tangible personal property in this state.

Sec. 3. Section 42-2003, Arizona Revised Statutes, as amended by Laws 2013, first special session, chapter 9, section 3 and Laws 2013, first regular session, chapter 40, section 2, chapter 114, section 6 and chapter 222, section 3, is amended to read:

42-2003. Authorized disclosure of confidential information

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 taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary.

2. A corporate taxpayer may be disclosed to any principal officer, any person designated by a principal officer or any person designated in a resolution by the corporate board of directors or other similar governing body.

3. A partnership may be disclosed to any partner of the partnership. This exception does not include disclosure of confidential information of a particular partner unless otherwise authorized.

4. An estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the department finds that the heir, next of kin or beneficiary has a material interest which will be affected by the confidential information.

5. A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the department finds that the grantor or beneficiary has a material interest that will be affected by the confidential information.

6. Any taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

7. The name and taxpayer identification numbers of persons issued direct payment permits may be publicly disclosed.

B. Confidential information may be disclosed to:

1. Any employee of the department whose official duties involve tax administration.

2. The office of the attorney general solely for its use in preparation for, or in an investigation that may result in, any proceeding involving tax administration before the department or any other agency or board of this state, or before any grand jury or any state or federal court.

3. The department of liquor licenses and control for its use in determining whether a spirituous liquor licensee has paid all transaction privilege taxes and affiliated excise taxes incurred as a result of the sale of spirituous liquor, as defined in section 4-101, at the licensed

establishment and imposed on the licensed establishments by this state and its political subdivisions.

4. Other state tax officials whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with an investigation or any other proceeding conducted by the official. Any disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the official.

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between the department and the foreign country, agency, state, Indian tribe or organization:

(a) The United States internal revenue service, alcohol and tobacco tax and trade bureau of the United States treasury, United States bureau of alcohol, tobacco, firearms and explosives of the United States department of justice, United States drug enforcement agency and federal bureau of investigation.

(b) A state tax official of another state.

(c) An organization of states, federation of tax administrators or multistate tax commission that operates an information exchange for tax administration purposes.

(d) An agency, official or organization of a foreign country with responsibilities that are comparable to those listed in subdivision (a), (b) or (c) of this paragraph.

(e) An agency, official or organization of an Indian tribal government with responsibilities comparable to the responsibilities of the agencies, officials or organizations identified in subdivision (a), (b) or (c) of this paragraph.

6. The auditor general, in connection with any audit of the department subject to the restrictions in section 42-2002, subsection D.

7. Any person to the extent necessary for effective tax administration in connection with:

(a) The processing, storage, transmission, destruction and reproduction of the information.

(b) The programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.

(c) The collection of the taxpayer's civil liability.

8. The office of administrative hearings relating to taxes administered by the department pursuant to section 42-1101, but the department shall not disclose any confidential information:

(a) Regarding income tax or withholding tax.

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

9. The United States treasury inspector general for tax administration for the purpose of reporting a violation of internal revenue code section 7213A (26 United States Code section 7213A), unauthorized inspection of returns or return information.

10. The financial management service of the United States treasury department for use in the treasury offset program.

11. The United States treasury department or its authorized agent for use in the state income tax levy program and in the electronic federal tax payment system.

12. The Arizona commerce authority for its use in:

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

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

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

(d) Certifying computer data centers for tax relief under section 41-1519.

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, surcharges and penalties prescribed by title 28.

16. The Arizona health care cost containment system administration for its use in administering nursing facility provider assessments.

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, on 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 TOBACCO PRODUCT 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 that 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 on 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 any other tax collected by the department on behalf of the county 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 1, subdivision (a), item (ii), 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 TO THE ATTORNEY GENERAL confidential information as requested by the attorney general for purposes of determining compliance with ~~and~~ OR enforcing ~~section~~ ANY OF THE FOLLOWING:

1. ANY PUBLIC HEALTH CONTROL LAW RELATING TO TOBACCO SALES AS PROVIDED UNDER TITLE 36, CHAPTER 6, ARTICLE 14.

2. ANY LAW RELATING TO REDUCED CIGARETTE IGNITION PROPENSITY STANDARDS AS PROVIDED UNDER TITLE 41, CHAPTER 16, ARTICLE 3.1.

3. SECTIONS 44-7101 AND 44-7111, the master settlement agreement referred to ~~therein~~ IN THOSE SECTIONS and ~~subsequent~~ ALL agreements ~~to which the state is a party that amend or implement~~ REGARDING DISPUTES UNDER 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 SPECIFIED IN SUBSECTION T OF THIS SECTION with ~~other~~ ANY OF THE FOLLOWING:

1. Federal, state or local agencies ~~only~~ for the purposes of enforcement of ~~section 13-3711, 36-798.06, 44-7101 or 44-7111 or~~ corresponding laws of other states.

2. A COURT, ARBITRATOR, DATA CLEARINGHOUSE OR SIMILAR ENTITY FOR THE PURPOSE OF ASSESSING COMPLIANCE WITH OR MAKING CALCULATIONS REQUIRED BY THE MASTER SETTLEMENT AGREEMENT OR AGREEMENTS REGARDING DISPUTES UNDER THE MASTER

SETTLEMENT AGREEMENT, AND WITH COUNSEL FOR THE PARTIES OR EXPERT WITNESSES IN ANY SUCH PROCEEDING, IF THE INFORMATION OTHERWISE REMAINS CONFIDENTIAL.

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 13-3711 or 36-798.06.~~

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

1. May only be used by the city, town or county 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 city, town or county must agree with the department in writing that any release of confidential information that violates the confidentiality standards will result in the immediate suspension of any rights of the city, town or county to receive information under this subsection.

Sec. 4. Section 42-2003, Arizona Revised Statutes, as amended by Laws 2013, chapter 255, section 2, 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 taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary.

2. A corporate taxpayer may be disclosed to any principal officer, any person designated by a principal officer or any person designated in a resolution by the corporate board of directors or other similar governing body.

3. A partnership may be disclosed to any partner of the partnership. This exception does not include disclosure of confidential information of a particular partner unless otherwise authorized.

4. An estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the department finds that the heir, next of kin or beneficiary has a material interest which will be affected by the confidential information.

5. A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the department finds that the grantor or beneficiary has a material interest that will be affected by the confidential information.

6. Any taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

7. The name and taxpayer identification numbers of persons issued direct payment permits may be publicly disclosed.

B. Confidential information may be disclosed to:

1. Any employee of the department whose official duties involve tax administration.

2. The office of the attorney general solely for its use in preparation for, or in an investigation that may result in, any proceeding involving tax administration before the department or any other agency or board of this state, or before any grand jury or any state or federal court.

3. The department of liquor licenses and control for its use in determining whether a spirituous liquor licensee has paid all transaction privilege taxes and affiliated excise taxes incurred as a result of the sale of spirituous liquor, as defined in section 4-101, at the licensed establishment and imposed on the licensed establishments by this state and its political subdivisions.

4. Other state tax officials whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with an investigation or any other proceeding conducted by the official. Any disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the official.

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between the department and the foreign country, agency, state, Indian tribe or organization:

(a) The United States internal revenue service, alcohol and tobacco tax and trade bureau of the United States treasury, United States bureau of alcohol, tobacco, firearms and explosives of the United States department of justice, United States drug enforcement agency and federal bureau of investigation.

(b) A state tax official of another state.

(c) An organization of states, federation of tax administrators or multistate tax commission that operates an information exchange for tax administration purposes.

(d) An agency, official or organization of a foreign country with responsibilities that are comparable to those listed in subdivision (a), (b) or (c) of this paragraph.

(e) An agency, official or organization of an Indian tribal government with responsibilities comparable to the responsibilities of the agencies, officials or organizations identified in subdivision (a), (b) or (c) of this paragraph.

6. The auditor general, in connection with any audit of the department subject to the restrictions in section 42-2002, subsection D.

7. Any person to the extent necessary for effective tax administration in connection with:

(a) The processing, storage, transmission, destruction and reproduction of the information.

(b) The programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.

(c) The collection of the taxpayer's civil liability.

8. The office of administrative hearings relating to taxes administered by the department pursuant to section 42-1101, but the department shall not disclose any confidential information:

(a) Regarding income tax or withholding tax.

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

9. The United States treasury inspector general for tax administration for the purpose of reporting a violation of internal revenue code section 7213A (26 United States Code section 7213A), unauthorized inspection of returns or return information.

10. The financial management service of the United States treasury department for use in the treasury offset program.

11. The United States treasury department or its authorized agent for use in the state income tax levy program and in the electronic federal tax payment system.

12. The Arizona commerce authority for its use in:

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

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

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

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, on 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 TOBACCO PRODUCT 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 that 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 on 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 any other tax collected by the department on behalf of any jurisdiction 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 or who may be subject to audit by the department pursuant to section 42-6002. Any taxpayer information released by the department to the county, city or town:

1. May only be used for internal purposes, including audits.

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 1, subdivision (a), item (ii), 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 TO THE ATTORNEY GENERAL confidential information as requested by the attorney general for purposes of determining compliance with ~~and~~ OR enforcing ~~section~~ ANY OF THE FOLLOWING:

1. ANY PUBLIC HEALTH CONTROL LAW RELATING TO TOBACCO SALES AS PROVIDED UNDER TITLE 36, CHAPTER 6, ARTICLE 14.

2. ANY LAW RELATING TO REDUCED CIGARETTE IGNITION PROPENSITY STANDARDS AS PROVIDED UNDER TITLE 41, CHAPTER 16, ARTICLE 3.1.

3. SECTIONS 44-7101 AND 44-7111, the master settlement agreement referred to ~~therein~~ IN THOSE SECTIONS and ~~subsequent~~ ALL agreements ~~to which the state is a party that amend or implement~~ REGARDING DISPUTES UNDER 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 SPECIFIED IN SUBSECTION T OF THIS SECTION with ~~other~~ ANY OF THE FOLLOWING:

1. Federal, state or local agencies ~~only~~ for the purposes of enforcement of ~~section 36-798.06, 44-7101 or 44-7111 or~~ corresponding laws of other states.

2. A COURT, ARBITRATOR, DATA CLEARINGHOUSE OR SIMILAR ENTITY FOR THE PURPOSE OF ASSESSING COMPLIANCE WITH OR MAKING CALCULATIONS REQUIRED BY THE MASTER SETTLEMENT AGREEMENT OR AGREEMENTS REGARDING DISPUTES UNDER THE MASTER SETTLEMENT AGREEMENT, AND WITH COUNSEL FOR THE PARTIES OR EXPERT WITNESSES IN ANY SUCH PROCEEDING, IF THE INFORMATION OTHERWISE REMAINS CONFIDENTIAL.

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.~~

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

1. May only be used by the city, town or county 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 city, town or county must agree with the department in writing that any release of confidential information that violates the confidentiality standards will result in the immediate suspension of any rights of the city, town or county to receive information under this subsection.

Sec. 5. Section 42-3001, Arizona Revised Statutes, is amended to read:

42-3001. <u>Definitions</u>

In this chapter, unless the context otherwise requires:

1. "Affix" and "affixed" includes imprinting tax meter stamps on packages and individual containers as authorized by the department.

2. "BRAND FAMILY" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7111.

~~2.~~ 3. "Cider" means vinous liquor that is made from the normal alcoholic fermentation of the juice of sound, ripe apples, including flavored, sparkling and carbonated cider and cider made from condensed apple must, and that contains more than one-half of one per cent of alcohol by volume but not more than seven per cent of alcohol by volume.

~~3.~~ 4. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco other than any roll of tobacco that is a cigarette, as defined in paragraph ~~4~~ 5, subdivision (b) of this section.

~~4.~~ 5. "Cigarette" means either of the following:

(a) Any roll of tobacco ~~or any substitute for tobacco~~ wrapped in paper or any substance not containing tobacco.

(b) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subdivision (a) of this paragraph. This subdivision shall be interpreted consistently with the classification guidelines established by the federal alcohol and tobacco tax and trade bureau.

~~5.~~ 6. "Cigarette distributor" means a distributor of cigarettes without stamps affixed as required by this article who is required to be licensed under section 42-3201. Cigarette distributor does not include a retailer or any person who holds a permit as a cigarette manufacturer, export warehouse proprietor or importer under 26 United States Code section 5712 if the person sells or distributes cigarettes in this state only to licensed cigarette distributors or to another person who holds a permit under 26 United States Code section 5712 as an export warehouse proprietor or manufacturer.

~~6.~~ 7. "Cigarette importer" means a distributor who directly or indirectly imports into the United States a finished cigarette for sale or distribution and who is required to be licensed under section 42-3201.

~~7.~~ 8. "Cigarette manufacturer" means a distributor who manufactures, fabricates, assembles, processes or labels a finished cigarette, ~~and who is required to be licensed under section 42-3201~~ INCLUDING A DISTRIBUTOR WHO USES OR MAKES AVAILABLE FOR USE A TOBACCO PRODUCT ROLLING VENDING MACHINE IN THE MANUFACTURE, FABRICATION, ASSEMBLY OR PROCESSING OF TOBACCO PRODUCTS.

~~8.~~ 9. "Consumer" means a person in this state who comes into possession of any luxury subject to the tax imposed by this chapter and who, on coming into possession of the luxury, is not a distributor intending to sell or distribute the luxury, retailer or wholesaler.

~~9.~~ 10. "Distributor" means any person who manufactures, produces, ships, transports or imports into this state or in any manner acquires or possesses for the purpose of making the first sale of the following:

(a) Cigarettes without ARIZONA TAX stamps affixed as required by this article.

(b) Other tobacco products upon which the taxes have not been paid as required by this chapter.

~~10.~~ 11. "Domestic farm winery" has the same meaning prescribed in section 4-101.

~~11.~~ 12. "Domestic microbrewery" has the same meaning prescribed in section 4-101.

~~12.~~ 13. "First sale" means the initial sale or distribution in intrastate commerce or the initial use or consumption of cigarettes or other tobacco products.

~~13.~~ 14. "Luxury" means any article, object or device upon which a tax is imposed under this chapter.

~~14.~~ 15. "Malt liquor" means any liquid that contains more than one-half of one per cent alcohol by volume and that is made by the process of fermentation and not distillation of hops or grains, but not including:

(a) Liquids made by the process of distillation of such substances.

(b) Medicines that are unsuitable for beverage purposes.

16. "MASTER SETTLEMENT AGREEMENT" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7101.

17. "NONPARTICIPATING MANUFACTURER" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7111.

18. "PARTICIPATING MANUFACTURER" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7111.

~~15.~~ 19. "Person" means any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, club, society or other group or combination acting as a unit, and the plural as well as the singular number.

20. "PLACE OF BUSINESS" MEANS A PLACE WHERE AN ORDER IS RECEIVED OR WHERE TOBACCO PRODUCTS ARE SOLD, DISTRIBUTED OR TRANSFERRED.

~~16.~~ 21. "Retailer" means any person who comes into possession of any luxury subject to the taxes imposed by this chapter for the purpose of selling it for consumption and not for resale.

~~17.~~ 22. "Spirituous liquor" means any liquid that contains more than one-half of one per cent alcohol by volume, that is produced by distillation of any fermented substance and that is used or prepared for use as a beverage. Spirituous liquor does not include medicines that are unsuitable for beverage purposes.

23. "TOBACCO PRODUCT MANUFACTURER" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7101.

~~18.~~ 24. "Tobacco products" means all luxuries included in section 42-3052, paragraphs 5 through 9~~, except that for the purposes of article 5.1 of this chapter tobacco products has the same meaning prescribed in section 42-3221~~.

25. "VEHICLE" MEANS A DEVICE IN, ON OR BY WHICH A PERSON OR PROPERTY IS OR MAY BE TRANSPORTED OR DRAWN ON THE ROADS OF THIS STATE REGARDLESS OF THE MEANS BY WHICH IT IS PROPELLED OR WHETHER IT RUNS ON A TRACK.

~~19.~~ 26. "Vinous liquor" means any liquid that contains more than one-half of one per cent alcohol by volume and that is made by the process of fermentation of grapes, berries, fruits, vegetables or other substances but does not include:

(a) Liquids in which hops or grains are used in the process of fermentation.

(b) Liquids made by the process of distillation of hops or grains.

(c) Medicines that are unsuitable for beverage purposes.

~~20.~~ 27. "Wholesaler" means a person who sells any spirituous, vinous or malt liquor taxed under this chapter to retail dealers or for the purposes of resale only.

Sec. 6. Section 42-3006, Arizona Revised Statutes, is amended to read:

42-3006. Revenue stamps

A. The department shall prepare and have on hand official adhesive stamps of the various types according to the classifications set forth in section 42-3052 of luxuries upon which a tax is imposed by this chapter.

B. The stamps shall be of a character so that they cannot be removed when once attached to an article without destroying them.

C. The stamps shall be printed in the form and manner prescribed by the director.

~~D. In lieu of purchasing official tax stamps for cigarettes, a registered individual described in section 42-3201, subsection C must pay all applicable taxes imposed by this chapter and chapter 5, article 4 of this title and file a return in a form and manner prescribed by the department.~~

~~E.~~ D. The department shall prescribe by rule or procedure the method and manner in which stamps are to be affixed to cigarettes and may provide for the cancellation of stamps.

~~F.~~ E. Cigarette stamps shall also meet the requirements of article 5 of this chapter.

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

42-3008. Refunds; definitions

A. Except as provided in subsection C of this section, the tax imposed by this chapter upon any ~~articles or substances~~ LUXURY 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~~ LUXURIES were exported from this state or that the stamps have been affixed to ~~articles or substances~~ LUXURIES upon which stamps are not required.

2. ~~The~~ PROOF IS MADE TO THE DEPARTMENT THAT THE luxury becomes unfit for sale due to breakage or spoilage WITHIN EITHER SIX MONTHS FROM THE DATE THAT THE DISTRIBUTOR ORIGINALLY RECEIVES THE LUXURY FOR SALE OR TWO MONTHS FROM THE DATE THAT THE LUXURY WAS RETURNED TO THE DISTRIBUTOR BY A RETAILER, WHICHEVER OCCURS LATER.

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~~ LUXURIES that are deemed contraband under this chapter.

D. EXCEPT AS OTHERWISE PROVIDED IN SECTION 42-1123, INTEREST IS CALCULATED SIXTY DAYS AFTER RECEIPT BY THE DEPARTMENT OF A CLAIM FOR REFUND UNDER THIS SECTION.

E. FOR THE PURPOSES OF THIS SECTION:

1. "BREAKAGE" MEANS DAMAGE TO THE OUTER WRAPPING OR CONTAINER OF A TOBACCO PRODUCT.

2. "SPOILAGE" MEANS MUTILATION OR PRODUCT EXPIRATION.

Sec. 8. Section 42-3010, Arizona Revised Statutes, is amended to read:

42-3010. Transaction invoices and other records; retention period

A. When any wholesaler or distributor in this state sells or delivers to any person any of the luxuries on which a tax is imposed by this chapter, the wholesaler or distributor shall make a duplicate invoice of the transaction, showing the date of delivery, the amount and value of each sale, shipment or consignment, and the name and location of the purchaser or person to whom delivery is made. EXCEPT AS OTHERWISE PROVIDED IN SECTION 42-3212, the wholesaler or distributor shall file and retain the invoice for a period of two years, subject to inspection and use by the department.

B. Every wholesaler, distributor or retailer shall procure and retain invoices showing the amount and value of each purchase or shipment of any luxuries received, the date of the shipment, the name and location of the shipper and the value of the purchase or shipment. EXCEPT AS OTHERWISE PROVIDED IN SECTION 42-3212, the wholesaler, distributor or retailer shall retain the invoices for a period of two years, subject to inspection and use by the department~~, except as otherwise provided for cigarette manufacturers, cigarette importers and cigarette distributors in section 42-3212~~.

C. Transactions that involve ~~cigarettes~~ TOBACCO PRODUCTS shall also meet the requirements of article 5 of this chapter.

Sec. 9. Section 42-3053, Arizona Revised Statutes, is amended to read:

42-3053. Method of payment; receipts; electronic filings of returns and reports

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, all remittances of taxes FOR THE PURCHASE OF ARIZONA TAX STAMPS imposed by this chapter~~, including remittances for the purchase of stamps,~~ shall be made by bank draft, check, cashier's check, money order, ~~or money~~ CASH OR ELECTRONIC TRANSFER to the department, which shall issue receipts to the taxpayers. A remittance other than cash does not constitute a final discharge of liability for the tax levied by this chapter until it has been paid in cash to the department.

B. BEGINNING ON JULY 1, 2015, ANY DISTRIBUTOR REMITTING TAXES LEVIED UNDER THIS CHAPTER ON ANY TOBACCO PRODUCT OTHER THAN CIGARETTES THAT IS SUBJECT TO TAX UNDER THIS CHAPTER IS REQUIRED TO PAY THE TAX LIABILITY ON OR BEFORE THE PAYMENT DATE IN MONIES THAT ARE IMMEDIATELY AVAILABLE TO THE STATE ON THE DATE OF TRANSFER. THE PAYMENT IN IMMEDIATELY AVAILABLE MONIES MUST BE MADE BY ELECTRONIC FUNDS TRANSFER AND WITH THE STATE TREASURER'S APPROVAL. THE DISTRIBUTOR MUST FURNISH EVIDENCE AS PRESCRIBED BY THE DEPARTMENT THAT THE PAYMENT WAS REMITTED ON OR BEFORE THE PAYMENT DUE DATE. A DISTRIBUTOR WHO IS REQUIRED TO MAKE PAYMENT BY ELECTRONIC FUNDS TRANSFER UNDER THIS

CHAPTER AND WHO FAILS TO DO SO IS SUBJECT TO THE CIVIL PENALTIES PRESCRIBED BY SECTION 42-1125, SUBSECTION O. A DISTRIBUTOR WHO FAILS TO MAKE A TIMELY PAYMENT IN IMMEDIATELY AVAILABLE MONIES AS PRESCRIBED BY THIS SUBSECTION IS SUBJECT TO CIVIL PENALTIES PRESCRIBED BY SECTION 42-1125, SUBSECTION D.

C. BEGINNING ON JULY 1, 2015, A DISTRIBUTOR OF TOBACCO PRODUCTS IS REQUIRED TO ELECTRONICALLY FILE ANY REPORT OR RETURN REQUIRED UNDER THIS CHAPTER PURSUANT TO AN ELECTRONIC FILING PROGRAM ESTABLISHED BY THE DEPARTMENT. THE REPORT OR RETURN IS DEEMED FILED AND RECEIVED BY THE DEPARTMENT ON THE DATE OF THE ELECTRONIC POSTMARK PURSUANT TO SECTION 42-1105.02. A DISTRIBUTOR WHO IS REQUIRED TO ELECTRONICALLY FILE ANY REPORT OR RETURN UNDER THIS CHAPTER AND FAILS TO DO SO IS SUBJECT TO THE CIVIL PENALTY PRESCRIBED BY SECTION 42-1125, SUBSECTION K. FOR THE PURPOSES OF THIS SUBSECTION, "ELECTRONIC FILING PROGRAM" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-1105.02.

Sec. 10. Section 42-3151, Arizona Revised Statutes, is amended to read:

42-3151. Inspection of records and stocks of luxuries

A. All books, papers, invoices and records of any wholesaler, distributor or retailer whether or not required under this chapter to be kept, showing sales, receipts and purchases of luxuries, shall be open for inspection by the department ~~at all times as provided in subsection C.~~ AS FOLLOWS:

1. EXCEPT AS PROVIDED IN PARAGRAPH 2 OF THIS SUBSECTION, ANY INSPECTION MUST BEGIN DURING THE NORMAL BUSINESS HOURS OF THE BUILDING, FACILITY, SITE OR PLACE BEING INSPECTED.

2. ANY INSPECTION THAT DOES NOT BEGIN DURING NORMAL BUSINESS HOURS REQUIRES A JUDICIAL WARRANT OR THE PRIOR WRITTEN CONSENT OF THE WHOLESALER, DISTRIBUTOR OR RETAILER.

B. Any stock of luxuries in and upon any building, facility, site or place where placed, produced, stored or sold may be inspected by the department to determine compliance with this chapter. EXCEPT AS PROVIDED IN SUBSECTIONS A AND C OF THIS SECTION, A BUSINESS MAY NOT MAINTAIN ANY BOOKS, PAPERS, INVOICES, RECORDS AND LUXURIES SUBJECT TO THE DEPARTMENT'S INSPECTION IN A PLACE AND MANNER THAT REQUIRES A JUDICIAL WARRANT OR PRIOR WRITTEN CONSENT OF THE WHOLESALER, DISTRIBUTOR OR RETAILER.

C. ~~Except as provided in subsection D, any inspection must begin during the normal business hours of the building, facility, site or place being inspected.~~ A BUSINESS THAT MAINTAINS ANY BOOKS, PAPERS, INVOICES OR RECORDS ELECTRONICALLY SHALL PROVIDE ACCESS TO THE DATA FOR THE DEPARTMENT'S INSPECTION AT ITS BUSINESS LOCATION, REGARDLESS OF THE STORAGE LOCATION OF THE DATA. THE BUSINESS SHALL PROVIDE THE ACCESS AT THE BUSINESS LOCATION IN A PLACE AND MANNER THAT IS ACCESSIBLE TO THE DEPARTMENT DURING NORMAL BUSINESS HOURS WITHOUT A JUDICIAL WARRANT OR PRIOR WRITTEN CONSENT OF THE WHOLESALER, DISTRIBUTOR OR RETAILER.

~~D. Any inspection that does not begin during normal business hours requires a judicial warrant or the prior written consent of the wholesaler, distributor or retailer.~~

Sec. 11. Section 42-3201, Arizona Revised Statutes, is amended to read:

42-3201. Licensing of tobacco products distributors

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 FOR EACH PLACE OF BUSINESS LISTED IN THE APPLICATION. The form shall state that the identity of the applicant may be posted to the department's ~~web site~~ WEBSITE for public inspection. The application for a license shall include the applicant's name and address, the applicant's principal place of business, ~~locations~~ ALL OTHER PLACES OF BUSINESS where the applicant's business is conducted ~~in this state~~ FOR THE PURPOSE OF MAKING THE INITIAL SALE OR DISTRIBUTION OF TOBACCO PRODUCTS IN THIS STATE, INCLUDING ANY LOCATION THAT MAINTAINS AN INVENTORY OF TOBACCO PRODUCTS 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. IF THE LICENSEE IS MAKING A CHANGE IN ITS BUSINESS LOCATION BY ADDING OR REPLACING ONE OR MORE ADDITIONAL PLACES OF BUSINESS THAT ARE NOT CURRENTLY LISTED ON ITS APPLICATION, THE LICENSEE MUST REMIT A FEE OF TWENTY-FIVE DOLLARS FOR EACH ADDITIONAL PLACE OF BUSINESS.

B. FOR THE PURPOSES OF SUBSECTION A OF THIS SECTION, AN APPLICANT WITH A CONTROLLING INTEREST IN MORE THAN ONE BUSINESS ENGAGED IN ACTIVITIES AS A DISTRIBUTOR SHALL APPLY FOR A SINGLE LICENSE ENCOMPASSING ALL SUCH BUSINESSES AND LIST EACH PLACE OF BUSINESS IN ITS APPLICATION. FOR THE PURPOSES OF THIS SUBSECTION, "CONTROLLING INTEREST" MEANS DIRECT OR INDIRECT OWNERSHIP OF AT LEAST EIGHTY PER CENT OF THE VOTING SHARES OF A CORPORATION OR OF THE INTERESTS IN A COMPANY, BUSINESS OR PERSON OTHER THAN A CORPORATION.

~~B.~~ C. 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. A LICENSEE MAY NOT TRANSFER ITS LICENSE TO A NEW OWNER WHEN SELLING ITS BUSINESS, AND ANY COURT-APPOINTED TRUSTEE,

RECEIVER OR OTHER PERSON SHALL OBTAIN A LICENSE IN ITS OWN NAME IN CASES OF LIQUIDATION, INSOLVENCY OR BANKRUPTCY IF THE BUSINESS REMAINS IN OPERATION AS A DISTRIBUTOR OF TOBACCO PRODUCTS. A LICENSEE SHALL APPLY FOR A NEW LICENSE IF IT CHANGES ITS LEGAL ENTITY STATUS OR OTHERWISE CHANGES THE LEGAL STRUCTURE OF ITS BUSINESS.

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 A CONSPICUOUS PLACE AT the applicant's place of business. IF THE APPLICANT OPERATES FROM MORE THAN ONE PLACE OF BUSINESS, THE APPLICANT MUST DISPLAY A COPY OF ITS LICENSE IN A CONSPICUOUS PLACE AT EACH LOCATION.

~~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. A PERSON MAY NOT HOLD, STORE OR TRANSPORT UNSTAMPED CIGARETTES OR OTHER UNTAXED TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE IN ANY VEHICLE PURSUANT TO SECTION 36-798.06. THIS SUBSECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

1. A VEHICLE THAT IS OWNED, OPERATED OR CONTRACTED BY A PERSON WHO HOLDS A VALID LICENSE ISSUED UNDER THIS SECTION AND IS TRANSPORTING UNSTAMPED CIGARETTES OR OTHER UNTAXED TOBACCO PRODUCTS FROM ONE OF THE LICENSEE'S PLACES OF BUSINESS LISTED ON ITS APPLICATION TO ANOTHER.

2. A VEHICLE THAT IS TRANSPORTING UNSTAMPED CIGARETTES OR OTHER UNTAXED TOBACCO PRODUCTS TO A LICENSED DISTRIBUTOR AS PART OF A LAWFUL SALE OR IN INTERSTATE COMMERCE TO A PERSON LAWFULLY OPERATING AS A MANUFACTURER, DISTRIBUTOR OR RETAILER OF CIGARETTES OR OTHER TOBACCO PRODUCTS.

E. AS A CONDITION OF LICENSURE UNDER THIS SECTION, AN APPLICANT AGREES TO THE FOLLOWING CONDITIONS:

1. A PERSON MAY NOT HOLD OR STORE ANY TOBACCO PRODUCTS, WHETHER WITHIN OR OUTSIDE OF THIS STATE, FOR SALE OR DISTRIBUTION IN THIS STATE BY OR ON BEHALF OF A DISTRIBUTOR AT ANY PLACE OTHER THAN A LOCATION THAT HAS BEEN DISCLOSED TO THE DEPARTMENT PURSUANT TO SUBSECTION A OF THIS SECTION. THIS PARAGRAPH DOES NOT INCLUDE A PERSON HOLDING OR STORING TOBACCO PRODUCTS BY OR ON BEHALF OF THE DISTRIBUTOR WHEN THE TOBACCO PRODUCTS ARE IN TRANSIT TO A DISTRIBUTOR OR RETAILER AS PART OF A LAWFUL SALE.

2. ALL TOBACCO PRODUCTS HELD OR STORED, WHETHER WITHIN OR OUTSIDE OF THIS STATE, FOR SALE OR DISTRIBUTION IN THIS STATE BY OR ON BEHALF OF A DISTRIBUTOR SHALL BE ACCESSIBLE TO THE DEPARTMENT DURING NORMAL BUSINESS

HOURS WITHOUT A JUDICIAL WARRANT OR PRIOR WRITTEN CONSENT OF THE DISTRIBUTOR, EXCLUDING RESIDENTIAL LOCATIONS.

~~D.~~ F. 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.~~ G. 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.~~ H. 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 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 13-3711 or 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).

8. THE APPLICANT'S CIVIL RIGHTS HAVE BEEN SUSPENDED UNDER SECTION 13-904. AN APPLICANT WHOSE CIVIL RIGHTS HAVE BEEN SUSPENDED WILL BE INELIGIBLE TO HOLD A LICENSE FOR A PERIOD OF FIVE YEARS FOLLOWING THE RESTORATION OF THE APPLICANT'S CIVIL RIGHTS.

~~G.~~ I. 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.~~ J. The department shall publish on its 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.~~ K. Tobacco products that are ordered, purchased or transported in ~~a~~ violation of section 13-3711, 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.

L. A PERSON MAY NOT APPLY FOR OR HOLD A DISTRIBUTOR'S LICENSE IF THAT PERSON DOES NOT ENGAGE IN THE ACTIVITIES DESCRIBED IN SUBSECTION A OF THIS SECTION. IN ADDITION TO ANY OTHER APPLICABLE PENALTY, THE DEPARTMENT MAY:

1. REVOKE THE LICENSE OF ANY LICENSEE THAT FAILS TO FILE A RETURN OR REPORT REQUIRED UNDER THIS CHAPTER FOR TWELVE CONSECUTIVE MONTHS.

2. CANCEL THE LICENSE OF ANY LICENSEE THAT FAILS TO INCUR ANY TAX LIABILITY UNDER THIS CHAPTER FOR TWELVE CONSECUTIVE MONTHS.

M. ANY SUSPENSION, REVOCATION OR DENIAL OF A LICENSE ISSUED UNDER THIS SECTION MUST COMPLY WITH SECTION 41-1092.11, SUBSECTION B.

N. NOTWITHSTANDING ANY OTHER LAW, FOR PURPOSES OF SUBSECTION G, PARAGRAPHS 1 AND 2 OF THIS SECTION, SECTION 42-1127, SUBSECTION C AND SECTION 42-3210, SUBSECTION B, IF A DISTRIBUTOR HAS LISTED IN ITS APPLICATION MORE THAN ONE PLACE OF BUSINESS, ANY SUSPENSION, REVOCATION OR NONRENEWAL OF A DISTRIBUTOR'S LICENSE SHALL APPLY ONLY WITH EFFECT TO REMOVE THE PLACE OF BUSINESS AT WHICH THE ACTIVITY OCCURRED THAT RESULTED IN THE VIOLATION FROM THE DISTRIBUTOR'S LICENSE. IF SUCH A REMOVAL OCCURS, THE DISTRIBUTOR SHALL BE SUBJECT TO RESTRICTIONS THAT THE DEPARTMENT PRESCRIBES BY RULE.

Sec. 12. Title 42, chapter 3, article 5, Arizona Revised Statutes, is amended by adding section 42-3201.02, to read:

42-3201.02. <u>Tobacco product retailers; license required; vehicle sales prohibited</u>

A. A RETAILER MAY SELL ANY TOBACCO PRODUCT THAT IS NOT OTHERWISE PROHIBITED BY FEDERAL OR STATE LAW FROM SALE FOR RESALE, BUT A RETAILER MAY NOT ACQUIRE OR POSSESS UNSTAMPED CIGARETTES, OR OTHER TOBACCO PRODUCTS ON WHICH TAXES LEVIED UNDER THIS CHAPTER HAVE NOT BEEN PAID, UNLESS THE RETAILER HOLDS A VALID LICENSE ISSUED UNDER SECTION 42-3201.

B. A RETAILER MAY NOT USE A VEHICLE AS A PLACE OF BUSINESS FOR SELLING TOBACCO PRODUCTS. THIS SUBSECTION DOES NOT PROHIBIT THE LAWFUL DELIVERY OF TOBACCO PRODUCTS BY A PERSON WHO HOLDS A VALID LICENSE ISSUED UNDER SECTION 42-3201 USING A VEHICLE THAT IS OWNED, OPERATED OR CONTRACTED BY THAT PERSON.

Sec. 13. Section 42-3202, Arizona Revised Statutes, is amended to read:

42-3202. <u>Payment of tax required to sell cigarettes</u>

A. Except as provided in subsection B of this section, a person may not:

1. Sell or offer for sale any ~~tobacco products~~ CIGARETTES upon which a tax is imposed by this article to any person within this state unless at the time of the sale, distribution or transfer the tax has been paid on the ~~tobacco products~~ CIGARETTES as evidenced by ~~a~~ AN ARIZONA TAX stamp or any other official indicia. THE DEPARTMENT SHALL CONSIDER TOBACCO TAXES PAID AT THE TIME OF THE SALE, DISTRIBUTION OR TRANSFER OF TOBACCO PRODUCTS OTHER THAN CIGARETTES IF A LICENSED DISTRIBUTOR REPORTS AND REMITS THE TAXES ON THE PRODUCTS IN ACCORDANCE WITH THE MANNER, METHOD AND TIME PRESCRIBED BY SECTION

42-3208. SWORN RETURNS THAT ARE PREPARED AND REMITTED BY A LICENSED DISTRIBUTOR UNDER SECTION 42-3208 CONSTITUTE OFFICIAL INDICIA THAT TOBACCO TAXES HAVE BEEN PAID ON THE TOBACCO PRODUCTS.

2. Sell cigarettes that have ARIZONA tax stamps affixed unless the tax evidenced by the stamps is actually paid. The department shall not refund any amount of that tax on the grounds that the stamps are not required to be affixed to the cigarettes.

B. A distributor licensed pursuant to section 42-3201 may NOT sell, distribute or transfer tobacco products for which the distributor is licensed to another such licensed distributor without paying the tax at the time of the sale, distribution or transfer.

Sec. 14. Section 42-3202.01, Arizona Revised Statutes, is amended to read:

42-3202.01. Presumption of tax on unstamped cigarettes

Except as otherwise provided in section 42-1127, subsection F~~,~~ AND section 42-3202, subsection B ~~and section 42-3203, subsection C~~, for the purpose of proper administration and to prevent evasion of the taxes imposed by this chapter, until the contrary is established, it is presumed that cigarettes that are sold, distributed, used or consumed by a person in this state, but not placed in packages or containers on which official tax stamps are affixed, are intended for first sale by the person and are subject to the taxes imposed by this chapter.

Sec. 15. Section 42-3203, Arizona Revised Statutes, is amended to read:

42-3203. Stamped packages required for cigarettes; exceptions

A. Except as otherwise provided in this chapter, all cigarettes on which a tax is imposed by this chapter shall be placed in packages or containers, and on each package or container shall be affixed an official stamp described in section 42-3006 or 42-3202.03. An affixed stamp shall be evidence that the taxes levied by sections 42-3052, 42-3251 and 42-3251.01 are paid.

B. ~~Except as provided in subsection C of this section,~~ Cigarette distributors are liable for affixing official stamps or otherwise applying tax indicia to cigarettes that are subject to a tax imposed by this chapter. A licensed cigarette distributor shall apply a stamp to each package of cigarettes that is sold or distributed in this state and that is subject to tax under this chapter, including cigarettes that are subject to tax under section 42-3302. A licensed cigarette distributor shall apply a tax exempt stamp to cigarette packages that are not subject to tax under section 42-3304, subsection A, paragraph 2.

C. Cigarettes that are sold, distributed or transferred by a distributor licensed pursuant to section 42-3201 to sell cigarettes are ~~not~~ required to have affixed the luxury stamps described in section 42-3006 at the time the cigarettes are sold, distributed or transferred to another licensed distributor.

D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, A LICENSED DISTRIBUTOR CAN SUBMIT A WRITTEN REQUEST IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT IN RULE OR PROCEDURE TO SELL, DISTRIBUTE OR TRANSFER UNSTAMPED CIGARETTES TO ANOTHER LICENSED DISTRIBUTOR. ONCE AN ACCURATE AND COMPLETE REQUEST IS SUBMITTED TO THE DEPARTMENT, THE DEPARTMENT WILL APPROVE OR DENY THE REQUEST AS PRESCRIBED IN RULE OR PROCEDURE WITHIN TEN DAYS OF RECEIPT OF THE REQUEST.

~~D.~~ E. Cigarettes that are exempt from tax under 26 United States Code section 5701 and that are distributed according to federal regulations are not subject to tax and do not require a stamp under this chapter.

~~E.~~ F. A retailer shall not offer for sale cigarettes in quantities that are not packaged as such for sale by the cigarette manufacturer.

~~F.~~ G. Cigarette distributors may apply stamps only to cigarette packages that the cigarette distributors have directly received from a licensed cigarette distributor, licensed cigarette manufacturer or licensed cigarette importer.

Sec. 16. Section 42-3205, Arizona Revised Statutes, is amended to read:

42-3205. Unstamped cigarettes

A. A person shall not possess an unstamped cigarette package unless the person is shipping or transporting unstamped cigarettes pursuant to subsection B of this section, is a licensed cigarette manufacturer or licensed cigarette importer~~, is a registered individual possessing the cigarettes solely for the individual's own use and consumption in this state pursuant to section 42-3201, subsection C~~ or is a licensed cigarette distributor who receives unstamped cigarette packages directly from a licensed cigarette manufacturer or cigarette importer.

B. Except for a licensed cigarette manufacturer, cigarette importer or cigarette distributor AND IF LAWFUL UNDER SECTION 36-798.06, a person who ships unstamped cigarette packages in or into this state shall first file with the department a notice of shipment. This subsection does not apply to any common or contract carrier that is transporting cigarettes through this state to another location under a proper bill of lading or freight bill that states the quantity, source and destination of the cigarettes.

C. IF LAWFUL UNDER SECTION 36-798.06, a person who transports unstamped cigarette packages in or into this state shall carry in the vehicle used to convey the shipment invoices or equivalent documentation of the shipment for all cigarettes in the shipment. The invoices or documentation shall indicate the name and address of the consignor or seller, the name and address of the consignee or purchaser and the quantity of each brand of cigarettes that is transported.

Sec. 17. Section 42-3206, Arizona Revised Statutes, is amended to read:

42-3206. Cigarette stamp discount purchases; refund; rebate

A. The official stamps to be affixed to packages of cigarettes shall be obtainable from the department by each licensed cigarette distributor by purchase:

1. ON OR BEFORE SEPTEMBER 30, 2014, AT THE FOLLOWING DISCOUNT RATES:

~~1.~~ (a) Ninety-six per cent of the face value for the first thirty-six thousand dollars worth of stamps purchased by the distributor in any month.

~~2.~~ (b) Ninety-seven per cent of the face value for the second thirty-six thousand dollars worth of stamps purchased by the distributor in any month.

~~3.~~ (c) Ninety-eight per cent of the face value on all stamps in excess of seventy-two thousand dollars purchased by the distributor in any month, except that if a distributor purchases more than one hundred sixty-five thousand dollars worth of stamps in one month, the department shall offset against the discount under this ~~paragraph~~ SUBDIVISION, or the distributor shall refund to the department, the difference between the face value and the discounted value of the first seventy-two thousand dollars worth of stamps under ~~paragraphs 1 and 2~~ SUBDIVISIONS (a) AND (b) OF THIS PARAGRAPH.

2. AFTER SEPTEMBER 30, 2014, AT THE RATE OF NINETY-SIX PER CENT OF THE FACE VALUE OF THE STAMPS.

B. ANY REFUND OF OR REBATES ON TAX STAMPS REQUESTED BY A LICENSED DISTRIBUTOR MUST BE ISSUED IN AN AMOUNT OF THE TOTAL FACE VALUE OF THE STAMPS MINUS FOUR PER CENT OF THE TOTAL FACE VALUE OF THE STAMPS.

Sec. 18. Section 42-3207, Arizona Revised Statutes, is amended to read:

42-3207. Secured cigarette stamp purchases on credit; cancellation of credit privileges; collection action

A. Subject to subsections B and C, AND EXCEPT AS PROVIDED IN SUBSECTION D, OF THIS SECTION a licensed cigarette distributor who furnishes a bond of a surety company qualified to do business in this state, in an amount equal to two times the amount of the distributor's current monthly stamp purchases and conditioned upon the payment within the time prescribed, may make payment for the official stamp on or before the twentieth day of the month next following the purchase of an official stamp. All other cigarette distributors shall pay for each stamp at the time of purchase.

B. Upon a finding that the amount of stamp purchases, or meter machine usage, exceeds seventy-five per cent of the amount of the bond the department may cancel the credit privileges provided to qualified cigarette distributors pursuant to subsection A.

C. If the indebtedness of a cigarette distributor whose credit privileges have been canceled pursuant to this section remains unpaid for thirty days after cancellation the director shall request the attorney

general to take suitable action on behalf of the department to collect either on the indebtedness or the surety bond.

D. THE CIGARETTE DISTRIBUTOR MAY REQUEST THAT THE DEPARTMENT WAIVE THE BONDING REQUIREMENT IN SUBSECTION A OF THIS SECTION IF THE DISTRIBUTOR MAINTAINS A TIMELY, ACCURATE AND COMPLETE FILING AND PAYMENT RECORD FOR A PERIOD OF TWO YEARS AND OTHERWISE COMPLIES WITH ALL REQUIREMENTS OF A LICENSED DISTRIBUTOR PURSUANT TO TITLE 42, CHAPTER 3 AND TITLE 44, CHAPTER 27. THE WAIVER OF THE BONDING REQUIREMENT APPLIES ONLY TO THE DISTRIBUTOR'S PURCHASES OF TAX STAMPS WITH WHICH THE DISTRIBUTOR PREPAYS THE INDIAN RESERVATION TOBACCO TAX, PURSUANT TO SECTION 42-3303.

Sec. 19. Section 42-3208, Arizona Revised Statutes, is amended to read:

42-3208. Return and payment by distributors of tobacco products other than cigarettes; report for refund or rebate

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, INCLUDING INFORMATION REQUIRED FOR ROLL-YOUR-OWN TOBACCO PROVIDED UNDER SECTION 42-3211.

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 ordered, purchased or transported in ~~a~~ violation of section 13-3711, 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.

G. EXCEPT AS OTHERWISE PROVIDED BY THE DEPARTMENT FOR A REFUND OR REDEMPTION ISSUED UNDER SECTION 42-3008 OR 42-3209, A DISTRIBUTOR REQUESTING

ANY REFUND OR REBATE OF TAXES PAID ON TOBACCO PRODUCTS PURSUANT TO THIS SECTION OR UNDER ARTICLE 7 OF THIS CHAPTER MUST ESTABLISH ENTITLEMENT TO THE REFUND OR REBATE BY OBTAINING A REPORT EXECUTED BY THE RETAILER THAT PURCHASED THE TOBACCO PRODUCTS ON WHICH THE DISTRIBUTOR PAID TAXES INDICATING THE NAME AND ADDRESS OF THE RETAILER AND THE QUANTITIES OF TOBACCO PRODUCTS SOLD, SEPARATELY IDENTIFIED BY THE TAX CATEGORY OF TOBACCO PRODUCT AND THE NECESSARY FACTS TO ESTABLISH THE APPROPRIATE AMOUNT OF REFUND OR REBATE. THE REPORT IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. THE REPORT MUST BE PROVIDED IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT. UNDER SUCH RULES AS IT MAY PRESCRIBE, THE DEPARTMENT MAY IDENTIFY TRANSACTIONS FOR WHICH A DISTRIBUTOR MAY NOT RELY SOLELY ON THE INFORMATION IN THE RETAILER'S REPORT BUT MUST INSTEAD OBTAIN ADDITIONAL INFORMATION AS REQUIRED BY THE RULES IN ORDER TO BE ENTITLED TO THE REFUND OR REBATE.

2. THE BURDEN OF PROOF FOR THE REFUND OR REBATE IS ON THE DISTRIBUTOR, BUT IF THE DISTRIBUTOR COMPLIES IN ALL OTHER RESPECTS WITH THIS SUBSECTION, THE DEPARTMENT MAY REQUIRE THE RETAILER THAT CAUSED THE EXECUTION OF THE REPORT TO ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION REQUIRED TO BE CONTAINED IN THE REPORT THAT WOULD ENTITLE THE DISTRIBUTOR TO THE REFUND OR REBATE. IF THE RETAILER CANNOT ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION, THE RETAILER IS LIABLE IN AN AMOUNT EQUAL TO ANY TAX, PENALTY AND INTEREST THAT THE DISTRIBUTOR WOULD HAVE BEEN LIABLE FOR UNDER THIS CHAPTER IF THE DISTRIBUTOR HAD NOT OTHERWISE COMPLIED WITH THIS SUBSECTION. PAYMENT OF THE AMOUNT UNDER THIS SUBSECTION BY THE RETAILER EXEMPTS THE DISTRIBUTOR FROM LIABILITY FOR THE UNDERLYING TAX, PENALTY AND INTEREST. ALL AMOUNTS PAID BY A RETAILER UNDER THIS PARAGRAPH SHALL BE TREATED AS TAX REVENUES COLLECTED FROM THE DISTRIBUTOR IN ORDER TO DESIGNATE THE DISTRIBUTION BASE FOR PURPOSES OF THIS CHAPTER.

Sec. 20. Section 42-3209, Arizona Revised Statutes, is amended to read:

42-3209. <u>Redemption of unused or spoiled tobacco product stamps and meter registration; definitions</u>

A. The department shall redeem unused or spoiled ARIZONA TAX stamps that a cigarette distributor presents for redemption IF THOSE STAMPS ARE UNAFFIXED AND PURCHASED WITHIN TWO YEARS OF THE DATE OF THE REQUEST FOR REDEMPTION and shall pay for them from monies collected under this chapter.

B. Under rules adopted by the department, the department shall redeem the unused amount of tax for which any meter is registered and shall pay for it from monies collected under this chapter.

C. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROVIDE FOR REDEMPTION IN THE CASE OF LOSS OR THEFT OF TAX STAMPS.

D. FOR THE PURPOSES OF THIS SECTION:

1. "REDEEM" MEANS REPURCHASE OR REPLACE ARIZONA TAX STAMPS.

2. "SPOILED" MEANS MUTILATED OR ILLEGIBLE.

Sec. 21. Section 42-3211, Arizona Revised Statutes, is amended to read:

42-3211. Cigarette and roll-your-own tobacco distributors; filing requirements; definition

A. ~~On or before the twentieth day of each month,~~ Each cigarette distributor shall file a return in a form prescribed by the department for each place of business ON OR BEFORE THE TWENTIETH DAY OF THE MONTH NEXT SUCCEEDING THE MONTH FOR WHICH THE RETURN IS FILED. The return shall contain all of the following:

1. The BRAND NAMES AND quantities of each brand of cigarettes in possession at the beginning and end of the reporting period.

2. The BRAND NAMES AND quantities of each brand of cigarettes received during the reporting period and the name and address of each person from whom each product was received.

3. The BRAND NAMES AND quantities of each brand of cigarettes distributed or shipped into this state or between locations in this state during the reporting period, except for sales directly to consumers, and the name and address of each person to whom each product was distributed or shipped.

4. The BRAND NAMES AND quantities of each brand of cigarettes distributed or shipped to any destination wherever located, including the quantities reported under paragraph 3 of this subsection during the reporting period, except for sales directly to consumers, and the name and address of each person to whom each product was distributed or shipped.

5. The BRAND NAMES AND quantities of each brand of cigarettes sold to consumers that are itemized to show sales to consumers in this state and sale to consumers outside of this state.

6. Copies of the customs certificates with respect to such cigarettes required to be submitted by 19 United States Code section 1681a(c).

7. THE NAME AND ADDRESS OF EACH NONPARTICIPATING MANUFACTURER OF EACH BRAND OF CIGARETTES IDENTIFIED BY THE DISTRIBUTOR IN THE RETURN.

8. THE NUMBER OF INDIVIDUAL CIGARETTES OF EACH BRAND OF EACH NONPARTICIPATING MANUFACTURER SOLD IN THIS STATE BY THE DISTRIBUTOR DURING THE PRECEDING MONTH, SEPARATELY STATING EACH OF THE FOLLOWING:

(a) THE NUMBER OF CIGARETTE PACKAGES SOLD AND THE NUMBER OF INDIVIDUAL CIGARETTES IN EACH PACKAGE.

(b) THE NUMBER OF ROLL-YOUR-OWN TOBACCO CONTAINERS SOLD AND THE NUMBER OF INDIVIDUAL CIGARETTES IN EACH CONTAINER.

9. THE AMOUNT OF LUXURY TAXES PAID OR TO BE PAID ON THE CIGARETTES AND ROLL-YOUR-OWN TOBACCO PRESCRIBED IN PARAGRAPH 8 OF THIS SUBSECTION, SEPARATELY STATING EACH OF THE FOLLOWING:

(a) THE AMOUNT OF LUXURY TAXES PAID BY PURCHASING AND AFFIXING TAX STAMPS TO CIGARETTE PACKAGES.

(b) THE AMOUNT OF LUXURY TAXES TO BE PAID FOR ROLL-YOUR-OWN TOBACCO CONTAINERS.

(c) ANY OTHER AMOUNT OF EXCISE TAXES TO BE PAID ON THE CIGARETTES.

10. THE NUMBER OF INDIVIDUAL CIGARETTES OF EACH BRAND OF EACH NONPARTICIPATING MANUFACTURER RECEIVED BY THE DISTRIBUTOR, SEPARATELY STATING EACH OF THE FOLLOWING:

(a) THE NUMBER OF CIGARETTE PACKAGES RECEIVED AND THE NUMBER OF INDIVIDUAL CIGARETTES IN EACH PACKAGE.

(b) THE NUMBER OF ROLL-YOUR-OWN TOBACCO CONTAINERS RECEIVED AND THE NUMBER OF INDIVIDUAL CIGARETTES IN EACH CONTAINER.

11. THE NUMBER OF INDIVIDUAL CIGARETTES OF EACH BRAND OF EACH NONPARTICIPATING MANUFACTURER THAT THE DISTRIBUTOR EXPORTED FROM THIS STATE WITHOUT PAYMENT OF ARIZONA LUXURY TAXES, SEPARATELY STATING EACH OF THE FOLLOWING:

(a) THE NUMBER OF CIGARETTE PACKAGES EXPORTED AND THE NUMBER OF INDIVIDUAL CIGARETTES IN EACH PACKAGE.

(b) THE NUMBER OF ROLL-YOUR-OWN TOBACCO CONTAINERS EXPORTED AND THE NUMBER OF INDIVIDUAL CIGARETTES IN EACH CONTAINER.

12. THE NUMBER OF INDIVIDUAL CIGARETTES OF EACH BRAND OF EACH NONPARTICIPATING MANUFACTURER FOR WHICH THE DISTRIBUTOR OBTAINED A REFUND UNDER SECTION 42-3008, SEPARATELY STATING EACH OF THE FOLLOWING:

(a) THE NUMBER OF CIGARETTE PACKAGES FOR WHICH THE DISTRIBUTOR OBTAINED A REFUND AND THE NUMBER OF INDIVIDUAL CIGARETTES IN EACH PACKAGE.

(b) THE NUMBER OF ROLL-YOUR-OWN TOBACCO CONTAINERS FOR WHICH THE DISTRIBUTOR OBTAINED A REFUND AND THE NUMBER OF INDIVIDUAL CIGARETTES IN EACH CONTAINER.

13. THE INVOICE NUMBER AND A COPY OF EACH INVOICE RELATING TO EACH OF THE FOLLOWING TRANSACTIONS:

(a) THE DISTRIBUTOR'S PURCHASE OR ACQUISITION OF ANY NONPARTICIPATING MANUFACTURER'S CIGARETTES RECEIVED OR SOLD BY THE TOBACCO DISTRIBUTOR IN THIS STATE.

(b) THE DISTRIBUTOR'S EXPORT, IF ANY, OF ANY NONPARTICIPATING MANUFACTURER'S CIGARETTES FROM THIS STATE.

B. Cigarette manufacturers and cigarette importers who ship cigarettes into or in this state shall file a monthly report with the department. The report shall contain the information regarding cigarettes described under subsection A, paragraph 3 OF THIS SECTION.

C. Cigarette distributor reports that are submitted under subsection A OF THIS SECTION shall be itemized to disclose the quantity of reported cigarettes bearing tax stamps of this state, tax exempt stamps of this state, stamps of another state and unstamped cigarettes. The distributor reports shall also include, if applicable, the following:

1. The quantity of Arizona tax and tax exempt stamps that were not affixed to cigarettes.

2. The quantity of Arizona tax and tax exempt stamps that the distributor possessed at the beginning and end of the reporting period.

3. The quantity of each type of Arizona stamp received during the reporting period.

4. The quantity of each type of Arizona stamp applied during the reporting period.

D. The department may adopt rules requiring additional information in the monthly reports as necessary for the purposes of enforcing this article.

E. FOR THE PURPOSES OF THIS SECTION, "CIGARETTE" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7101, SECTION 2(d) EXCEPT IF DIFFERING REPORTING REQUIREMENTS ARE SPECIFIED FOR ROLL-YOUR-OWN TOBACCO.

Sec. 22. Section 42-3212, Arizona Revised Statutes, is amended to read:

42-3212. Records

A. Except for retail transactions with consumers, each ~~cigarette~~ manufacturer, ~~cigarette~~ importer and ~~cigarette~~ distributor OF TOBACCO PRODUCTS shall maintain copies of invoices or equivalent documentation for each facility and for each transaction that involves the sale, purchase, transfer, consignment or receipt of ~~cigarettes~~ TOBACCO PRODUCTS within this state. The invoices or documentation shall indicate the name and address of the other party and the quantity by brand style of the ~~cigarettes~~ TOBACCO PRODUCTS involved in the transaction.

B. A ~~cigarette~~ distributor OF TOBACCO PRODUCTS shall issue an invoice or equivalent documentation for each transaction that involves the sale, purchase or consignment of ~~cigarettes~~ TOBACCO PRODUCTS to a retailer. The invoice or equivalent documentation must include the license number of the ~~cigarette~~ distributor, which the retailer may use to ascertain whether the license is current and valid.

C. ANY RETAILER OF TOBACCO PRODUCTS SHALL RETAIN ALL INVOICES OR EQUIVALENT DOCUMENTATION RECEIVED UNDER SUBSECTION B OF THIS SECTION.

~~C.~~ D. Records required under this section shall be preserved on the premises described in the relevant license in a manner as to ensure accessibility for inspection at reasonable hours by authorized personnel of the department. With the department's permission, persons with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business within three business days after a request by the department.

~~D.~~ E. The records required by this section shall be retained for a period of four years after the date of the transaction.

~~E.~~ F. On request, the department and the United States secretary of the treasury or secretary's designee shall have access to records required under this section and reports required under section 42-3211. The department at its sole discretion may share the records and reports required by this chapter with other law enforcement officials of federal and state governments under conditions that assume the confidentiality of taxpayer information contained in the records and reports.

Sec. 23. Section 42-3301, Arizona Revised Statutes, is amended to read:

42-3301. Definitions

In this article, unless the context otherwise requires:

1. "Indian" means any person who is duly registered on the tribal rolls of an Indian tribe that occupies an Indian reservation.

2. "Indian reservation" means all lands that are held in trust by the United States within the limits of an area that is set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, statute or executive order and that is recognized as an Indian reservation by the United States department of the interior.

3. "Indian tribe" means any organized Indian nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior.

4. "LUXURY, SALES, TRANSACTION PRIVILEGE OR SIMILAR TAX" MEANS AN EXCISE TAX LEVIED EXCLUSIVELY ON TOBACCO PRODUCTS.

Sec. 24. Title 42, chapter 3, article 7, Arizona Revised Statutes, is amended by adding sections 42-3303.01 and 42-3308, to read:

42-3303.01. Stamps required for cigarettes sold on Indian reservations to enrolled tribal members; definition

A. FROM AND AFTER DECEMBER 31, 2014, FOR CIGARETTES PURCHASED ON AN INDIAN RESERVATION BY AN ENROLLED MEMBER OF THE GOVERNING TRIBE:

1. WHERE THAT TRIBE DOES NOT LEVY AN EXCISE TAX ON TOBACCO PRODUCTS OR EXEMPTS ITS ENROLLED MEMBERS FROM THE TAX, A CIGARETTE DISTRIBUTOR SHALL AFFIX TAX-EXEMPT STAMPS THAT ARE DISTINGUISHABLE FROM ANY OTHER TAX STAMP REQUIRED BY THIS CHAPTER.

2. WHERE THAT TRIBE LEVIES AN EXCISE TAX ON TOBACCO PRODUCTS AND DOES NOT EXEMPT ITS MEMBERS FROM THE TAX, A CIGARETTE DISTRIBUTOR SHALL PURCHASE AND AFFIX TAX STAMPS PURSUANT TO ARTICLE 5 OF THIS CHAPTER THAT ARE DISTINGUISHABLE FROM ANY OTHER TAX OR TAX-EXEMPT STAMP REQUIRED BY THIS CHAPTER.

B. FOR THE PURPOSES OF THIS SECTION, "EXCISE TAX ON TOBACCO PRODUCTS" HAS THE SAME MEANING PRESCRIBED FOR "LUXURY, SALES, TRANSACTION PRIVILEGE OR SIMILAR TAX" UNDER SECTION 42-3301.

42-3308. Agreements between the department and tribal tax authorities; definition

A. THE DEPARTMENT MAY COLLECT AND ADMINISTER ANY TRIBAL EXCISE TAX ON TOBACCO PRODUCTS IMPOSED BY AN INDIAN TRIBE, AS DESCRIBED IN SECTION 42-3302, SUBSECTION C ON ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT OR CONTRACT WITH THE TRIBE TO PROVIDE A UNIFORM OR COORDINATED METHOD OF ADMINISTRATION OF INDIAN RESERVATION TOBACCO TAX IMPOSED BY THIS STATE UNDER THIS ARTICLE AND TRIBAL EXCISE TAX IMPOSED BY THE TRIBE.

B. ANY INTERGOVERNMENTAL AGREEMENT OR CONTRACT PURSUANT TO SUBSECTION A OF THIS SECTION MUST CONTAIN PROVISIONS FOR A UNIFORM OR COORDINATED AUDIT

PROCEDURE FOR THE INDIAN RESERVATION TOBACCO TAX IMPOSED BY THIS STATE UNDER THIS ARTICLE AND TRIBAL EXCISE TAX ON TOBACCO PRODUCTS IMPOSED BY THE TRIBE.

C. FOR THE PURPOSES OF THIS SECTION, "EXCISE TAX ON TOBACCO PRODUCTS" HAS THE SAME MEANING PRESCRIBED FOR "LUXURY, SALES, TRANSACTION PRIVILEGE OR SIMILAR TAX" UNDER SECTION 42-3301.

Sec. 25. Section 44-7101, Arizona Revised Statutes, is amended to read:

44-7101. Tobacco product manufacturers escrow accounts; model statute

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

Section 1. Findings and Purpose.

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

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

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

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

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "master settlement agreement," with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an

eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Section 2. Definitions.

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

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

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

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

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

(f) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 3(B)(2) of this act.

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

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

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

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

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

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

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

(j) "Tribal luxury taxes" means those taxes referenced in section 42-3302, subsection C.

(k) "Units sold" means the number of individual cigarettes sold TO A CONSUMER in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, ~~as measured by~~ REGARDLESS OF WHETHER state ~~tobacco~~ excise taxes WERE DUE OR collected ~~or precollected by the state and tribal luxury taxes collected or precollected by an Indian tribe~~. FOR CIGARETTES FOR WHICH A STATE OR TRIBAL EXCISE, LUXURY OR SIMILAR TAX IS COLLECTED OR PRECOLLECTED OR THAT HAVE A DEPARTMENT OF REVENUE CIGARETTE TAX STAMP AFFIXED TO THE PACKAGE, THE SALE OCCURS AT THE EARLIER OF THE TIME THAT ANY TAX IS COLLECTED OR PRECOLLECTED OR THAT THE TAX STAMP IS AFFIXED. The department of revenue shall ~~promulgate~~ ADOPT such ~~regulations~~ RULES as are necessary to ascertain the ~~amount of any such tax collected or precollected on the cigarettes~~ UNITS SOLD of such tobacco product manufacturer for each year. ~~The term units sold does not include cigarettes described in section 42-3304, subsection A, paragraphs 2 and 3.~~

Section 3. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar

intermediary or intermediaries) after the date of enactment of this act shall do one of the following:

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

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

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

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

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

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

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

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

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

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

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

(a) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the

amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

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

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

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

(c) Notwithstanding subparagraph (b), paragraph 2 of this section, a tobacco product manufacturer that elects to place funds into escrow pursuant to subparagraph (b), paragraph 1 of this section may make an irrevocable assignment of its interest in the funds to the benefit of this state. The assignment shall be permanent and apply to all funds in the escrow account or that may subsequently come into the account, including those funds deposited into the escrow account before the assignment is executed, those funds deposited into the escrow account after the assignment is executed and interest or other appreciation on the funds. The tobacco product manufacturer, the attorney general and the financial institution where the escrow account is maintained may make amendments to the qualified escrow account agreement as may be necessary to effectuate an assignment of rights executed pursuant to this subparagraph or a withdrawal of monies from the escrow account pursuant to subparagraph (b), paragraph 2 of this section. An assignment of rights executed pursuant to this subparagraph shall be in writing, shall be signed by a duly authorized representative of the tobacco product manufacturer making the assignment and shall become effective on delivery of the assignment to the attorney general and the financial institution where the escrow account is maintained. An assignment of escrow funds shall not be made by a tobacco product manufacturer unless and until the attorney general provides written approval to the tobacco product manufacturer.

(d) Notwithstanding subparagraph (b), paragraph 2 of this section, any escrow funds assigned to the state pursuant to subparagraph (c) of this section shall be withdrawn by the state on the approval of the attorney general. Any funds withdrawn pursuant to this subparagraph shall be deposited in the consumer protection-consumer fraud revolving fund

established by section 44-1531.01 and shall be calculated on a dollar-for-dollar basis as a credit against any judgment or settlement described in subparagraph (b), paragraph 2 of this section that may be obtained against the tobacco product manufacturer that has assigned the funds in the escrow account. This section does not relieve a tobacco product manufacturer from any past, current or future obligations that the manufacturer may have pursuant to this section or section 44-7111.

Section 4. Effect of judicial action.

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

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

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

ANY HOLDING THAT FEDERAL LAW PREEMPTS OR PROHIBITS THE APPLICATION OF ANY OTHER PROVISION OF SECTION 44-7101 IN ONE OR MORE CIRCUMSTANCES DOES NOT IMPAIR OR INVALIDATE THE STATUTE'S APPLICATION IN ANY OTHER CIRCUMSTANCE.

Sec. 26. Section 44-7111, Arizona Revised Statutes, is amended to read:

44-7111. <u>Tobacco; nonparticipating manufacturers; civil penalty; violation; classification</u>

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.

Section 2. Definitions.

(a) "Brand family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol", "lights", "kings" and "100s", and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(b) "Cigarette" has the same meaning prescribed in section 44-7101.

(c) "Department" means the department of revenue.

(d) "Director" means the director of the department.

(e) "Distributor" has the same meaning prescribed in section 42-3001.

(f) "Master settlement agreement" has the same meaning prescribed in section 44-7101.

(g) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(h) "Participating manufacturer" has the meaning given that term in section II(jj) of the master settlement agreement and all amendments thereto.

(i) "Qualified escrow fund" has the same meaning prescribed in section 44-7101.

(j) "Tobacco product manufacturer" has the same meaning prescribed in section 44-7101.

(k) "Units sold" has the same meaning prescribed in section 44-7101.

Section 3. Certifications; Directory; Tax Stamps.

(a) Certification. Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the ~~director and~~ attorney general not later than the thirtieth day of April each year, certifying that, as of the date of the certification, the tobacco product manufacturer either is a participating manufacturer or is in full compliance with section 44-7101, section 3(b), including all quarterly installment payments required by regulations as may be promulgated by the attorney general pursuant to section 5(f) of this article. AS TO ALL CERTIFICATIONS REQUIRED BY THIS ARTICLE, IF THE CERTIFICATION IS REJECTED DUE TO INCOMPLETENESS OR INCORRECTNESS, THE TOBACCO PRODUCT MANUFACTURER MAY NOT SUBMIT SUPPLEMENTAL DOCUMENTATION TO TRY TO CURE THE REJECTION AND MUST EXECUTE AND DELIVER AN ENTIRELY NEW CERTIFICATION TO THE ATTORNEY GENERAL.

(1) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general ~~and director~~.

(2) A nonparticipating manufacturer shall include in its certification (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year, (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year, (iii) indicating by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification and (iv) identifying by name and address any other manufacturer of the brand families in the preceding or current calendar year AND (v) FOR EACH OF THE CURRENT CALENDAR YEAR AND THE PRECEDING CALENDAR YEAR, A LIST OF ALL OF THIS STATE'S RESIDENT AND NONRESIDENT DISTRIBUTORS THAT THE MANUFACTURER SOLD CIGARETTES TO OR THAT THE MANUFACTURER BELIEVES OR HAS REASON TO BELIEVE PURCHASED OR RECEIVED ANY OF THE MANUFACTURER'S CIGARETTES FROM ANOTHER SOURCE. The nonparticipating manufacturer ~~shall update the list thirty calendar days prior~~ MUST EXECUTE AND DELIVER A SUPPLEMENTAL CERTIFICATION TO THE ATTORNEY GENERAL to REQUEST any addition to or modification of its brand families ~~by executing and delivering a supplemental certification to the attorney general and director~~. THE SUPPLEMENTAL CERTIFICATION REQUESTING THE ADDITION OR MODIFICATION DOES NOT RELIEVE THE BRAND FAMILIES FROM THE PROHIBITIONS SET FORTH IN SECTIONS 3(c) AND 6(d) UNTIL THE REQUEST IS APPROVED BY THE ATTORNEY GENERAL AND THE ADDITION OR MODIFICATION TO THE BRAND FAMILIES IS LISTED OR MADE IN THE DIRECTORY.

(3) In the case of a nonparticipating manufacturer, the certification shall further certify:

(a) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice thereof as required by section 4.

(b) That the nonparticipating manufacturer (i) has established and continues to maintain a qualified escrow fund and (ii) has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.

(c) That the nonparticipating manufacturer is in full compliance with section 44-7101, section (3)(b) and this article, and any regulations promulgated pursuant thereto;

(d) (i) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to section 44-7101, section 3(b) and all regulations promulgated pursuant thereto, (ii) the account number of the qualified escrow fund and any subaccount number for the state, (iii) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing and (iv) the amount of and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which

it ever made escrow payments pursuant to section 44-7101, section 3(b) and all regulations promulgated pursuant thereto.

(e) UNLESS THE NONPARTICIPATING MANUFACTURER OR ITS AFFILIATE IS LICENSED AS A TOBACCO DISTRIBUTOR IN THIS STATE, THAT ALL SALES OR SHIPMENTS MADE BY THE NONPARTICIPATING MANUFACTURER OR ITS AFFILIATE WITHIN OR INTO THIS STATE ARE MADE TO A TOBACCO DISTRIBUTOR THAT IS LICENSED IN THIS STATE.

(f) ALL OTHER INFORMATION AND MATERIALS SPECIFICALLY REQUESTED BY THIS SECTION OR THE ATTORNEY GENERAL IN THE COURSE OF ENFORCING THIS SECTION.

(4) A tobacco product manufacturer may not include a brand family in its certification unless (i) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement, and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of section 44-7101, section 3(b). Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of 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.

(6) A TOBACCO PRODUCT MANUFACTURER THAT IS NOT CURRENTLY LISTED IN THE DIRECTORY MUST SUBMIT AN INITIAL CERTIFICATION SUBJECT TO THE SAME REQUIREMENTS AND REVIEW PROCESS SET FORTH IN THIS ARTICLE FOR ANNUAL CERTIFICATIONS. THE TOBACCO PRODUCT MANUFACTURERS BRAND FAMILIES REMAIN SUBJECT TO THE PROHIBITIONS SET FORTH IN SECTIONS 3(c) AND 6(d) UNTIL LISTED IN THE DIRECTORY.

(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)~~ ANY TERM OF THIS ARTICLE, 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, INCLUDING FOR SALE WITHIN OR OUTSIDE OF THIS STATE, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(d) ~~A~~ EVERY nonparticipating manufacturer shall post a bond for the exclusive benefit of this state. ~~if (i) its cigarettes were not sold in the state during any one of the four preceding calendar quarters, (ii) it or any~~

~~person affiliated with it failed to make a full and timely escrow deposit due under section 44-7101 during any of the five preceding calendar years, unless the failure was not knowing or reckless and was promptly cured on notice or (iii) it or any person affiliated with it, or any of its brands or brands of a person affiliated with it, were removed from the state directory of any state during any of the five preceding calendar years, unless the removal was determined to have been erroneous or illegal. Entities are affiliated with each other if one directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the other.~~

(e) The bond shall be posted at least ten days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brand families being included in the state directory for that quarter. The amount of the bond shall be the greater of (i) the greatest required escrow amount due from the nonparticipating manufacturer or its predecessor for any of the twelve preceding calendar quarters or (ii) fifty thousand dollars. THE BOND CERTIFICATIONS AND MATERIALS MUST BE SUBMITTED AS PART OF THE INITIAL, ANNUAL AND SUPPLEMENTAL CERTIFICATIONS REQUIRED BY THIS ARTICLE.

(f) If a nonparticipating manufacturer that posted a bond has failed to make or have made on its behalf deposits equal to the full amount owed for a quarter within fifteen days following the due date of the quarter under section 5, subparagraph (g), the state may execute on the bond in the amount equal to any remaining amount of the escrow due. Amounts that the state collects on a bond shall be deposited into the state treasury and shall reduce the amount of escrow due from that nonparticipating manufacturer in the dollar amount collected. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and, as provided in any joint and several provision in this section, from the importers that sold its cigarettes during that calendar quarter.

(g) The office of the attorney general shall adopt rules necessary to implement subparagraphs (d), (e) and (f) of this section.

(h) Nonparticipating manufacturers located outside the United States must provide a declaration in a form prescribed by the attorney general from each of its importers into the United States of any of its brand families, that the importer accepts joint and several liability with the nonparticipating manufacturer for all escrow deposits due pursuant to section 44-7101 as well as all penalties and other relief available to the state pursuant to section 44-7101 and this section. The declaration shall appoint a resident agent for service of process in this state pursuant to section 4. The declarations shall be submitted as part of the certifications required pursuant to this section and updated at least thirty days before any other importer begins the importation of the manufacturer's cigarettes. Failure to comply with this subparagraph is grounds for removal from the directory. For the purposes of this subparagraph, "importer" has the same meaning as in 27 Code of Federal Regulations section 41.11 (2012). THE IMPORTER DECLARATION

MUST BE SUBMITTED AS PART OF THE INITIAL, ANNUAL AND SUPPLEMENTAL CERTIFICATIONS REQUIRED BY THIS ARTICLE.

(i) The attorney general shall have the authority to not retain or refuse to include in the directory any nonparticipating manufacturer or the manufacturer's brand families, that (i) does not certify that it is subject to the enforcement of section 44-7101, this section and section 36-798.06 without any immunity, (ii) provides incorrect, false or misleading statements in any certification submitted to this state pursuant to section 44-7101 or this section with regard to any year or (iii) was previously or is currently not in compliance with any other federal or state laws, including another state's qualifying statute as defined in the master settlement agreement or if the attorney general has reason to believe that the tobacco product manufacturer will not comply with the laws.

(j) The attorney general has the authority to require any nonparticipating manufacturer to submit all information, certifications, affidavits and other materials that the attorney general deems appropriate to determine compliance with this section and other related laws, including the grounds for not retaining or not including in the directory any nonparticipating manufacturer or the manufacturer's brand families.

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.

Section 5. Reporting of Information; Escrow Installments.

(a) Reporting by distributors. Not later than twenty calendar days after the end of each calendar ~~quarter~~ MONTH, and more frequently if so directed by the director, each distributor shall submit TO THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT such information as the director requires to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes or, in the case of roll your own, the equivalent stick count, for which the distributor affixed stamps during the previous calendar quarter or otherwise paid the tax due for the cigarettes. THE DEPARTMENT SHALL REVIEW ALL INFORMATION REPORTED BY THE DISTRIBUTOR FOR ACCURACY AND COMPLETENESS. The distributor shall maintain, and make available to the director and the attorney general, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the director for a period of five years.

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

(c) If a tobacco product manufacturer required to establish a qualified escrow fund under section 44-7101, section 3(b) disputes the attorney general's determination of the amount that the manufacturer is required to deposit into escrow and the attorney general determines that the dispute can likely be resolved by information contained in reports submitted by distributors to the department indicating sales or purchases of the manufacturer's cigarettes, then the attorney general shall produce the relevant portions of the reports to the manufacturer. However, before disclosing the foregoing information, the attorney general may require the manufacturer to provide all records related to its sales of the cigarettes in dispute. The disclosure provided by the attorney general to a tobacco product manufacturer pursuant to this subsection shall be limited to information concerning the cigarettes alleged by the state to be subject to the requirements of section 44-7101, section 3(b), may be used by the manufacturer only for the limited purpose of determining the appropriate escrow deposit, and may not be disclosed by the manufacturer to any third parties.

(d) Verification of qualified escrow fund. The attorney general may require at any time from the nonparticipating manufacturer, proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with section 44-7101, section 3(b) of the amount of money in the fund, exclusive of interest, the amount and the date of each deposit to the fund, and the amount and date of each withdrawal 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~~ FOLLOWING EACH SALES QUARTER. 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. QUARTERLY ESCROW INSTALLMENT DEPOSITS MUST BE MADE PURSUANT TO THE FOLLOWING SCHEDULE:

(1) FOR THE FIRST QUARTER, JANUARY THROUGH MARCH, ON OR BEFORE MAY 31 OF THE CALENDAR YEAR.

(2) FOR THE SECOND QUARTER, APRIL THROUGH JUNE, ON OR BEFORE AUGUST 31 OF THE CALENDAR YEAR.

(3) FOR THE THIRD QUARTER, JULY THROUGH SEPTEMBER, ON OR BEFORE NOVEMBER 30 OF THE CALENDAR YEAR.

(4) FOR THE FOURTH QUARTER, OCTOBER THROUGH DECEMBER, ON OR BEFORE FEBRUARY 28 OF THE FOLLOWING CALENDAR YEAR.

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 to seizure by the department and forfeiture, and all the cigarettes so seized and forfeited shall be destroyed and not resold.

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

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

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

Section 7. Miscellaneous Provisions.

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

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

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

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

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

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

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

Sec. 27. Rulemaking

The attorney general and the department of revenue are exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 28. Retroactivity

Section 42-3207, Arizona Revised Statutes, as amended by this act, is effective retroactively to from and after March 31, 2012.

Sec. 29. Effective date

Section 42-2003, Arizona Revised Statutes, as amended by Laws 2013, chapter 255, section 2 and this act, is effective from and after December 31, 2014.

APPROVED BY THE GOVERNOR APRIL 22, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2014.

Passed the House March 6, 2014

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Speaker of the House

Pro Tempore

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 16, 2014

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2674

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

April 16, 2014,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Cheryl Lauber

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17th day of April, 2014,

at 10:45 o'clock A M.

Lindsay Scornavacco

Secretary to the Governor

Approved this 22nd day of

April, 2014,

at 3:58 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 23rd day of April, 2014,

at 9:40 o'clock a M.

Ken Bennett

Secretary of State

H.B. 2674