

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1725

5 By: Representative L. Johnson
6 By: Senators J. Petty, J. Boyd
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT
10 OF 1977; TO INFORM THE PUBLIC OF HEALTH RISKS CAUSED
11 BY VAPOR PRODUCTS, E-LIQUID PRODUCTS, AND ALTERNATIVE
12 NICOTINE PRODUCTS; TO PREVENT CONTAMINATION,
13 ADULTERATION, OR INCLUSION OF INGREDIENTS OR OTHER
14 SUBSTANCES IN VAPOR PRODUCTS, E-LIQUID PRODUCTS, OR
15 ALTERNATIVE NICOTINE PRODUCTS THAT MIGHT CAUSE HARM
16 TO PUBLIC HEALTH AND SAFETY; TO ENSURE THE SAFETY OF
17 ARKANSAS YOUTH; AND FOR OTHER PURPOSES.
18
19

Subtitle

21 TO INFORM THE PUBLIC OF HEALTH RISKS
22 CAUSED BY VAPOR PRODUCTS, E-LIQUID
23 PRODUCTS, AND ALTERNATIVE NICOTINE
24 PRODUCTS; AND TO ENSURE THE SAFETY OF
25 ARKANSAS YOUTH.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code 19-6-831(b)(2), concerning the creation of
31 the Arkansas Tobacco Control Revenue Fund, is amended to read as follows:

32 (2) The fund also shall consist of any other revenues authorized
33 by law, including without limitation all certification fees collected by
34 Arkansas Tobacco Control under § 20-65-201 et seq. and all civil penalties
35 collected by Arkansas Tobacco Control under § 20-65-204(c).
36



1 SECTION 2. Arkansas Code 19-6-831(c)(1), concerning the creation of
 2 the Arkansas Tobacco Control Revenue Fund, is amended to read as follows:

3 (c)(1) The fund shall be used for expenses incurred by Arkansas
 4 Tobacco Control in the organization, maintenance, operation, and merchant
 5 education and training with regard to enforcement of § 5-27-227, § 20-65-201
 6 et seq., the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq.,
 7 and the Unfair Cigarette Sales Act, § 4-75-701 et seq.

8
 9 SECTION 3. Arkansas Code Title 20, is amended to add an additional
 10 chapter to read as follows:

11 CHAPTER 65 – TOBACCO PRODUCTS, VAPOR PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS,
 12 AND E-LIQUID PRODUCTS

13
 14 Subchapter 1 – General Provisions

15
 16 20-65-101. Definitions.

17 As used in this chapter, unless otherwise specified in this chapter:

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

22 (B) “Alternative nicotine product” does not include a:

23 (i) Tobacco product;

24 (ii) Vapor product;

25 (iii) Product that is a drug under 21 U.S.C. §
 26 321(g)(1);

27 (iv) Product that is a device under 21 U.S.C. §
 28 321(h); or

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

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

33 (3) “Brand family” means all styles of vapor products,
 34 alternative nicotine products, and e-liquid products sold under the same
 35 trademark and differentiated from another style by means of additional
 36 modifiers or descriptors, and includes any brand name alone or in conjunction

1 with any other word, trademark, logo, symbol, motto, selling message,
2 recognizable pattern of colors, or any other indicia of product
3 identification identical or similar to or identifiable with a previously
4 known brand of vapor products, alternative nicotine product, or e-liquid
5 products;

6 (4) "Childcare facility" means the same as provided in § 20-78-
7 202(2);

8 (5)(A) "Child-resistant packaging" means packaging that is
9 designed or constructed to be:

10 (i) Significantly difficult for a child under five
11 (5) years of age to:

12 (a) Open; or

13 (b) Obtain a toxic or harmful amount of the
14 substance contained in the packaging within a reasonable time; and

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

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

21 (6) "Consumer" means a member of the public at large;

22 (7)(A) "E-liquid container" means a bottle or other container of
23 e-liquid that is sold or provided for mixing at retail and is marketed or
24 intended for use in a vapor product.

25 (B) "E-liquid container" does not include e-liquid
26 contained in a cartridge that is sold, marketed, or intended for use in a
27 vapor product if the cartridge is prefilled and sealed by the manufacturer
28 and is not intended to be opened by the consumer;

29 (8) "E-liquid" and "e-liquid product" means a liquid product,
30 which may or may not contain nicotine, that is inhaled when using a vapor
31 product, and that may or may not include without limitation propylene glycol,
32 vegetable glycerin, nicotine from any source, and flavorings;

33 (9) "Healthcare facility" means the same as in § 20-27-1803(6);

34 (10)(A) "Manufacturer" means a person that manufactures,
35 fabricates, assembles, or processes a tobacco product or manufactures or
36 fabricates a vapor product, alternative nicotine product, or e-liquid

1 product, including without limitation federally licensed importers and
2 federally licensed distributors that deal in tobacco products, vapor
3 products, alternative nicotine products, or e-liquid products.

4 (B) "Manufacturer" includes a sales entity affiliate of
5 the manufacturer or any other entity representing the manufacturer with
6 regard to the sale of tobacco products, vapor products, alternative nicotine
7 products, or e-liquid products produced by the manufacturer to wholesalers or
8 permitted retailers.

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

11 (11) "School" means:

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

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

18 (12) "Tobacco products" means all products containing tobacco
19 for consumption, including without limitation cigarettes, cigars, little
20 cigars, cigarillos, chewing tobacco, smokeless tobacco, snuff, smoking
21 tobacco, including pipe tobacco, and smoking tobacco substitutes; and

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

26 (A) Is composed of a heating element, battery, electronic
27 circuit, chemical process, mechanical device, or a combination of heating
28 element, battery, electronic circuit, chemical process, or mechanical device;

29 (B) Works in combination with a cartridge, other
30 container, or liquid delivery device containing nicotine, e-liquid, or any
31 other substance and manufactured for use with vapor products;

32 (C) Is manufactured, distributed, marketed, or sold as any
33 type or derivation of a vapor product, e-cigarette, e-cigar, e-pipe, or any
34 other product name or descriptor; and

35 (D) Does not include a product regulated as a drug or
36 device by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.,

1 as it existed on January 1, 2015.

2
3 20-65-102. Safety inspections – Child-resistant packaging.

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

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

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

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

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

23 (b) All alternative nicotine products and e-liquid containers sold at
24 retail in this state shall satisfy the child-resistant packaging
25 effectiveness standards described in § 20-65-101 and the requirements of the
26 Federal Nicotine Poisoning Prevention Act, Public Law No. 114-116 (2016), 15
27 U.S.C. § 1472a.

28
29 20-65-103. Prohibition on use in certain settings.

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

33
34 20-65-104. Advertising prohibitions for vapor product, alternative
35 nicotine product, e-liquid product, or e-liquid containers.

36 A person shall not advertise, market, or offer for sale in this state

1 any tobacco products, vapor products, alternative nicotine products, e-liquid
2 products, or e-liquid containers by using, in the labeling or design of the
3 product, its packaging, or in its advertising or marketing materials, trade
4 dress, trademarks, branding, or other related imagery that:

5 (1) Imitates or replicates those of food brands or other related
6 products that are commonly marketed to children or minors, including, but not
7 limited to, breakfast cereal, cookies, juice drinks, soft drinks, frozen
8 drinks, ice creams, sorbets, sherbets, and frozen pops;

9 (2) Depicts or signifies characters or symbols that are known to
10 a reasonable person to appeal primarily to or are commonly associated with
11 children or minors, including, but not limited to, superheroes, cartoons or
12 cartoon characters, including anime characters, comic book characters, video
13 game characters, television show characters, movie characters, mythical
14 creatures, unicorns, or that otherwise incorporates related imagery or
15 scenery; or

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

24
25 20-65-105. Contaminated or adulterated tobacco products, vapor
26 products, alternative nicotine products, or e-liquid products.

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

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

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

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

1 (3) Does not have an approved certification as required § 20-65-
2 202.

3
4 Subchapter 2 – Manufacturer Directory for Vapor Products, Alternative
5 Nicotine Products, or E-liquid Products

6
7 20-65-201. Definitions.

8 As used in this subchapter:

9 (1) “Alternative nicotine product” has the same meaning as in §
10 20-65-101(1);

11 (2) “E-liquid” and “e-liquid product” means a liquid product
12 containing nicotine from any source that is inhaled when using a vapor
13 product, and that may or may not include without limitation propylene glycol,
14 vegetable glycerin, and flavorings; and

15 (3) “Vapor product” means an electronic oral device of any size
16 or shape that contains a vapor of nicotine or e-liquid that when used or
17 inhaled simulates smoking, regardless of whether a visible vapor is produced,
18 including without limitation a device that:

19 (A) Is composed of a heating element, battery, electronic
20 circuit, chemical process, mechanical device, or a combination of heating
21 element, battery, electronic circuit, chemical process, or mechanical device;

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

25 (C) Is manufactured, distributed, marketed, or sold as any
26 type or derivation of a vapor product, e-cigarette containing nicotine from
27 any source, e-cigar containing nicotine from any source, e-pipe containing
28 nicotine from any source, or any other vapor product name or descriptor; and

29 (D) Does not include a product regulated as a drug or
30 device by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.,
31 as it existed on January 1, 2015.

32
33 20-65-202. Establishment.

34 (a) The Director of Arkansas Tobacco Control shall develop and
35 maintain a directory listing all manufacturers that have provided
36 certifications that comply with this subchapter and each vapor product,

1 alternative nicotine product, and e-liquid product that is listed in those
2 certifications.

3 (b) The director shall:

4 (1) Make the directory available for public inspection on
5 Arkansas Tobacco Control's website by July 1, 2024; and

6 (2) Update the directory as necessary in order to correct
7 mistakes and to add or remove manufacturers or a vapor product, alternative
8 nicotine product, or e-liquid product consistent with the requirements of
9 this section on a monthly basis.

10 (c) A person or entity is deemed to have received notice that a vapor
11 product, alternative nicotine product, or e-liquid product of a manufacturer
12 is not included in the directory maintained by Arkansas Tobacco Control under
13 this section at the time Arkansas Tobacco Control's website fails to list any
14 vapor product, alternative nicotine product, or e-liquid product in the
15 directory or at the time the director removes the vapor product, alternative
16 nicotine product, or e-liquid product from the directory.

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

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

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

32 (3) If after fifteen (15) days from the date of service of the
33 notice of the director's intended action the manufacturer of vapor product,
34 alternative nicotine product, or e-liquid product remains in noncompliance,
35 and the manufacturer has not requested a hearing before the Arkansas Tobacco
36 Control Board within fifteen (15) days of notice of the director's intended

1 action, the manufacturer and its vapor product, alternative nicotine product,
2 or e-liquid product shall be removed from the directory.

3 (4) Every manufacturer shall provide and update as necessary an
4 email address to the Director of Arkansas Tobacco Control for the purpose of
5 receiving any notifications as may be required by this subchapter.

6 (e)(1) Beginning June 1, 2024, a vapor product, alternative nicotine
7 product, or e-liquid product shall not be offered for sale in this state or
8 sold to a person located in this state unless the manufacturer certifies
9 before that date on a form prescribed by the director, under penalty of
10 perjury, either:

11 (A) The vapor product, alternative nicotine product, or e-
12 liquid product was on the market in the United States as of August 8, 2016,
13 and the manufacturer has applied for a marketing order under 21 U.S.C. § 387j
14 for the vapor product, alternative nicotine product, or e-liquid product,
15 whichever is applicable, by submitting a premarket tobacco product
16 application on or before September 9, 2020, if the product contains tobacco-
17 derived nicotine, or May 14, 2022, if the product contains nontobacco-derived
18 nicotine, to the United States Food and Drug Administration, and either:

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

22 (ii) The United States Food and Drug Administration
23 has issued a no marketing order for the vapor product, alternative nicotine
24 product, or e-liquid product, whichever is applicable, but the United States
25 Food and Drug Administration or a federal court has issued a stay order or
26 injunction during the pendency of the manufacturer's appeal of the no
27 marketing order; or

28 (B) The manufacturer has received a marketing order or
29 other authorization under 21 U.S.C. § 387j for the vapor product, alternative
30 nicotine product, or e-liquid product from the United States Food and Drug
31 Administration.

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

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

1 (B) Marketing order or other authorization issued under 21
2 U.S.C. § 387j.

3
4 20-65-203. Material change to certification.

5 A manufacturer shall notify the Director of Arkansas Tobacco Control
6 within thirty (30) days of any material change to the information provided in
7 § 20-65-202, including issuance by the United States Food and Drug
8 Administration of:

9 (1) A market order or other authorization issued under 21 U.S.C.
10 § 387j;

11 (2) An order requiring a manufacturer to remove a vapor product,
12 alternative nicotine product, or e-liquid product from the market either
13 temporarily or permanently;

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

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

21
22 20-65-204. Fees – Violations.

23 (a)(1) Each certifying manufacturer shall pay an initial fee of one
24 thousand dollars (\$1,000) for each brand family of vapor products,
25 alternative nicotine products, or e-liquid products to offset the costs
26 incurred by Arkansas Tobacco Control for processing the certifications and
27 operating the directory under § 20-65-202.

28 (2) The Director of Arkansas Tobacco Control shall collect an
29 annual fee of five hundred dollars (\$500) for each brand family of vapor
30 products, alternative nicotine products, or e-liquid products to offset the
31 costs associated with maintaining the directory and satisfying the
32 requirements of this subchapter.

33 (3) Any certification fees collected under this section shall be
34 deposited into the Arkansas Tobacco Control Revenue Fund established under §
35 19-6-831.

36 (b)(1) If a manufacturer can demonstrate to the director that the

1 United States Food and Drug Administration has issued a rule, guidance, or
2 any other formal statement that temporarily exempts a vapor product,
3 alternative nicotine product, or e-liquid product from the federal premarket
4 tobacco application requirements, the vapor product, alternative nicotine
5 product, or e-liquid product may be added to the directory upon request by
6 the manufacturer if the manufacturer provides sufficient evidence that the
7 vapor product, alternative nicotine product, or e-liquid product is compliant
8 with the federal rule, guidance, or other formal statement, as applicable.

9 (2) Beginning on and after July 1, 2024, or on the date that
10 Arkansas Tobacco Control first makes the directory available for public
11 inspection on its website as provided in § 20-65-202, whichever is later, a
12 manufacturer who offers for sale a vapor product, alternative nicotine
13 product, or e-liquid product that is not listed on the directory is subject
14 to a civil penalty of one thousand dollars (\$1,000) daily for each vapor
15 product, alternative nicotine product, or e-liquid product offered for sale
16 in violation of § 20-65-202 until the vapor product, alternative nicotine
17 product, or e-liquid product is removed from the market or properly listed on
18 the directory.

19 (3) In addition to any penalty prescribed by law, a corporation,
20 partnership, sole proprietor, limited partnership, or association engaged in
21 the manufacture of vapor products, alternative nicotine products, or e-liquid
22 products that knowingly makes a false certification under this subchapter is
23 subject to a civil penalty of not less than seventy-five thousand dollars
24 (\$75,000) but not more than two hundred fifty thousand dollars (\$250,000) for
25 each false certification.

26 (4) Beginning on July 1, 2024, or on the date that the Arkansas
27 Tobacco Control first makes the directory available for public inspection on
28 its website as provided in this subchapter, whichever is later, it is
29 unlawful for any person or entity to sell, offer, or possess in this state,
30 or import for personal consumption in this state, vapor products, alternative
31 nicotine products, or e-liquid products that the person or entity knows is
32 not included in the directory maintained by the director under this
33 subchapter.

34 (5) A person or entity is deemed to have received notice that a
35 manufacturer is not included in the directory maintained by Arkansas Tobacco
36 Control under this subsection at the time Arkansas Tobacco Control's website

1 fails to list any manufacturer in the directory or at the time the director
2 removes the manufacturer from the directory.

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

13 (7) If a vapor product, alternative nicotine product, or e-
14 liquid product or a manufacturer of a vapor product, alternative nicotine
15 product, or e-liquid product is removed from the directory established and
16 maintained by the director under § 20-65-201, each retailer shall have one
17 hundred twenty (120) days from the date any vapor product, alternative
18 nicotine product, or e-liquid product is removed from the directory to remove
19 any vapor product, alternative nicotine product, or e-liquid product from the
20 retailer's inventory and permitted location.

21 (c)(1) In addition to the other fines and forfeitures, a person who
22 violates § 20-65-202 may be subject to a penalty for vapor products,
23 alternative nicotine products, or e-liquid products held, sold, or offered
24 for sale and confiscated by Arkansas Tobacco Control under state law in the
25 amount of:

26 (A) Twenty-five dollars (\$25.00) for each individual vapor
27 product, alternative nicotine product, or e-liquid product up to twenty (20)
28 individual vapor products, alternative nicotine products, or e-liquid
29 products; and

30 (B) Fifty dollars (\$50.00) for each individual vapor
31 product, alternative nicotine product, or e-liquid product in excess of
32 twenty (20) individual vapor products, alternative nicotine products, or e-
33 liquid products.

34 (2) The penalty under subdivision (c)(1) of this section shall
35 be held to be in the nature of a civil penalty and may be collected by civil
36 or administrative action and may be levied by the Arkansas Tobacco Control

1 Board or any circuit court of this state.

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

5
 6 SECTION 4. Arkansas Code § 26-57-203(4), concerning the definition of
 7 "child-resistant packaging" within the Arkansas Tobacco Products Tax Act of
 8 1977, is repealed to be codified in a more appropriate section.

9 ~~(4)(A) "Child resistant packaging" means packaging that is~~
 10 ~~designed or constructed to be:~~

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

13 ~~(a) Open; or~~

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

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

18 ~~(B) "Child resistant packaging" does not mean packaging~~
 19 ~~that children cannot open or obtain a toxic or harmful amount within a~~
 20 ~~reasonable time when tested in accordance with the method described in 16~~
 21 ~~C.F.R. § 1700.20, as it existed on January 1, 2015;~~

22
 23 SECTION 5. Arkansas Code 26-57-247(b), concerning seizure, forfeiture,
 24 and disposition of tobacco products and other property, is amended to read as
 25 follows:

26 (b) The Director of Arkansas Tobacco Control may seize and hold for
 27 disposition of the courts or the Arkansas Tobacco Control Board all tobacco
 28 products, alternative nicotine products, or e-liquid products found in the
 29 possession of a person dealing in, or a consumer of, tobacco products, vapor
 30 products, alternative nicotine products, or e-liquid products if:

31 (1) Prima facie evidence exists that the full amount of excise
 32 tax due on the tobacco products has not been paid to the Secretary of the
 33 Department of Finance and Administration;

34 (2) Tobacco products, vapor products, alternative nicotine
 35 products, or e-liquid products are in the possession of a wholesaler who does
 36 not possess a current Arkansas wholesale permit;

1 (3) A retail establishment does not possess a current Arkansas
 2 retail permit; ~~or~~

3 (4) The tobacco products, vapor products, alternative nicotine
 4 products, or e-liquid products have been offered for sale to the public at
 5 another location without a current Arkansas retail permit; or

6 (5) Tobacco products, vapor products, alternative nicotine
 7 products, or e-liquid products are possessed, sold, or offered for sale in
 8 violation of Title 20, Chapter 65.

9
 10 SECTION 6. Arkansas Code § 26-57-254 is repealed to be codified in a
 11 more appropriate section.

12 ~~26-57-254. Safety inspections on permitted products—Restrictions on~~
 13 ~~use of e-liquid products and alternative nicotine products—Definitions.~~

14 ~~(a) In order to assure that the citizens of this state receive only~~
 15 ~~tobacco products, vapor products, alternative nicotine products, or e-liquid~~
 16 ~~products that are fresh and not contaminated, and to ensure the safety of~~
 17 ~~Arkansas youth, the Director of Arkansas Tobacco Control is authorized under~~
 18 ~~this subchapter to:~~

19 ~~(1) Inspect or cause to be inspected any tobacco product, vapor~~
 20 ~~product, alternative nicotine product, or e-liquid container in places of~~
 21 ~~storage or distribution authorized under this subchapter; and~~

22 ~~(2) Require any tobacco products, vapor products, alternative~~
 23 ~~nicotine products, or e-liquid containers found to be contaminated, damaged,~~
 24 ~~or not fresh be removed from stock and be either returned to the proper~~
 25 ~~wholesaler or manufacturer for disposal according to law or delivered to the~~
 26 ~~Director of Arkansas Tobacco Control for destruction or disposal.~~

27 ~~(b)(1) It is a violation for any person to use a tobacco product,~~
 28 ~~vapor product, alternative nicotine product, or e-liquid product in or on the~~
 29 ~~grounds of any school, childcare facility, or healthcare facility.~~

30 ~~(2) As used in subdivision (b)(1) of this section:~~

31 ~~(A) “Childcare facility” means the same as provided in §~~
 32 ~~20-78-202(2);~~

33 ~~(B) “Healthcare facility” means the same as provided in §~~
 34 ~~20-27-1803(6); and~~

35 ~~(C) “School” means:~~

36 ~~(i) Any buildings, parking lots, playing fields,~~

1 playgrounds, school buses, or other school vehicles; or

2 (ii) ~~Any off-campus school sponsored or school-~~
3 ~~sanctioned events with respect to any public, charter, or private school~~
4 ~~where children attend classes in kindergarten programs or grades one through~~
5 ~~twelve (1-12).~~

6 (c) ~~On and after July 22, 2015, all alternative nicotine products and~~
7 ~~e-liquid containers containing nicotine sold at retail in this state shall~~
8 ~~satisfy the child-resistant packaging effectiveness standards described in §~~
9 ~~26-57-203 when tested in accordance with the method described by 16 C.F.R. §~~
10 ~~1700.20, as it existed on January 1, 2015.~~

11 (d) ~~As used in this section, “e-liquid container” means a bottle or~~
12 ~~other container of e-liquid that is sold or provided for mixing at retail and~~
13 ~~is marketed or intended for use in a vapor product, but does not include e-~~
14 ~~liquid contained in a cartridge that is sold, marketed, or intended for use~~
15 ~~in a vapor product if the cartridge is prefilled and sealed by the~~
16 ~~manufacturer and is not intended to be opened by the consumer.~~

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18 SECTION 7. Arkansas Code 26-57-255(g)(3)(A), concerning the creation
19 of the Arkansas Tobacco Control Board, is amended to read as follows:

20 (A) Conduct public hearings when appropriate regarding a
21 permit authorized under this subchapter or in violation of this subchapter,
22 the Unfair Cigarette Sales Act, § 4-75-701 et seq., § 5-27-227, Title 20,
23 Chapter 65, or any other federal, state, or local statute, ordinance, rule,
24 or regulation concerning the sale of tobacco products, vapor products,
25 alternative nicotine products, or e-liquid products to minors or the rules
26 promulgated by Arkansas Tobacco Control.

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28 SECTION 8. Arkansas Code 26-57-255(g)(3)(B), concerning the creation
29 of the Arkansas Tobacco Control Board, is amended to read as follows:

30 (B) After notice and hearing held in accordance with the
31 Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board
32 finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-
33 701 et seq., Title 20, Chapter 65, or the rules promulgated by Arkansas
34 Tobacco Control, the board may suspend or revoke any or all permits issued by
35 the director to any person.

36

1 SECTION 9. Arkansas Code 26-57-255(g)(3)(C), concerning the creation
2 of the Arkansas Tobacco Control Board, is amended to read as follows:

3 (C) The board may levy a civil penalty in an amount not to
4 exceed five thousand dollars (\$5,000) for each violation against a person
5 found to be in violation of this subchapter, the Unfair Cigarette Sales Act,
6 4-75-701 et seq., Title 20, Chapter 65, or the rules promulgated by Arkansas
7 Tobacco Control.

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9 SECTION 10. Arkansas Code 26-57-256(a), concerning the powers of
10 Arkansas Tobacco Control, is amended to add an additional subdivision to read
11 as follows:

12 (7)(A) Develop and maintain a directory as described under § 20-
13 65-202.

14 (B) Arkansas Tobacco Control shall impose a civil penalty
15 set under § 20-65-204 for a violation of § 20-65-201 et seq.

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