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4

As Engrossed: H4/3/23

# 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;

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 (iii) The United States Food and Drug Administration  
29 has not issued a marketing order or denial order for the vapor product,  
30 alternative nicotine product, or e-liquid product, but the manufacturer has  
31 amended, supplemented, or refiled the premarket tobacco application for the  
32 vapor product, alternative nicotine product, or e-liquid product to address  
33 written recommended corrections from the United States Food and Drug  
34 Administration within six (6) months from the date the manufacturer received  
35 the written recommended corrections from the United States Food and Drug  
36 Administration; or

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

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

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

10                   (B) Marketing order or other authorization issued under 21  
11 U.S.C. § 387j; and

12                   (C) If applicable under subdivision (e)(1)(A)(iii) of this  
13 section, the written recommended corrections from the United States Food and  
14 Drug Administration with dates of receipt.

15  
16                   20-65-203. Material change to certification.

17                   A manufacturer shall notify the Director of Arkansas Tobacco Control  
18 within thirty (30) days of any material change to the information provided in  
19 § 20-65-202, including issuance by the United States Food and Drug  
20 Administration of:

21                   (1) A market order or other authorization issued under 21 U.S.C.  
22 § 387j;

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

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

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

33                   (5) Evidence that the United States Food and Drug Administration  
34 has provided the manufacturer with written recommended corrections or  
35 requests for amendments, supplemental documentation, or refiling of the  
36 premarket tobacco application for the vapor product, alternative nicotine

1 product, or e-liquid product.

2  
3 20-65-204. Fees – Violations.

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

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

14 (3) Any certification fees collected under this section shall be  
15 deposited into the Arkansas Tobacco Control Revenue Fund established under §  
16 19-6-831.

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

26 (2) Beginning on and after July 1, 2024, or on the date that  
27 Arkansas Tobacco Control first makes the directory available for public  
28 inspection on its website as provided in § 20-65-202, whichever is later, a  
29 manufacturer who offers for sale a vapor product, alternative nicotine  
30 product, or e-liquid product that is not listed on the directory is subject  
31 to a civil penalty of one thousand dollars (\$1,000) daily for each vapor  
32 product, alternative nicotine product, or e-liquid product offered for sale  
33 in violation of § 20-65-202 until the vapor product, alternative nicotine  
34 product, or e-liquid product is removed from the market or properly listed on  
35 the directory.

36 (3) In addition to any penalty prescribed by law, a corporation,

1 partnership, sole proprietor, limited partnership, or association engaged in  
2 the manufacture of vapor products, alternative nicotine products, or e-liquid  
3 products that knowingly makes a false certification under this subchapter is  
4 subject to a civil penalty of not less than seventy-five thousand dollars  
5 (\$75,000) but not more than two hundred fifty thousand dollars (\$250,000) for  
6 each false certification.

7 (4) Beginning on July 1, 2024, or on the date that the Arkansas  
8 Tobacco Control first makes the directory available for public inspection on  
9 its website as provided in this subchapter, whichever is later, it is  
10 unlawful for any person or entity to sell, offer, or possess in this state,  
11 or import for personal consumption in this state, vapor products, alternative  
12 nicotine products, or e-liquid products that the person or entity knows is  
13 not included in the directory maintained by the director under this  
14 subchapter.

15 (5) A person or entity is deemed to have received notice that a  
16 manufacturer is not included in the directory maintained by Arkansas Tobacco  
17 Control under this subsection at the time Arkansas Tobacco Control's website  
18 fails to list any manufacturer in the directory or at the time the director  
19 removes the manufacturer from the directory.

20 (6) If a vapor product, alternative nicotine product, or e-  
21 liquid product or a manufacturer of a vapor product, alternative nicotine  
22 product, or e-liquid product is removed from the directory established and  
23 maintained by the director under § 20-65-202, each wholesaler shall have  
24 sixty (60) days from the date any vapor product, alternative nicotine  
25 product, or e-liquid product is removed from the directory to remove any  
26 vapor product, alternative nicotine product, or e-liquid product from the  
27 wholesaler's inventory and physical location where the wholesaler takes  
28 orders for, receives orders for, or sells the vapor product, alternative  
29 nicotine product, or e-liquid product.

30 (7) If a vapor product, alternative nicotine product, or e-  
31 liquid product or a manufacturer of a vapor product, alternative nicotine  
32 product, or e-liquid product is removed from the directory established and  
33 maintained by the director under § 20-65-201, each retailer shall have one  
34 hundred twenty (120) days from the date any vapor product, alternative  
35 nicotine product, or e-liquid product is removed from the directory to remove  
36 any vapor product, alternative nicotine product, or e-liquid product from the

1 retailer's inventory and permitted location.

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

7 (A) Twenty-five dollars (\$25.00) for each individual vapor  
 8 product, alternative nicotine product, or e-liquid product up to twenty (20)  
 9 individual vapor products, alternative nicotine products, or e-liquid  
 10 products; and

11 (B) Fifty dollars (\$50.00) for each individual vapor  
 12 product, alternative nicotine product, or e-liquid product in excess of  
 13 twenty (20) individual vapor products, alternative nicotine products, or e-  
 14 liquid products.

15 (2) The penalty under subdivision (c)(1) of this section shall  
 16 be held to be in the nature of a civil penalty and may be collected by civil  
 17 or administrative action and may be levied by the Arkansas Tobacco Control  
 18 Board or any circuit court of this state.

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

22  
 23 SECTION 4. Arkansas Code § 26-57-203(4), concerning the definition of  
 24 "child-resistant packaging" within the Arkansas Tobacco Products Tax Act of  
 25 1977, is repealed to be codified in a more appropriate section.

26 ~~(4)(A) "Child-resistant packaging" means packaging that is~~  
 27 ~~designed or constructed to be:~~

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

30 ~~(a) Open; or~~

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

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

35 ~~(B) "Child-resistant packaging" does not mean packaging~~  
 36 ~~that children cannot open or obtain a toxic or harmful amount within a~~

1 ~~reasonable time when tested in accordance with the method described in 16~~  
2 ~~C.F.R. § 1700.20, as it existed on January 1, 2015,~~

3  
4 SECTION 5. Arkansas Code 26-57-247(b), concerning seizure, forfeiture,  
5 and disposition of tobacco products and other property, is amended to read as  
6 follows:

7 (b) The Director of Arkansas Tobacco Control may seize and hold for  
8 disposition of the courts or the Arkansas Tobacco Control Board all tobacco  
9 products, alternative nicotine products, or e-liquid products found in the  
10 possession of a person dealing in, or a consumer of, tobacco products, vapor  
11 products, alternative nicotine products, or e-liquid products if:

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

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

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

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

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

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

29 ~~26-57-254. Safety inspections on permitted products—Restrictions on~~  
30 ~~use of e-liquid products and alternative nicotine products—Definitions.~~

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

36 ~~(1) Inspect or cause to be inspected any tobacco product, vapor~~

1 ~~product, alternative nicotine product, or e-liquid container in places of~~  
2 ~~storage or distribution authorized under this subchapter; and~~

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

8 ~~(b)(1) It is a violation for any person to use a tobacco product,~~  
9 ~~vapor product, alternative nicotine product, or e-liquid product in or on the~~  
10 ~~grounds of any school, child care facility, or health care facility.~~

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

12 ~~(A) "Child care facility" means the same as provided in §~~  
13 ~~20-78-202(2);~~

14 ~~(B) "Health care facility" means the same as provided in §~~  
15 ~~20-27-1803(6); and~~

16 ~~(C) "School" means:~~

17 ~~(i) Any buildings, parking lots, playing fields,~~  
18 ~~playgrounds, school buses, or other school vehicles; or~~

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

23 ~~(c) On and after July 22, 2015, all alternative nicotine products and~~  
24 ~~e-liquid containers containing nicotine sold at retail in this state shall~~  
25 ~~satisfy the child-resistant packaging effectiveness standards described in §~~  
26 ~~26-57-203 when tested in accordance with the method described by 16 C.F.R. §~~  
27 ~~1700.20, as it existed on January 1, 2015.~~

28 ~~(d) As used in this section, "e-liquid container" means a bottle or~~  
29 ~~other container of e-liquid that is sold or provided for mixing at retail and~~  
30 ~~is marketed or intended for use in a vapor product, but does not include e-~~  
31 ~~liquid contained in a cartridge that is sold, marketed, or intended for use~~  
32 ~~in a vapor product if the cartridge is prefilled and sealed by the~~  
33 ~~manufacturer and is not intended to be opened by the consumer.~~

34  
35 SECTION 7. Arkansas Code 26-57-255(g)(3)(A), concerning the creation  
36 of the Arkansas Tobacco Control Board, is amended to read as follows:

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

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

11 (B) After notice and hearing held in accordance with the  
12 Arkansas Administrative Procedure Act, § 25-15-201 et seq., if the board  
13 finds a violation of this subchapter, the Unfair Cigarette Sales Act, § 4-75-  
14 701 et seq., Title 20, Chapter 65, or the rules promulgated by Arkansas  
15 Tobacco Control, the board may suspend or revoke any or all permits issued by  
16 the director to any person.

17  
18 SECTION 9. Arkansas Code 26-57-255(g)(3)(C), concerning the creation  
19 of the Arkansas Tobacco Control Board, is amended to read as follows:

20 (C) The board may levy a civil penalty in an amount not to  
21 exceed five thousand dollars (\$5,000) for each violation against a person  
22 found to be in violation of this subchapter, the Unfair Cigarette Sales Act,  
23 4-75-701 et seq., Title 20, Chapter 65, or the rules promulgated by Arkansas  
24 Tobacco Control.

25  
26 SECTION 10. Arkansas Code 26-57-256(a), concerning the powers of  
27 Arkansas Tobacco Control, is amended to add an additional subdivision to read  
28 as follows:

29 (7)(A) Develop and maintain a directory as described under § 20-  
30 65-202.

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

33  
34 /s/L. Johnson  
35  
36