

REFERENCE TITLE: tobacco; internet; mail sales; e-cigarettes

State of Arizona
Senate
Fiftieth Legislature
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2012

SB 1280

Introduced by
Senators Yarbrough: Barto

AN ACT

AMENDING SECTION 13-3622, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 6, ARTICLE 14, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-798.06; AMENDING SECTION 42-3001, ARIZONA REVISED STATUTES; REPEALING TITLE 42, CHAPTER 3, ARTICLE 5.1, ARIZONA REVISED STATUTES; AMENDING SECTION 44-7111, ARIZONA REVISED STATUTES; RELATING TO TOBACCO.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 13-3622. Furnishing of tobacco to minor; minor accepting or
5 receiving tobacco; illegally obtaining tobacco by
6 underage person; classification; definition

7 A. A person who knowingly sells, gives or furnishes cigars,
8 cigarettes, **ELECTRONIC CIGARETTES** or cigarette papers or smoking or chewing
9 tobacco to a minor, and a minor who buys, or has in his possession or
10 knowingly accepts or receives from any person, cigars, cigarettes, **ELECTRONIC**
11 **CIGARETTES** or cigarette papers or smoking or chewing tobacco of any kind, is
12 guilty of a petty offense.

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

20 C. **FOR THE PURPOSES OF THIS SECTION, "ELECTRONIC CIGARETTE" MEANS A**
21 **BATTERY-POWERED DEVICE THAT CAN PROVIDE INHALED DOSES OF NICOTINE BY**
22 **DELIVERING A VAPORIZED SOLUTION.**

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

25 36-798.06. Delivery sales prohibited; common carriers; civil
26 penalty; forfeiture; unlawful practice;
27 application; violation; classification;
28 definitions

29 A. **A PERSON, DISTRIBUTOR, MANUFACTURER OR RETAILER SHALL NOT DO EITHER**
30 **OF THE FOLLOWING:**

31 1. **CAUSE A TOBACCO PRODUCT OR CIGARETTE TO BE ORDERED OR PURCHASED BY**
32 **ANYONE OTHER THAN A LICENSED PERSON.**

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

35 B. **A COMMON CARRIER SHALL NOT KNOWINGLY TRANSPORT A TOBACCO PRODUCT OR**
36 **CIGARETTE FOR A PERSON, DISTRIBUTOR, MANUFACTURER OR RETAILER WHO IS IN**
37 **VIOLATION OF THIS SECTION.**

38 C. **A COMMON CARRIER IS PRESUMED TO KNOWINGLY TRANSPORT A TOBACCO**
39 **PRODUCT OR CIGARETTE IN VIOLATION OF SUBSECTION B OF THIS SECTION IF THE**
40 **COMMON CARRIER DELIVERS A TOBACCO PRODUCT OR CIGARETTE TO A RESIDENTIAL**
41 **ADDRESS.**

42 D. **EACH ORDER OR PURCHASE OF A TOBACCO PRODUCT OR CIGARETTE IN**
43 **VIOLATION OF SUBSECTION A, PARAGRAPH 1 OF THIS SECTION CONSTITUTES A SEPARATE**
44 **VIOLATION UNDER THIS SECTION.**

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

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

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

7 3. RECOVERY BY THIS STATE FOR:

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

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

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

13 (d) REASONABLE ATTORNEY FEES.

14 F. ON THE CONVICTION OF ANY PERSON FOR A VIOLATION OF THIS SECTION,
15 THE COURT SHALL ORDER THE TOBACCO PRODUCT OR CIGARETTE FORFEITED AND
16 DESTROYED.

17 G. A VIOLATION OF THIS SECTION IS AN UNLAWFUL PRACTICE UNDER SECTION
18 44-1522 AND IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES AND
19 PENALTIES THAT ARE AVAILABLE TO THIS STATE. THE ATTORNEY GENERAL MAY
20 INVESTIGATE AND TAKE APPROPRIATE ACTION PURSUANT TO TITLE 44, CHAPTER 10,
21 ARTICLE 7.

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

23 1. THE SHIPMENT OF A TOBACCO PRODUCT OR CIGARETTE TO A FOREIGN TRADE
24 ZONE LOCATED IN THIS STATE IF THE TOBACCO PRODUCT OR CIGARETTE IS FROM
25 OUTSIDE OF THIS COUNTRY, WAS ORDERED BY A DISTRIBUTOR IN ANOTHER STATE AND IS
26 NOT DISTRIBUTED IN THIS STATE.

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

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

30 J. FOR THE PURPOSES OF THIS SECTION:

31 1. "DISTRIBUTOR" MEANS A PERSON, WHEREVER RESIDING OR LOCATED, WHO IS
32 LICENSED IN THIS STATE TO PURCHASE NON-TAXED TOBACCO PRODUCTS AND WHO STORES,
33 SELLS OR OTHERWISE DISPOSES OF TOBACCO PRODUCTS.

34 2. "LICENSED PERSON" MEANS A PERSON WHO IS REQUIRED TO BE LICENSED
35 UNDER SECTION 42-3201 AND WHO IS EITHER A:

36 (a) DISTRIBUTOR.

37 (b) JOBBER.

38 (c) MANUFACTURER.

39 (d) RETAILER.

40 (e) WHOLESALER.

41 3. "ORDER OR PURCHASE" MEANS:

42 (a) BY MAIL OR DELIVERY SERVICE.

43 (b) THROUGH THE INTERNET OR A COMPUTER NETWORK.

44 (c) BY TELEPHONE.

45 (d) THROUGH ANY OTHER ELECTRONIC METHOD.

1 4. "RETAILER" MEANS ANY PERSON WHO SELLS TOBACCO PRODUCTS TO CONSUMERS
2 FOR PERSONAL CONSUMPTION.

3 Sec. 3. Section 42-3001, Arizona Revised Statutes, is amended to read:
4 42-3001. Definitions

5 In this chapter, unless the context otherwise requires:

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

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

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

16 4. "Cigarette" means either of the following:

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

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

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

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

37 7. "Cigarette manufacturer" means a distributor who manufactures,
38 fabricates, assembles, processes or labels a finished cigarette and who is
39 required to be licensed under section 42-3201.

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

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

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

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

7 10. "Domestic farm winery" has the same meaning prescribed in section
8 4-101.

9 11. "Domestic microbrewery" has the same meaning prescribed in section
10 4-101.

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

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

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

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

20 (b) Medicines that are unsuitable for beverage purposes.

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

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

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

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

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

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

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

43 (c) Medicines that are unsuitable for beverage purposes.

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

4 Sec. 4. Repeal

5 Title 42, chapter 3, article 5.1, Arizona Revised Statutes, is
6 repealed.

7 Sec. 5. Section 44-7111, Arizona Revised Statutes, is amended to read:

8 44-7111. Tobacco; nonparticipating manufacturers; civil
9 penalty; violation; classification

10 This state enacts the model nonparticipating manufacturers legislation
11 as follows:

12 Section 1. Findings and Purpose.

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

19 Section 2. Definitions.

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

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

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

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

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

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

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

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

38 (i) "Qualified escrow fund" has the same meaning prescribed in section
39 44-7101.

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

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

43 Section 3. Certifications; Directory; Tax Stamps.

44 (a) Certification. Every tobacco product manufacturer whose
45 Cigarettes are sold in this state, whether directly or through a distributor,

1 retailer or similar intermediary or intermediaries, shall execute and deliver
2 on a form prescribed by the attorney general a certification to the director
3 and attorney general not later than the thirtieth day of April each year,
4 certifying that, as of the date of the certification, the tobacco product
5 manufacturer either is a participating manufacturer or is in full compliance
6 with section 44-7101, section 3(b), including all quarterly installment
7 payments required by regulations as may be promulgated by the attorney
8 general pursuant to section 5(f) of this article.

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

14 (2) A nonparticipating manufacturer shall include in its certification
15 (i) a list of all of its brand families and the number of units sold for each
16 brand family that were sold in the state during the preceding calendar year,
17 (ii) a list of all of its brand families that have been sold in the state at
18 any time during the current calendar year, (iii) indicating by an asterisk,
19 any brand family sold in the state during the preceding calendar year that is
20 no longer being sold in the state as of the date of the certification and
21 (iv) identifying by name and address any other manufacturer of the brand
22 families in the preceding or current calendar year. The nonparticipating
23 manufacturer shall update the list thirty calendar days prior to any addition
24 to or modification of its brand families by executing and delivering a
25 supplemental certification to the attorney general and director.

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

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

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

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

38 (d) (i) The name, address and telephone number of the financial
39 institution where the nonparticipating manufacturer has established the
40 qualified escrow fund required pursuant to section 44-7101, section 3(b) and
41 all regulations promulgated pursuant thereto, (ii) the account number of the
42 qualified escrow fund and any subaccount number for the state, (iii) the
43 amount the nonparticipating manufacturer placed in the fund for cigarettes
44 sold in the state during the preceding calendar year, the date and amount of
45 each deposit and such evidence or verification as may be deemed necessary by

1 the attorney general to confirm the foregoing and (iv) the amount of and date
2 of any withdrawal or transfer of funds the nonparticipating manufacturer made
3 at any time from the fund or from any other qualified escrow fund into which
4 it ever made escrow payments pursuant to section 44-7101, section 3(b) and
5 all regulations promulgated pursuant thereto.

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

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

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

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

36 (2) Neither a tobacco product manufacturer nor brand family shall be
37 included or retained in the directory if the attorney general concludes, in
38 the case of a nonparticipating manufacturer, that (i) any escrow payment
39 required pursuant to section 44-7101, section 3(b) for any period for any
40 brand family, whether or not listed by the nonparticipating manufacturer, has
41 not been fully paid into a qualified escrow fund governed by a qualified
42 escrow agreement that has been approved by the attorney general, or (ii) any
43 outstanding final judgment, including interest thereon, for a violation of
44 section 44-7101 has not been fully satisfied for the brand family or the
45 manufacturer.

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

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

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

13 (6) A tobacco product manufacturer included in the directory may
14 request that a new brand family be added to the directory by executing and
15 delivering a supplemental certification with the necessary information to the
16 attorney general and the director. Not later than forty-five business days
17 after receiving such a request, and at such earlier time as is reasonable to
18 do so, the attorney general shall either (i) certify the new brand family or
19 (ii) deny the request. However, in cases where the attorney general
20 reasonably determines that it needs additional information to ascertain
21 whether the requestor is the tobacco product manufacturer of the new brand
22 family, the attorney general may take whatever additional time is reasonably
23 needed to process the request, to locate and assemble information or
24 documents needed to process the request, and to notify persons or agencies
25 affected by the request.

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

32 Section 4. Agent for Service of Process.

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

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

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

18 Section 5. Reporting of Information; Escrow Installments.

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

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

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

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

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

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

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

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

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

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

1 Section 6. Penalties and Other Remedies.

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

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

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

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

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

36 Section 7. Miscellaneous Provisions.

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

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

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

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

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

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

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