

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# SENATE BILL 1280

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 SECTIONS 42-1102, 42-1124, 42-2003, 42-3201 AND 44-7111, ARIZONA REVISED STATUTES; RELATING TO TOBACCO.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

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

21 C. FOR THE PURPOSES OF THIS SECTION:

22 1. "ELECTRONIC CIGARETTE" MEANS A BATTERY-POWERED DEVICE THAT CAN  
23 PROVIDE INHALED DOSES OF NICOTINE OR OTHER SUBSTANCE BY DELIVERING A  
24 VAPORIZED SOLUTION.

25 2. "TOBACCO PRODUCT" MEANS ANY OF THE FOLLOWING:

- 26 (a) CIGARS.
- 27 (b) CIGARETTES.
- 28 (c) ELECTRONIC CIGARETTES.
- 29 (d) CIGARETTE PAPERS OF ANY KIND.
- 30 (e) SMOKING TOBACCO OF ANY KIND.
- 31 (f) CHEWING TOBACCO OF ANY KIND.

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

34 36-798.06. Delivery sales prohibited; common carriers; civil  
35 penalty; forfeiture; unlawful practice;  
36 application; violation; classification;  
37 definitions

38 A. A PERSON SHALL NOT DO EITHER OF THE FOLLOWING:

39 1. CAUSE A TOBACCO PRODUCT TO BE ORDERED OR PURCHASED BY ANYONE OTHER  
40 THAN A LICENSED PERSON OR A RETAILER WHO ORDERS OR PURCHASES FROM A LICENSED  
41 PERSON, INCLUDING BY ORDERING OR PURCHASING A TOBACCO PRODUCT.

42 2. KNOWINGLY PROVIDE SUBSTANTIAL ASSISTANCE TO A PERSON WHO VIOLATES  
43 THIS SECTION.

44 B. A COMMON CARRIER SHALL NOT KNOWINGLY TRANSPORT A TOBACCO PRODUCT  
45 FOR A PERSON WHO IS IN VIOLATION OF THIS SECTION.

1 C. EACH ORDER OR PURCHASE OF A TOBACCO PRODUCT IN VIOLATION OF  
2 SUBSECTION A, PARAGRAPH 1 OF THIS SECTION CONSTITUTES A SEPARATE VIOLATION  
3 UNDER THIS SECTION.

4 D. IN ADDITION TO ANY OTHER PENALTY, A PERSON WHO VIOLATES THIS  
5 SECTION IS SUBJECT TO ALL OF THE FOLLOWING:

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

8 2. AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF THIS  
9 SECTION.

10 3. RECOVERY BY THIS STATE FOR:

11 (a) THE COSTS OF ANY INVESTIGATION RELATED TO A VIOLATION OF THIS  
12 SECTION.

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

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

16 (d) REASONABLE ATTORNEY FEES.

17 4. ALL STATE TOBACCO TAXES DUE UNDER TITLE 42, CHAPTER 3 AND ALL  
18 TRANSACTION PRIVILEGE OR USE TAXES DUE UNDER TITLE 42, CHAPTER 5, INCLUDING  
19 ANY PENALTIES AND INTEREST.

20 E. ALL TOBACCO PRODUCTS THAT ARE SEIZED FOR A VIOLATION OF THIS  
21 SECTION SHALL BE FORFEITED TO THE STATE AND DESTROYED PURSUANT TO SECTION  
22 42-1124.

23 F. A VIOLATION OF THIS SECTION IS AN UNLAWFUL PRACTICE UNDER SECTION  
24 44-1522 AND IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES AND  
25 PENALTIES THAT ARE AVAILABLE TO THIS STATE. THE ATTORNEY GENERAL MAY  
26 INVESTIGATE AND TAKE APPROPRIATE ACTION PURSUANT TO TITLE 44, CHAPTER 10,  
27 ARTICLE 7.

28 G. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

29 1. THE SHIPMENT OF A TOBACCO PRODUCT TO A FOREIGN TRADE ZONE THAT IS  
30 ESTABLISHED UNDER 19 UNITED STATES CODE SECTION 81 AND TITLE 44, CHAPTER 18  
31 AND THAT IS LOCATED IN THIS STATE IF THE TOBACCO PRODUCT IS FROM OUTSIDE OF  
32 THIS COUNTRY, WAS ORDERED BY A DISTRIBUTOR IN ANOTHER STATE AND IS NOT  
33 DISTRIBUTED IN THIS STATE.

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

36 H. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

37 I. FOR THE PURPOSES OF THIS SECTION:

38 1. "LICENSED PERSON" MEANS A PERSON WHO IS REQUIRED TO BE LICENSED  
39 UNDER SECTION 42-3201.

40 2. "ORDER OR PURCHASE" MEANS ANY OF THE FOLLOWING:

41 (a) BY MAIL OR DELIVERY SERVICE.

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

43 (c) BY TELEPHONE.

44 (d) THROUGH ANY OTHER ELECTRONIC METHOD.

1           3. "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, FIRM, ASSOCIATION,  
2 CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP, JOINT VENTURE OR OTHER  
3 ENTITY.

4           4. "RETAILER" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-5001.

5           5. "TOBACCO PRODUCT" MEANS ALL LUXURIES INCLUDED IN SECTION 42-3052,  
6 PARAGRAPHS 5, 6 AND 7. TOBACCO PRODUCT DOES NOT INCLUDE PIPE TOBACCO OR  
7 CIGARS.

8           Sec. 3. Section 42-1102, Arizona Revised Statutes, is amended to read:  
9           42-1102. Taxpayer bonds; definition

10          A. If the department deems it necessary to protect the revenues to be  
11 collected under this title and title 43, it may require a person liable for  
12 the tax to file a bond to secure the payment of the tax, penalty or interest  
13 which may become due from that person. The bond shall be:

14           1. Issued by a surety company authorized to transact business in this  
15 state and approved by the director of insurance of this state as to solvency  
16 and responsibility or composed of securities or cash ~~which~~ THAT are deposited  
17 with, and kept in the custody of, the department.

18           2. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, in the amount which  
19 the department prescribes by administrative rule to secure the payment of any  
20 tax, penalty or interest which may become due from the person.

21          B. FOR THE PURPOSES OF LICENSES TO SELL TOBACCO PRODUCTS ISSUED UNDER  
22 SECTION 42-3201, THE AMOUNT OF THE BOND REQUIRED UNDER THIS SECTION IS THE  
23 GREATER OF FIVE HUNDRED DOLLARS OR FOUR TIMES THE AVERAGE MONTHLY TAX  
24 LIABILITY. FOR THE PURPOSES OF DETERMINING THE BOND AMOUNT, THE AVERAGE  
25 MONTHLY TAX LIABILITY IS EQUAL TO THE AVERAGE MONTHLY TAX DUE FROM THE  
26 APPLICANT FOR THE PRECEDING SIX CONSECUTIVE MONTHS. IF AN APPLICANT DOES NOT  
27 HAVE A SIX MONTH PAYMENT HISTORY, THE BOND AMOUNT IS A MINIMUM OF FIVE  
28 HUNDRED DOLLARS. IF AN APPLICANT PROVIDES A SURETY BOND AND THE BOND LAPSES,  
29 THE APPLICANT SHALL DEPOSIT WITH THE DEPARTMENT CASH OR OTHER SECURITY IN AN  
30 AMOUNT EQUAL TO THE LAPSED SURETY BOND WITHIN FIVE BUSINESS DAYS AFTER THE  
31 APPLICANT'S RECEIPT OF WRITTEN NOTIFICATION BY THE DEPARTMENT. THE BOND  
32 AMOUNT MAY BE INCREASED OR DECREASED AS NECESSARY BASED ON ANY REASON LISTED  
33 IN SUBSECTION D OF THIS SECTION OR A CHANGE IN THE APPLICANT'S PREVIOUS  
34 FILING PERIOD, FILING COMPLIANCE RECORD OR PAYMENT HISTORY. IF THE BOND  
35 AMOUNT IS INCREASED ABOVE THE AMOUNT COMPUTED UNDER THIS SUBSECTION, THE  
36 APPLICANT MAY REQUEST A HEARING PURSUANT TO SUBSECTION C OF THIS SECTION TO  
37 SHOW WHY THE ORDER INCREASING THE BOND AMOUNT IS IN ERROR.

38          ~~B-~~ C. If the department determines that a person is to file such a  
39 bond it shall notify him to that effect, specifying the amount of the bond  
40 required. The person shall file the bond within five days after the giving  
41 of notice unless within that time he requests in writing a hearing before the  
42 department at which time the department shall determine the necessity,  
43 propriety and amount of the bond. The determination is final unless within  
44 fifteen days after the giving of notice of the determination the person  
45 appeals the determination to the state board of tax appeals. The board shall

1 decide on the appeal within fifteen days of its receipt. The bond ~~may~~, at  
2 any time without notice, MAY be applied to any tax, penalties or interest  
3 due, and for that purpose the securities may be sold at public or private  
4 sale without notice to the depositor.

5 ~~C.~~ D. For purposes of this section a bond may be required if:

6 1. After investigation of financial status, the department determines  
7 that an applicant for a new license would be unable to timely remit amounts  
8 due.

9 2. An applicant for a new license held a license for a prior business,  
10 and the remittance record for the prior business falls within one of the  
11 conditions in paragraph 5.

12 3. The department experienced collection problems while the applicant  
13 was engaged in business under a prior license.

14 4. The applicant is substantially similar to a person who would have  
15 been required to post a bond under paragraph 5 OF THIS SUBSECTION or the  
16 person had a previous license ~~which~~ THAT was revoked. An applicant is  
17 substantially similar if it is owned or controlled by persons who owned or  
18 controlled a previous licensee.

19 5. An existing licensee has had two or more delinquencies in remitting  
20 tax during the preceding twenty-four months if filing on a quarterly or less  
21 frequent basis or four or more delinquencies during the preceding twenty-four  
22 months if filing on a monthly or more frequent basis.

23 ~~D.~~ E. If a licensee who is required to post a bond or security  
24 maintains a good filing and payment record for a period of two years, the  
25 licensee may request that the department waive the continued bond or security  
26 requirement.

27 ~~E.~~ F. In this section "person" includes a firm, partnership, joint  
28 venture, association, corporation, sole proprietorship or any other business  
29 or governmental entity subject to a tax administered by this article but does  
30 not include an individual subject to individual income tax.

31 Sec. 4. Section 42-1124, Arizona Revised Statutes, is amended to read:

32 42-1124. Failure to affix stamps or pay or account for tax;  
33 forfeiture of commodity; sale of forfeited  
34 commodity; effect of seizure and sale; request for  
35 administrative hearing; definitions

36 A. If the department or its authorized agents or representatives  
37 discover any luxury subject to tax under chapter 3 of this title to which  
38 official stamps have not been affixed as required or on which the tax has not  
39 been paid or accounted for, the department or its agent or representative may  
40 seize and take possession of the luxury, and it is deemed forfeited to this  
41 state. Except as provided in subsection D or E of this section, the  
42 department shall within a reasonable time thereafter, pursuant to a notice  
43 posted on the premises or by publication in a newspaper of general  
44 circulation in the county where the sale is to take place, not fewer than  
45 five days before the date of sale, offer for sale and sell the forfeited

1 luxuries. The department shall pay the proceeds of the sale into the state  
2 general fund. The sale shall take place in the county which is most  
3 convenient and economical. The department need not offer any property for  
4 sale if, in its opinion, the probable cost of sale exceeds the value of the  
5 property.

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

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

11 D. All cigarettes that are seized for violations under this title  
12 shall be forfeited to this state. All cigarettes that are forfeited to this  
13 state pursuant to section 36-798.06 OR 42-3210 or section 44-7111, section  
14 6(b) shall be destroyed. If a cigarette distributor defrauds this state by  
15 knowingly and intentionally failing to keep or make any record, return,  
16 report or inventory pertaining to cigarettes, by refusing to pay any luxury  
17 tax for cigarettes subject to tax under chapter 3 of this title or by  
18 attempting to evade or defeat any requirement of this title, the cigarette  
19 distributor shall forfeit to this state all fixtures, equipment and all other  
20 materials and personal property that are located on the premises of the  
21 cigarette distributor. Alternatively, at the request of the department, the  
22 cigarette distributor may be enjoined by an action commenced by the attorney  
23 general or a county attorney in the name of the state from engaging or  
24 continuing in any business for which a tax is imposed by this chapter until  
25 the tax has been paid and until such person has complied with this title.

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

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

38 1. Except as provided in paragraph 2 of this subsection, the  
39 department shall post and maintain an on-line notice of seizure and  
40 forfeiture on its web site for a period of at least six months, beginning no  
41 later than ten business days after the date of the personal service of the  
42 notice to a person or the date of the mailing of the notice. The on-line  
43 notice shall display the date on which the department posts the notice to the  
44 web site, which shall serve as the date of publication of the notice.

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

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

10          H. The seizure and forfeiture of cigarettes or other tobacco products  
11 by the department is an appealable agency action as defined in section  
12 41-1092 and is governed by title 41, chapter 6, article 10 and section  
13 42-1251, except that:

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

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

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

38          Sec. 5. Section 42-2003, Arizona Revised Statutes, is amended to read:  
39 42-2003. Authorized disclosure of confidential information

40          A. Confidential information relating to:

41           1. A taxpayer may be disclosed to the taxpayer, its successor in  
42 interest or a designee of the taxpayer who is authorized in writing by the  
43 taxpayer. A principal corporate officer of a parent corporation may execute  
44 a written authorization for a controlled subsidiary.

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

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

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

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

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

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

22           B. Confidential information may be disclosed to:

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

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

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

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

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

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

6 (b) A state tax official of another state.

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

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

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

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

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

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

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

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

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

29 (a) Regarding income tax, withholding tax or estate tax.

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

32 9. The United States treasury inspector general for tax administration  
33 for the purpose of reporting a violation of internal revenue code section  
34 7213A (26 United States Code section 7213A), unauthorized inspection of  
35 returns or return information.

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

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

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

42 (a) Qualifying motion picture production companies for the tax  
43 incentives provided for motion picture production under chapter 5 of this  
44 title and sections 43-1075 and 43-1163.

1 (b) Qualifying applicants for the motion picture infrastructure  
2 project tax credits under sections 43-1075.01 and 43-1163.01.

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

5 (d) Fulfilling its annual reporting responsibility pursuant to section  
6 41-1511, subsections U and V and section 41-1517, subsections S and T.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 G. If an organization is exempt from this state's income tax as  
2 provided in section 43-1201 for any taxable year, the name and address of the  
3 organization and the application filed by the organization upon which the  
4 department made its determination for exemption together with any papers  
5 submitted in support of the application and any letter or document issued by  
6 the department concerning the application are open to public inspection.

7 H. Confidential information relating to transaction privilege tax, use  
8 tax, severance tax, jet fuel excise and use tax and rental occupancy tax may  
9 be disclosed to any county, city or town tax official if the information  
10 relates to a taxpayer who is or may be taxable by the county, city or town.  
11 Any taxpayer information released by the department to the county, city or  
12 town:

13 1. May only be used for internal purposes.

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

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

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

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

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

36 K. Except as provided in section 42-2002, subsection C, confidential  
37 information, described in section 42-2001, paragraph 2, subdivision (a), item  
38 (iii), may be disclosed to law enforcement agencies for law enforcement  
39 purposes.

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

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

1 N. Except as provided in section 42-2002, subsection D, a court may  
2 order the department to disclose confidential information pertaining to a  
3 party to an action. An order shall be made only upon a showing of good cause  
4 and that the party seeking the information has made demand upon the taxpayer  
5 for the information.

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

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

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

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

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

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

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

1 attachments containing any of the foregoing information are redacted and if  
2 either:

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

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

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

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

20 W. The department may provide the name and address of qualifying  
21 hospitals and qualifying health care organizations, as defined in section  
22 42-5001, to a business classified and reporting transaction privilege tax  
23 under the utilities classification.

24 X. THE DEPARTMENT MAY DISCLOSE TO THE ATTORNEY GENERAL CONFIDENTIAL  
25 INFORMATION REQUESTED BY THE ATTORNEY GENERAL FOR THE PURPOSES OF DETERMINING  
26 COMPLIANCE WITH AND ENFORCING SECTION 36-798.06.

27 Sec. 6. Section 42-3201, Arizona Revised Statutes, is amended to read:  
28 42-3201. Licenses

29 A. Every distributor acquiring or possessing for the purpose of making  
30 the initial sale or distribution in this state of any tobacco products on  
31 which a tax is imposed by this chapter shall obtain from the department a  
32 license to sell tobacco products. The application for the license shall be  
33 in the form provided by the department and shall be accompanied by a fee of  
34 twenty-five dollars. The form shall state that the identity of the applicant  
35 may be posted to the department's web site for public inspection. The  
36 application for a license shall include the applicant's name and address, the  
37 applicant's principal place of business, locations where the applicant's  
38 business is conducted in this state and any other information required by the  
39 department. If the applicant is a firm, partnership, limited liability  
40 company, limited liability partnership or association, the applicant shall  
41 list the name and address of each of the applicant's members. If the  
42 applicant is a corporation, the application shall list the name and address  
43 of the applicant's officers and any person who directly or indirectly owns an  
44 aggregate amount of ten per cent or more of the ownership interest in the  
45 corporation. If a licensee changes its business location, the licensee under

1 this subsection shall notify the department within thirty days after a change  
2 in location.

3 B. The department shall issue a license authorizing the applicant to  
4 acquire or possess tobacco products in this state upon the condition that the  
5 applicant complies with this chapter and the rules of the department. The  
6 license:

7 1. Shall be nontransferable.

8 2. Shall be valid for one year unless earlier revoked by the  
9 department.

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

12 C. An individual who acquires or possesses unstamped cigarettes solely  
13 for that individual's own use or consumption in this state must register with  
14 the department on a form and in a manner prescribed by the department to  
15 remit taxes imposed by this chapter and chapter 5, article 4 of this title.  
16 The registration is free of charge. On registration, the individual must pay  
17 all applicable taxes imposed by this chapter and chapter 5, article 4 of this  
18 title and file on a form and in a manner prescribed by the department within  
19 ten calendar days after receipt of unstamped cigarettes.

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

24 E. A person who is convicted of an offense described in section  
25 42-1127, subsection E is permanently ineligible to hold a license issued  
26 under this section.

27 F. The department may not issue or renew a license to an applicant and  
28 may revoke a license issued under subsection B of this section if any of the  
29 following ~~apply~~ APPLIES:

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

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

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

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

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

42 6. THE APPLICANT IS IN VIOLATION OF SECTION 36-798.06, SUBSECTION A.

43 7. PURSUANT TO SECTION 42-7111, SECTION 6(a), THE APPLICANT IS IN  
44 VIOLATION OF SECTION 44-7111, SECTION 3(c).

1 G. In addition to any other civil or criminal penalty AND EXCEPT AS  
2 OTHERWISE PROVIDED IN THIS SECTION, the department may suspend or revoke a  
3 license issued under subsection B of this section if the person violates any  
4 requirement under this title more than two times within a three-year period.  
5 A suspension or revocation under this subsection shall comply with section  
6 41-1092.11, subsection B.

7 H. The department shall publish on its ~~web-site~~ WEBSITE the names of  
8 each person who is issued a license under subsection B of this section. The  
9 department shall update the published names at least once each month.

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

11 44-7111. Tobacco; nonparticipating manufacturers; civil  
12 penalty; violation; classification

13 This state enacts the model nonparticipating manufacturers legislation  
14 as follows:

15 Section 1. Findings and Purpose.

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

22 Section 2. Definitions.

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

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

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

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

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

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

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

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

41 (i) "Qualified escrow fund" has the same meaning prescribed in section  
42 44-7101.

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

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

1 Section 3. Certifications; Directory; Tax Stamps.

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

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

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

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

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

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

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

41 (d) (i) The name, address and telephone number of the financial  
42 institution where the nonparticipating manufacturer has established the  
43 qualified escrow fund required pursuant to section 44-7101, section 3(b) and  
44 all regulations promulgated pursuant thereto, (ii) the account number of the  
45 qualified escrow fund and any subaccount number for the state, (iii) the

1 amount the nonparticipating manufacturer placed in the fund for cigarettes  
2 sold in the state during the preceding calendar year, the date and amount of  
3 each deposit and such evidence or verification as may be deemed necessary by  
4 the attorney general to confirm the foregoing and (iv) the amount of and date  
5 of any withdrawal or transfer of funds the nonparticipating manufacturer made  
6 at any time from the fund or from any other qualified escrow fund into which  
7 it ever made escrow payments pursuant to section 44-7101, section 3(b) and  
8 all regulations promulgated pursuant thereto.

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

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

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

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

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

1 outstanding final judgment, including interest thereon, for a violation of  
2 section 44-7101 has not been fully satisfied for the brand family or the  
3 manufacturer.

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

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

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

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

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

35 Section 4. Agent for Service of Process.

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

1 nonparticipating manufacturer shall provide the name, address, phone number  
2 and proof of the appointment and availability of the agent to and to the  
3 satisfaction of the attorney general.

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

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

21 Section 5. Reporting of Information; Escrow Installments.

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

34 (b) Disclosure of information. The department is authorized to  
35 disclose to the attorney general any information received under this article  
36 and requested by the attorney general for purposes of determining compliance  
37 with and enforcing the provisions of this article. The department and  
38 attorney general shall share with each other the information received under  
39 this article, and may share the information with other federal, state or  
40 local agencies only for purposes of enforcement of this article, section  
41 44-7101 or corresponding laws of other states.

42 (c) If a tobacco product manufacturer required to establish a  
43 qualified escrow fund under section 44-7101, section 3(b) disputes the  
44 attorney general's determination of the amount that the manufacturer is  
45 required to deposit into escrow and the attorney general determines that the

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

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

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

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

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

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

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

1 SUFFICIENT TO ENABLE THE ATTORNEY GENERAL TO DETERMINE THE ADEQUACY OF THE  
2 AMOUNT OF THE INSTALLMENT DEPOSIT.

3 Section 6. Penalties and Other Remedies.

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

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

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

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

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

38 Section 7. Miscellaneous Provisions.

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

44 (b) Dates. For the year 2003, the first report of distributors  
45 required by section 5(a) shall be due thirty calendar days after the

1 effective date of this article. The certifications by a tobacco product  
2 manufacturer described in section 3(a) shall be due forty-five calendar days  
3 after the effective date and the directory described in section 3(b) shall be  
4 published or made available within ninety calendar days after the effective  
5 date.

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

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

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

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

31 Sec. 8. Exemption from rule making

32 For the purposes of this act, the attorney general and the department  
33 of revenue are exempt from the rule making requirements of title 41, chapter  
34 6, Arizona Revised Statutes, for one year after the effective date of this  
35 act.