

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

**CHAPTER 311**  
**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 AND 42-2003, ARIZONA REVISED STATUTES; REPEALING SECTION 42-3006, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 278, SECTION 8; AMENDING SECTIONS 42-3008 AND 42-3201, ARIZONA REVISED STATUTES; REPEALING SECTION 42-3202.03, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 38, SECTION 2; REPEALING SECTION 42-3203, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 222, SECTION 11; AMENDING SECTIONS 42-3208 AND 44-7111, ARIZONA REVISED STATUTES; REPEALING LAWS 2006, CHAPTER 278, SECTION 34; REPEALING LAWS 2007, CHAPTER 222, SECTION 18; REPEALING LAWS 2008, CHAPTER 38, SECTION 3; 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 ~~cigars, 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, ~~cigars, 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 ~~cigars, 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, "TOBACCO PRODUCT" MEANS ANY OF  
22 THE FOLLOWING:

- 23 1. CIGARS.
- 24 2. CIGARETTES.
- 25 3. CIGARETTE PAPERS OF ANY KIND.
- 26 4. SMOKING TOBACCO OF ANY KIND.
- 27 5. CHEWING TOBACCO OF ANY KIND.

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

30 36-798.06. Delivery sales prohibited; common carriers; civil  
31 penalty; forfeiture; unlawful practice;  
32 application; violation; classification;  
33 definitions

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

- 35 1. CAUSE A TOBACCO PRODUCT TO BE ORDERED OR PURCHASED BY ANYONE OTHER  
36 THAN A LICENSED PERSON OR A RETAILER WHO ORDERS OR PURCHASES FROM A LICENSED  
37 PERSON, INCLUDING BY ORDERING OR PURCHASING A TOBACCO PRODUCT.
- 38 2. KNOWINGLY PROVIDE SUBSTANTIAL ASSISTANCE TO A PERSON WHO VIOLATES  
39 THIS SECTION.

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

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

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

1           1. A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS  
2 FOR EACH VIOLATION.  
3           2. AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF THIS  
4 SECTION.  
5           3. RECOVERY BY THIS STATE FOR:  
6           (a) THE COSTS OF ANY INVESTIGATION RELATED TO A VIOLATION OF THIS  
7 SECTION.  
8           (b) THE COST OF EXPERT WITNESS FEES IN ANY ACTION RELATED TO A  
9 VIOLATION OF THIS SECTION.  
10           (c) THE COST OF THE ACTION RELATED TO A VIOLATION OF THIS SECTION.  
11           (d) REASONABLE ATTORNEY FEES.  
12           4. ALL STATE TOBACCO TAXES DUE UNDER TITLE 42, CHAPTER 3 AND ALL  
13 TRANSACTION PRIVILEGE OR USE TAXES DUE UNDER TITLE 42, CHAPTER 5, INCLUDING  
14 ANY PENALTIES AND INTEREST.  
15           E. ALL TOBACCO PRODUCTS THAT ARE SEIZED FOR A VIOLATION OF THIS  
16 SECTION SHALL BE FORFEITED TO THE STATE AND DESTROYED PURSUANT TO SECTION  
17 42-1124.  
18           F. A VIOLATION OF THIS SECTION IS AN UNLAWFUL PRACTICE UNDER SECTION  
19 44-1522 AND IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES AND  
20 PENALTIES THAT ARE AVAILABLE TO THIS STATE. THE ATTORNEY GENERAL MAY  
21 INVESTIGATE AND TAKE APPROPRIATE ACTION PURSUANT TO TITLE 44, CHAPTER 10,  
22 ARTICLE 7.  
23           G. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:  
24           1. THE SHIPMENT OF A TOBACCO PRODUCT TO A FOREIGN TRADE ZONE THAT IS  
25 ESTABLISHED UNDER 19 UNITED STATES CODE SECTION 81 AND TITLE 44, CHAPTER 18  
26 AND THAT IS LOCATED IN THIS STATE IF THE TOBACCO PRODUCT IS FROM OUTSIDE OF  
27 THIS COUNTRY, WAS ORDERED BY A DISTRIBUTOR IN ANOTHER STATE AND IS NOT  
28 DISTRIBUTED IN THIS STATE.  
29           2. A GOVERNMENT EMPLOYEE WHO IS ACTING IN THE COURSE OF THE EMPLOYEE'S  
30 OFFICIAL DUTIES.  
31           H. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 6 FELONY.  
32           I. FOR THE PURPOSES OF THIS SECTION:  
33           1. "LICENSED PERSON" MEANS A PERSON WHO IS REQUIRED TO BE LICENSED  
34 UNDER SECTION 42-3201.  
35           2. "ORDER OR PURCHASE" MEANS ANY OF THE FOLLOWING:  
36           (a) BY MAIL OR DELIVERY SERVICE.  
37           (b) THROUGH THE INTERNET OR A COMPUTER NETWORK.  
38           (c) BY TELEPHONE.  
39           (d) THROUGH ANY OTHER ELECTRONIC METHOD.  
40           3. "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, FIRM, ASSOCIATION,  
41 CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP, JOINT VENTURE OR OTHER  
42 ENTITY.  
43           4. "RETAILER" HAS THE SAME MEANING PRESCRIBED IN SECTION 42-5001.  
44           5. "TOBACCO PRODUCT" MEANS ALL LUXURIES INCLUDED IN SECTION 42-3052,  
45 PARAGRAPHS 5, 6 AND 7. TOBACCO PRODUCT DOES NOT INCLUDE PIPE TOBACCO OR  
46 CIGARS.

1           Sec. 3. Section 42-1102, Arizona Revised Statutes, is amended to read:  
2           42-1102. Taxpayer bonds: definition

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

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

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

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

31           ~~B-~~ C. If the department determines that a person is to file such a  
32 bond it shall notify him to that effect, specifying the amount of the bond  
33 required. The person shall file the bond within five days after the giving  
34 of notice unless within that time he requests in writing a hearing before the  
35 department at which time the department shall determine the necessity,  
36 propriety and amount of the bond. The determination is final unless within  
37 fifteen days after the giving of notice of the determination the person  
38 appeals the determination to the state board of tax appeals. The board shall  
39 decide on the appeal within fifteen days of its receipt. The bond ~~may~~, at  
40 any time without notice, MAY be applied to any tax, penalties or interest  
41 due, and for that purpose the securities may be sold at public or private  
42 sale without notice to the depositor.

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

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

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

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

6           4. The applicant is substantially similar to a person who would have  
7 been required to post a bond under paragraph 5 **OF THIS SUBSECTION** or the  
8 person had a previous license ~~which~~ **THAT** was revoked. An applicant is  
9 substantially similar if it is owned or controlled by persons who owned or  
10 controlled a previous licensee.

11           5. An existing licensee has had two or more delinquencies in remitting  
12 tax during the preceding twenty-four months if filing on a quarterly or less  
13 frequent basis or four or more delinquencies during the preceding twenty-four  
14 months if filing on a monthly or more frequent basis.

15           ~~D.~~ **E.** If a licensee who is required to post a bond or security  
16 maintains a good filing and payment record for a period of two years, the  
17 licensee may request that the department waive the continued bond or security  
18 requirement.

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

23           Sec. 4. Section 42-1124, Arizona Revised Statutes, is amended to read:  
24           42-1124. Failure to affix stamps or pay or account for tax;  
25                                   forfeiture of commodity; sale of forfeited  
26                                   commodity; effect of seizure and sale; request for  
27                                   administrative hearing; definitions

28           A. If the department or its authorized agents or representatives  
29 discover any luxury subject to tax under chapter 3 of this title to which  
30 official stamps have not been affixed as required or on which the tax has not  
31 been paid or accounted for, the department or its agent or representative may  
32 seize and take possession of the luxury, and it is deemed forfeited to this  
33 state. Except as provided in subsection D or E of this section, the  
34 department shall within a reasonable time thereafter, pursuant to a notice  
35 posted on the premises or by publication in a newspaper of general  
36 circulation in the county where the sale is to take place, not fewer than  
37 five days before the date of sale, offer for sale and sell the forfeited  
38 luxuries. The department shall pay the proceeds of the sale into the state  
39 general fund. The sale shall take place in the county which is most  
40 convenient and economical. The department need not offer any property for  
41 sale if, in its opinion, the probable cost of sale exceeds the value of the  
42 property.

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

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

4 D. All cigarettes that are seized for violations under this title  
5 shall be forfeited to this state. All cigarettes that are forfeited to this  
6 state pursuant to section 36-798.06 OR 42-3210 or section 44-7111, section  
7 6(b) shall be destroyed. If a cigarette distributor defrauds this state by  
8 knowingly and intentionally failing to keep or make any record, return,  
9 report or inventory pertaining to cigarettes, by refusing to pay any luxury  
10 tax for cigarettes subject to tax under chapter 3 of this title or by  
11 attempting to evade or defeat any requirement of this title, the cigarette  
12 distributor shall forfeit to this state all fixtures, equipment and all other  
13 materials and personal property that are located on the premises of the  
14 cigarette distributor. Alternatively, at the request of the department, the  
15 cigarette distributor may be enjoined by an action commenced by the attorney  
16 general or a county attorney in the name of the state from engaging or  
17 continuing in any business for which a tax is imposed by this chapter until  
18 the tax has been paid and until such person has complied with this title.

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

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

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

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

40 G. Any person whose legal rights, duties or privileges are determined  
41 by the notice of seizure and forfeiture may file a request for an  
42 administrative hearing with the department on a form prescribed by the  
43 department. The request for an administrative hearing shall contain a  
44 statement of the petitioner's interest in the cigarettes and an explanation  
45 of why the release or recovery of the cigarettes is warranted on the ground  
46 that the cigarettes were erroneously or illegally seized.

1 H. The seizure and forfeiture of cigarettes or other tobacco products  
2 by the department is an appealable agency action as defined in section  
3 41-1092 and is governed by title 41, chapter 6, article 10 and section  
4 42-1251, except that:

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

15 2. If a request for an administrative hearing is not filed with the  
16 department at the expiration of ten days after the notice has been personally  
17 served, mailed or published, the department's determination is final. If a  
18 timely request for an administrative hearing has been filed with the  
19 department, the department shall request a hearing by the office of  
20 administrative hearings and the department shall suspend action until the  
21 final order of the department has been issued. An order that is issued by  
22 the office of administrative hearings shall be the final order of the  
23 department thirty days after the petitioner receives the decision unless a  
24 decision by the director is issued pursuant to section 42-1251. If the  
25 director issues a decision, that decision is the final order of the  
26 department.

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

29 Sec. 5. Section 42-2003, Arizona Revised Statutes, is amended to read:  
30 42-2003. Authorized disclosure of confidential information

31 A. Confidential information relating to:

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

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

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

43 4. An estate may be disclosed to the personal representative of the  
44 estate and to any heir, next of kin or beneficiary under the will of the  
45 decedent if the department finds that the heir, next of kin or beneficiary

1 has a material interest which will be affected by the confidential  
2 information.

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

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

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

12 B. Confidential information may be disclosed to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 9. The United States treasury inspector general for tax administration  
24 for the purpose of reporting a violation of internal revenue code section  
25 7213A (26 United States Code section 7213A), unauthorized inspection of  
26 returns or return information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 E. The department, upon the request of any person, shall provide the  
21 names and addresses of bingo licensees as defined in section 5-401, verify  
22 whether or not a person has a privilege license and number, a distributor's  
23 license and number or a withholding license and number or disclose the  
24 information to be posted on the department's website or otherwise publicly  
25 accessible pursuant to section 42-1124, subsection F and section 42-3201,  
26 subsection A.

27 F. A department employee, in connection with the official duties  
28 relating to any audit, collection activity or civil or criminal  
29 investigation, may disclose return information to the extent that disclosure  
30 is necessary to obtain information which is not otherwise reasonably  
31 available. These official duties include the correct determination of and  
32 liability for tax, the amount to be collected or the enforcement of other  
33 state tax revenue laws.

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

40 H. Confidential information relating to transaction privilege tax, use  
41 tax, severance tax, jet fuel excise and use tax and rental occupancy tax may  
42 be disclosed to any county, city or town tax official if the information  
43 relates to a taxpayer who is or may be taxable by the county, city or town.  
44 Any taxpayer information released by the department to the county, city or  
45 town:

46 1. May only be used for internal purposes.

1           2. May not be disclosed to the public in any manner that does not  
2 comply with confidentiality standards established by the department. The  
3 county, city or town shall agree in writing with the department that any  
4 release of confidential information that violates the confidentiality  
5 standards adopted by the department will result in the immediate suspension  
6 of any rights of the county, city or town to receive taxpayer information  
7 under this subsection.

8           I. The department may disclose statistical information gathered from  
9 confidential information if it does not disclose confidential information  
10 attributable to any one taxpayer. The department may disclose statistical  
11 information gathered from confidential information, even if it discloses  
12 confidential information attributable to a taxpayer, to:

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

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

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

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

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

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

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

38           O. This section does not prohibit the disclosure by the department of  
39 any information or documents submitted to the department by a bingo licensee.  
40 Before disclosing the information the department shall obtain the name and  
41 address of the person requesting the information.

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

45           Q. Except as provided in section 42-2002, subsection D, the department  
46 of revenue shall release confidential information as requested by the

1 department of economic security pursuant to section 42-1122 or 46-291.  
2 Information disclosed under this subsection is limited to the same type of  
3 information that the United States internal revenue service is authorized to  
4 disclose under section 6103(1)(6) of the internal revenue code.

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

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

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

21 U. For proceedings before the department, the office of administrative  
22 hearings, the board of tax appeals or any state or federal court involving  
23 penalties that were assessed against a return preparer, an electronic return  
24 preparer or a payroll service company pursuant to section 42-1103.02,  
25 42-1125.01 or 43-419, confidential information may be disclosed only before  
26 the judge or administrative law judge adjudicating the proceeding, the  
27 parties to the proceeding and the parties' representatives in the proceeding  
28 prior to its introduction into evidence in the proceeding. The confidential  
29 information may be introduced as evidence in the proceeding only if the  
30 taxpayer's name, the names of any dependents listed on the return, all social  
31 security numbers, the taxpayer's address, the taxpayer's signature and any  
32 attachments containing any of the foregoing information are redacted and if  
33 either:

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

36 2. Such return or return information relates or may relate to a  
37 transactional relationship between a person who is a party to the proceeding  
38 and the taxpayer which directly affects the resolution of an issue in the  
39 proceeding.

40 3. The method of payment of the taxpayer's withholding tax liability  
41 or the method of filing the taxpayer's withholding tax return is an issue for  
42 the period.

43 V. The department may disclose to the attorney general confidential  
44 information received under section 44-7111 and requested by the attorney  
45 general for purposes of determining compliance with and enforcing section  
46 44-7111. The department and attorney general shall share with each other the

1 information received under section 44-7111, and may share the information  
2 with other federal, state or local agencies only for the purposes of  
3 enforcement of section 36-798.06, 44-7101, ~~section~~ 44-7111 or corresponding  
4 laws of other states.

5 W. The department may provide the name and address of qualifying  
6 hospitals and qualifying health care organizations, as defined in section  
7 42-5001, to a business classified and reporting transaction privilege tax  
8 under the utilities classification.

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

12 Sec. 6. Repeal

13 Section 42-3006, Arizona Revised Statutes, as amended by Laws 2006,  
14 chapter 278, section 8, is repealed.

15 Sec. 7. Section 42-3008, Arizona Revised Statutes, is amended to read:  
16 42-3008. Refunds

17 A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, the tax imposed  
18 by this chapter upon any articles or substances shall be refunded when the  
19 amount of the tax has been paid and when either:

20 1. Proof is made to the department that the articles or substances  
21 were exported from this state or that the stamps have been affixed to  
22 articles or substances upon which stamps are not required.

23 2. The luxury becomes unfit for sale due to breakage or spoilage.

24 B. The manner of making proof shall be in accordance with rules  
25 adopted by the department.

26 C. THE DEPARTMENT SHALL NOT REFUND THE TAX FOR STAMPS THAT ARE AFFIXED  
27 TO ARTICLES OR SUBSTANCES THAT ARE DEEMED CONTRABAND UNDER THIS CHAPTER.

28 Sec. 8. Section 42-3201, Arizona Revised Statutes, is amended to read:  
29 42-3201. Licenses

30 A. Every distributor acquiring or possessing for the purpose of making  
31 the initial sale or distribution in this state of any tobacco products on  
32 which a tax is imposed by this chapter shall obtain from the department a  
33 license to sell tobacco products. The application for the license shall be  
34 in the form provided by the department and shall be accompanied by a fee of  
35 twenty-five dollars. The form shall state that the identity of the applicant  
36 may be posted to the department's web site for public inspection. The  
37 application for a license shall include the applicant's name and address, the  
38 applicant's principal place of business, locations where the applicant's  
39 business is conducted in this state and any other information required by the  
40 department. If the applicant is a firm, partnership, limited liability  
41 company, limited liability partnership or association, the applicant shall  
42 list the name and address of each of the applicant's members. If the  
43 applicant is a corporation, the application shall list the name and address  
44 of the applicant's officers and any person who directly or indirectly owns an  
45 aggregate amount of ten per cent or more of the ownership interest in the  
46 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. EXCEPT FOR CIGARETTES THAT ARE DESCRIBED IN SUBSECTION I OF THIS  
13 SECTION, an individual who acquires or possesses unstamped cigarettes solely  
14 for that individual's own use or consumption in this state must register with  
15 the department on a form and in a manner prescribed by the department to  
16 remit taxes imposed by this chapter and chapter 5, article 4 of this title.  
17 The registration is free of charge. On registration, the individual must pay  
18 all applicable taxes imposed by this chapter and chapter 5, article 4 of this  
19 title and file on a form and in a manner prescribed by the department within  
20 ten calendar days after receipt of unstamped cigarettes.

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

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

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

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

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

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

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

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

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

44 7. PURSUANT TO SECTION 44-7111, SECTION 6(a), THE APPLICANT IS IN  
45 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 I. TOBACCO PRODUCTS THAT ARE IN VIOLATION OF SECTION 36-798.06 OR  
11 42-3210 OR SECTION 44-7111, SECTION 3(c) OR ANY OTHER STATUTE FOR WHICH THE  
12 TOBACCO PRODUCTS ARE SUBJECT TO SEIZURE AND DESTRUCTION ARE DEEMED CONTRABAND  
13 FOR WHICH TAXES THAT ARE IMPOSED UNDER THIS CHAPTER CANNOT BE REPORTED AND  
14 REMITTED.

15 Sec. 9. Repeal

16 A. Section 42-3202.03, Arizona Revised Statutes, as amended by Laws  
17 2008, chapter 38, section 2, is repealed.

18 B. Section 42-3203, Arizona Revised Statutes, as amended by Laws 2007,  
19 chapter 222, section 11, is repealed.

20 Sec. 10. Section 42-3208, Arizona Revised Statutes, is amended to  
21 read:

22 42-3208. Return and payment by distributors of tobacco products  
23 other than cigarettes

24 A. EXCEPT FOR TOBACCO PRODUCTS DESCRIBED IN SUBSECTION F OF THIS  
25 SECTION, every distributor of cigars or tobacco products other than  
26 cigarettes shall pay the tax imposed by this chapter on all those products  
27 received within the state and shall add the amount of the tax to the sales  
28 price.

29 B. The distributor shall pay the tax to the department monthly on or  
30 before the twentieth day of the month next succeeding the month in which the  
31 tax accrues.

32 C. On or before that date the distributor shall prepare a sworn return  
33 for the month in which the tax accrues in the form prescribed by the  
34 department, showing:

35 1. The amount of cigars or tobacco products other than cigarettes  
36 received in this state during the month in which the tax accrues.

37 2. The amount of tax for the period covered by the return.

38 3. Any other information the department deems necessary for the proper  
39 administration of this chapter.

40 D. The distributor shall deliver the return, together with a  
41 remittance of the amount of the tax due, to the department.

42 E. A taxpayer who fails to pay the tax within ten days of the date on  
43 which the payment becomes due is subject to and shall pay a penalty  
44 determined under section 42-1125 plus interest at the rate determined  
45 pursuant to section 42-1123 from the time the tax was due and payable until  
46 paid.

1 F. TOBACCO PRODUCTS THAT ARE IN VIOLATION OF SECTION 36-798.06 OR  
2 42-3210 OR SECTION 44-7111, SECTION 3(c) OR ANY OTHER STATUTE FOR WHICH THE  
3 TOBACCO PRODUCTS ARE SUBJECT TO SEIZURE AND DESTRUCTION ARE DEEMED CONTRABAND  
4 FOR WHICH TAXES THAT ARE IMPOSED UNDER THIS CHAPTER CANNOT BE REPORTED AND  
5 REMITTED.

6 Sec. 11. Section 44-7111, Arizona Revised Statutes, is amended to  
7 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,  
46 retailer or similar intermediary or intermediaries, shall execute and deliver

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

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

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

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

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

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

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

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

1 at any time from the fund or from any other qualified escrow fund into which  
2 it ever made escrow payments pursuant to section 44-7101, section 3(b) and  
3 all regulations promulgated pursuant thereto.

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

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

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

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

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

44 (3) The attorney general shall update the directory as necessary in  
45 order to correct mistakes and to add or remove a tobacco product manufacturer

1 or brand family to keep the directory in conformity with the requirements of  
2 this article.

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

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

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

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

30 Section 4. Agent for Service of Process.

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

44 (b) The nonparticipating manufacturer shall provide notice to the  
45 attorney general thirty calendar days prior to termination of the authority  
46 of an agent and shall further provide proof to the satisfaction of the

1 attorney general of the appointment of a new agent not less than five  
2 calendar days prior to the termination of an existing agent appointment. In  
3 the event an agent terminates an agency appointment, the nonparticipating  
4 manufacturer shall notify the attorney general of the termination within five  
5 calendar days and shall include proof to the satisfaction of the attorney  
6 general of the appointment of a new agent.

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

15 Section 5. Reporting of Information; Escrow Installments.

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

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

36 (c) If a tobacco product manufacturer required to establish a  
37 qualified escrow fund under section 44-7101, section 3(b) disputes the  
38 attorney general's determination of the amount that the manufacturer is  
39 required to deposit into escrow and the attorney general determines that the  
40 dispute can likely be resolved by information contained in reports submitted  
41 by distributors to the department indicating sales or purchases of the  
42 manufacturer's cigarettes, then the attorney general shall produce the  
43 relevant portions of the reports to the manufacturer. However, before  
44 disclosing the foregoing information, the attorney general may require the  
45 manufacturer to provide all records related to its sales of the cigarettes in  
46 dispute. The disclosure provided by the attorney general to a tobacco

1 product manufacturer pursuant to this subsection shall be limited to  
2 information concerning the cigarettes alleged by the state to be subject to  
3 the requirements of section 44-7101, section 3(b), may be used by the  
4 manufacturer only for the limited purpose of determining the appropriate  
5 escrow deposit, and may not be disclosed by the manufacturer to any third  
6 parties.

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

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

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

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

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

35 (g) A TOBACCO PRODUCT MANUFACTURER THAT IS SUBJECT TO THE REQUIREMENTS  
36 OF SECTION 3(a)(2) SHALL MAKE THE REQUIRED ESCROW DEPOSITS IN QUARTERLY  
37 INSTALLMENTS DURING THE YEAR IN WHICH THE SALES COVERED BY THE DEPOSITS ARE  
38 MADE. THE ATTORNEY GENERAL MAY REQUIRE THE PRODUCTION OF INFORMATION THAT IS  
39 SUFFICIENT TO ENABLE THE ATTORNEY GENERAL TO DETERMINE THE ADEQUACY OF THE  
40 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  
46 after the effective date and the directory described in section 3(b) shall be

1 published or made available within ninety calendar days after the effective  
2 date.

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

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

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

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

28 Sec. 12. Exemption from rule making

29 For the purposes of this act, the attorney general and the department  
30 of revenue are exempt from the rule making requirements of title 41, chapter  
31 6, Arizona Revised Statutes, for one year after the effective date of this  
32 act.

33 Sec. 13. Repeal

34 A. Laws 2006, chapter 278, section 34 is repealed.

35 B. Laws 2007, chapter 222, section 18 is repealed.

36 C. Laws 2008, chapter 38, section 3 is repealed.

APPROVED BY THE GOVERNOR MAY 9, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2012.