House Engrossed Senate Bill

State of Arizona
Senate
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2013

SENATE BILL 1312

AN ACT

AMENDING TITLE 13, CHAPTER 37, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3711; AMENDING SECTIONS 42-1124, 42-2003, 42-3201, 42-3208, 44-7101 AND 44-7111, ARIZONA REVISED STATUTES; RELATING TO TOBACCO.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 13, chapter 37, Arizona Revised Statutes, is amended by adding section 13-3711, to read:

13-3711. Unlawful commercial use of cigarette machines; civil penalties; forfeiture; classification

A. IT IS UNLAWFUL TO POSSESS, USE OR MAKE AVAILABLE FOR USE FOR COMMERCIAL PURPOSES A TOBACCO PRODUCT ROLLING VENDING MACHINE. A TOBACCO PRODUCT ROLLING VENDING MACHINE LOCATED IN A NONRESIDENTIAL PREMISES IS PRESUMED TO BE POSSESSED, USED OR AVAILABLE FOR USE FOR COMMERCIAL PURPOSES UNLESS THE MACHINE IS FOR SALE. THIS SUBSECTION DOES NOT APPLY TO:

1. A TOBACCO PRODUCT ROLLING VENDING MACHINE THAT IS TO BE USED EXCLUSIVELY FOR THE OWNER'S PERSONAL CONSUMPTION OR USE IF THE MACHINE IS NOT LOCATED ON A RETAIL OR OTHER BUSINESS PREMISES.

2. TOBACCO PRODUCT MANUFACTURERS WHO HAVE OBTAINED A CURRENT FEDERAL MANUFACTURER OF TOBACCO PRODUCTS PERMIT ISSUED BY THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO OPERATE AS A TOBACCO PRODUCT MANUFACTURER.

B. THE DEPARTMENT OF REVENUE IS AUTHORIZED TO SEIZE THE MACHINE AND ALL RELATED TUBES, PAPERS, TOBACCO PRODUCTS AND MATERIALS, WHICH SHALL BE FORFEITED TO THIS STATE FOLLOWING THE PROCESS PRESCRIBED IN SECTION 42-1124. ALL FORFEITED TOBACCO PRODUCTS SHALL ALSO BE DESTROYED PURSUANT TO SECTION 42-1124 AND DEEMED CONTRABAND UNDER SECTION 42-3201, SUBSECTION I.

C. A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A CLASS 3 MISDEMEANOR AND IS ALSO SUBJECT TO THE FOLLOWING:

1. THE REVOCATION OR TERMINATION OF A LICENSE ISSUED PURSUANT TO SECTION 42-3201.

2. A CIVIL PENALTY NOT TO EXCEED FIFTY THOUSAND DOLLARS FOR EACH VIOLATION.

3. AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF THIS SECTION.

4. RECOVERY BY THIS STATE FOR THE COSTS OF ENFORCING THIS SECTION OR OF ANY ACTION OR PROCEEDING PERTAINING TO A VIOLATION OF THIS SECTION, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEY FEES IN THE TRIAL AND APPELLATE COURTS. PAYMENTS SHALL BE DEPOSITED INTO THE STATE GENERAL FUND.

Sec. 2. Section 42-1124, Arizona Revised Statutes, is amended to read:

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

A. If the department or its authorized agents or representatives discover any luxury subject to tax under chapter 3 of this title to which official stamps have not been affixed as required or on which the tax has not been paid or accounted for, the department or its agent or representative may seize and take possession of the luxury, and it is deemed forfeited to this state. Except as provided in subsection D or E of this section, the

department shall within a reasonable time thereafter, pursuant to a notice posted on the premises or by publication in a newspaper of general circulation in the county where the sale is to take place, not fewer than five days before the date of sale, offer for sale and sell the forfeited luxuries. The department shall pay the proceeds of the sale into the state general fund. The sale shall take place in the county which is most convenient and economical. The department need not offer any property for sale if, in its opinion, the probable cost of sale exceeds the value of the property.

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

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

D. All cigarettes that are seized for violations under this title shall be forfeited to this state. All cigarettes that are forfeited to this state pursuant to section 13-3711, 36-798.06 or 42-3210 or section 44-7111, section 6(b) shall be destroyed. If a cigarette distributor defrauds this state by knowingly and intentionally failing to keep or make any record, return, report or inventory pertaining to cigarettes, by refusing to pay any luxury tax for cigarettes subject to tax under chapter 3 of this title or by attempting to evade or defeat any requirement of this title, the cigarette distributor shall forfeit to this state all fixtures, equipment and all other materials and personal property that are located on the premises of the cigarette distributor. Alternatively, at the request of the department, the cigarette distributor may be enjoined by an action commenced by the attorney general or a county attorney in the name of the state from engaging or continuing in any business for which a tax is imposed by this chapter until the tax has been paid and until such person has complied with this title.

E. The department may sell or otherwise dispose of any cigarettes forfeited to this state on such conditions as it deems most advantageous and just under the circumstances, unless such cigarettes are forfeited pursuant to section 13-3711, 36-798.06 or 42-3210 or section 44-7111, section 6(b). The department shall deposit the proceeds of any sales made pursuant to this subsection in the state general fund.

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

1. Except as provided in paragraph 2 of this subsection, the department shall post and maintain an on-line notice of seizure and forfeiture on its web site for a period of at least six months, beginning no later than ten business days after the date of the personal service of the

notice to a person or the date of the mailing of the notice. The on-line notice shall display the date on which the department posts the notice to the web site, which shall serve as the date of publication of the notice.

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

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

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

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

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

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

Sec. 3. Section 42-2003, Arizona Revised Statutes, is amended to read:

42-2003. Authorized disclosure of confidential information

A. Confidential information relating to:

1. A taxpayer may be disclosed to the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the

taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary.

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

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

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

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

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

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

B. Confidential information may be disclosed to:

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

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

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

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

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between

the department and the foreign country, agency, state, Indian tribe or organization:

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

(b) A state tax official of another state.

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

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

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

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

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

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

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

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

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

(a) Regarding income tax or withholding tax.

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

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

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

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

12. The Arizona commerce authority for its use in:

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

(b) Qualifying businesses with a qualified facility for income tax credits under sections 43-1083.03 and 43-1164.04.

(c) Fulfilling its annual reporting responsibility pursuant to section 41-1511, subsections U and V and section 41-1512, subsections U and V.

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

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

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

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

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

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

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

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

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

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

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

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

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

G. If an organization is exempt from this state's income tax as provided in section 43-1201 for any taxable year, the name and address of the organization and the application filed by the organization on which the

department made its determination for exemption together with any papers submitted in support of the application and any letter or document issued by the department concerning the application are open to public inspection.

H. Confidential information relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and ~~and~~ any other tax collected by the department on behalf of the county may be disclosed to any county, city or town tax official if the information relates to a taxpayer who is or may be taxable by the county, city or town. Any taxpayer information released by the department to the county, city or town:

1. May only be used for internal purposes.

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

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

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

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

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

K. Except as provided in section 42-2002, subsection C, confidential information, described in section 42-2001, paragraph 1, subdivision (a), item (ii), may be disclosed to law enforcement agencies for law enforcement purposes.

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

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

N. Except as provided in section 42-2002, subsection D, a court may order the department to disclose confidential information pertaining to a party to an action. An order shall be made only upon a showing of good cause

and that the party seeking the information has made demand upon the taxpayer for the information.

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

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

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

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

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

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

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

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

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

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

V. The department may disclose to the attorney general confidential information received under section 44-7111 and requested by the attorney general for purposes of determining compliance with and enforcing section 44-7111. The department and attorney general shall share with each other the information received under section 44-7111, and may share the information with other federal, state or local agencies only for the purposes of enforcement of section 13-3711, 36-798.06, 44-7101~~,~~ OR 44-7111 or corresponding laws of other states.

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

X. The department may disclose to the attorney general confidential information requested by the attorney general for the purposes of determining compliance with and enforcing section 13-3711 OR 36-798.06.

Y. The department may disclose to an official of any city, town or county in a current agreement or considering a prospective agreement with the department as described in section 42-5032.02, subsection F any information relating to amounts subject to distribution required by section 42-5032.02. Information disclosed by the department under this subsection:

1. May only be used by the city, town or county for internal purposes.

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

Sec. 4. Section 42-3201, Arizona Revised Statutes, is amended to read:

42-3201. Licenses

A. Every distributor acquiring or possessing for the purpose of making the initial sale or distribution in this state of any tobacco products on which a tax is imposed by this chapter shall obtain from the department a license to sell tobacco products. The application for the license shall be in the form provided by the department and shall be accompanied by a fee of twenty-five dollars. The form shall state that the identity of the applicant may be posted to the department's web site for public inspection. The

application for a license shall include the applicant's name and address, the applicant's principal place of business, locations where the applicant's business is conducted in this state and any other information required by the department. If the applicant is a firm, partnership, limited liability company, limited liability partnership or association, the applicant shall list the name and address of each of the applicant's members. If the applicant is a corporation, the application shall list the name and address of the applicant's officers and any person who directly or indirectly owns an aggregate amount of ten per cent or more of the ownership interest in the corporation. If a licensee changes its business location, the licensee under this subsection shall notify the department within thirty days after a change in location.

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

1. Shall be nontransferable.

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

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

C. Except for cigarettes that are described in subsection I of this section, an individual who acquires or possesses unstamped cigarettes solely for that individual's own use or consumption in this state must register with the department on a form and in a manner prescribed by the department to remit taxes imposed by this chapter and chapter 5, article 4 of this title. The registration is free of charge. On registration, the individual must pay all applicable taxes imposed by this chapter and chapter 5, article 4 of this title and file on a form and in a manner prescribed by the department within ten calendar days after receipt of unstamped cigarettes.

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

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

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

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

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

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

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

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

6. The applicant is in violation of section 13-3711 OR 36-798.06, subsection A.

7. Pursuant to section 44-7111, section 6(a), the applicant is in violation of section 44-7111, section 3(c).

G. In addition to any other civil or criminal penalty and except as otherwise provided in this section, the department may suspend or revoke a license issued under subsection B of this section if the person violates any requirement under this title more than two times within a three-year period. A suspension or revocation under this subsection shall comply with section 41-1092.11, subsection B.

H. The department shall publish on its website the names of each person who is issued a license under subsection B of this section. The department shall update the published names at least once each month.

I. Tobacco products that are ORDERED, PURCHASED OR TRANSPORTED in A violation of section 13-3711, 36-798.06 or 42-3210 or section 44-7111, section 3(c) or any other statute for which the tobacco products are subject to seizure and destruction are deemed contraband for which taxes that are imposed under this chapter cannot be reported and remitted.

Sec. 5. Section 42-3208, Arizona Revised Statutes, is amended to read:

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

A. Except for tobacco products described in subsection F of this section, every distributor of cigars or tobacco products other than cigarettes shall pay the tax imposed by this chapter on all those products received within the state and shall add the amount of the tax to the sales price.

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

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

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

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

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

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

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

F. Tobacco products that are ORDERED, PURCHASED OR TRANSPORTED in A violation of section 13-3711, 36-798.06 or 42-3210 or section 44-7111, section 3(c) or any other statute for which the tobacco products are subject to seizure and destruction are deemed contraband for which taxes that are imposed under this chapter cannot be reported and remitted.

Sec. 6. Section 44-7101, Arizona Revised Statutes, is amended to read:

44-7101. Tobacco product manufacturers escrow accounts; model statute

This state enacts the model statute described in the master settlement agreement entered into on November 23, 1998 between this state and certain United States tobacco product manufacturers as exhibit T as follows:

Section 1. Findings and Purpose.

(a) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the state. Under certain health-care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that such manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "master settlement agreement," with the state. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial

changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the state to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Section 2. Definitions.

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the master settlement agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means allocable share as that term is defined in the master settlement agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(e) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with

any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 3(B)(2) of this act.

(g) "Released claims" means released claims as that term is defined in the master settlement agreement.

(h) "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.

(i) "Tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the master settlement agreement) that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(MM) of the master settlement agreement and that pays the taxes specified in subsection II(Z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) Becomes a successor of an entity described in paragraph (1) or (2).

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)-(3) above.

(j) "TRIBAL LUXURY TAXES" MEANS THOSE TAXES REFERENCED IN SECTION 42-3302, SUBSECTION C.

~~(j)~~ (k) "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by ~~excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state.~~ STATE TOBACCO EXCISE TAXES COLLECTED OR PRECOLLECTED BY THE STATE AND TRIBAL LUXURY TAXES COLLECTED OR PRECOLLECTED BY AN INDIAN TRIBE. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of ~~state excise tax paid~~ ANY SUCH TAX COLLECTED OR PRECOLLECTED on the cigarettes of such tobacco product manufacturer for each year. THE TERM UNITS SOLD DOES NOT INCLUDE CIGARETTES DESCRIBED IN SECTION 42-3304, SUBSECTION A, PARAGRAPHS 2 AND 3.

Section 3. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this act shall do one of the following:

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or

(b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

2000: $.0104712 per unit sold after the date of enactment of this act;

For each of 2001 and 2002: $.0136125 per unit sold;

For each of 2003 through 2006: $.0167539 per unit sold;

For each of 2007 and each year thereafter: $.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(b) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(c) To the extent not released from escrow under subparagraphs (a) or (b), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that it is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(a) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(b) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(c) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation and the violator shall pay to the attorney general the costs and attorney fees incurred during a successful prosecution under paragraph (3).

(c) NOTWITHSTANDING SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION, A TOBACCO PRODUCT MANUFACTURER THAT ELECTS TO PLACE FUNDS INTO ESCROW PURSUANT TO SUBPARAGRAPH (b), PARAGRAPH 1 OF THIS SECTION MAY MAKE AN IRREVOCABLE ASSIGNMENT OF ITS INTEREST IN THE FUNDS TO THE BENEFIT OF THIS STATE. THE ASSIGNMENT SHALL BE PERMANENT AND APPLY TO ALL FUNDS IN THE ESCROW ACCOUNT OR THAT MAY SUBSEQUENTLY COME INTO THE ACCOUNT, INCLUDING THOSE FUNDS DEPOSITED INTO THE ESCROW ACCOUNT BEFORE THE ASSIGNMENT IS EXECUTED, THOSE FUNDS DEPOSITED INTO THE ESCROW ACCOUNT AFTER THE ASSIGNMENT IS EXECUTED AND INTEREST OR OTHER APPRECIATION ON THE FUNDS. THE TOBACCO PRODUCT MANUFACTURER, THE ATTORNEY GENERAL AND THE FINANCIAL INSTITUTION WHERE THE ESCROW ACCOUNT IS MAINTAINED MAY MAKE AMENDMENTS TO THE QUALIFIED ESCROW ACCOUNT AGREEMENT AS MAY BE NECESSARY TO EFFECTUATE AN ASSIGNMENT OF RIGHTS EXECUTED PURSUANT TO THIS SUBPARAGRAPH OR A WITHDRAWAL OF MONIES FROM THE ESCROW ACCOUNT PURSUANT TO SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION. AN ASSIGNMENT OF RIGHTS EXECUTED PURSUANT TO THIS SUBPARAGRAPH SHALL BE IN WRITING, SHALL BE SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE TOBACCO PRODUCT MANUFACTURER MAKING THE ASSIGNMENT AND SHALL BECOME EFFECTIVE ON DELIVERY OF THE ASSIGNMENT TO THE ATTORNEY GENERAL AND THE FINANCIAL INSTITUTION WHERE THE ESCROW ACCOUNT IS MAINTAINED. AN ASSIGNMENT OF ESCROW FUNDS SHALL NOT BE MADE BY A TOBACCO PRODUCT MANUFACTURER UNLESS AND UNTIL THE ATTORNEY GENERAL PROVIDES WRITTEN APPROVAL TO THE TOBACCO PRODUCT MANUFACTURER.

(d) NOTWITHSTANDING SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION, ANY ESCROW FUNDS ASSIGNED TO THE STATE PURSUANT TO SUBPARAGRAPH (c) OF THIS SECTION SHALL BE WITHDRAWN BY THE STATE ON THE APPROVAL OF THE ATTORNEY GENERAL. ANY FUNDS WITHDRAWN PURSUANT TO THIS SUBPARAGRAPH SHALL BE DEPOSITED IN THE CONSUMER PROTECTION-CONSUMER FRAUD REVOLVING FUND ESTABLISHED BY SECTION 44-1531.01 AND SHALL BE CALCULATED ON A DOLLAR-FOR-DOLLAR BASIS AS A CREDIT AGAINST ANY JUDGMENT OR SETTLEMENT DESCRIBED IN SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION THAT MAY BE OBTAINED AGAINST THE TOBACCO PRODUCT MANUFACTURER THAT HAS ASSIGNED THE FUNDS IN THE ESCROW ACCOUNT. THIS SECTION DOES NOT RELIEVE A TOBACCO PRODUCT MANUFACTURER FROM ANY PAST, CURRENT OR FUTURE OBLIGATIONS THAT THE MANUFACTURER MAY HAVE PURSUANT TO THIS SECTION OR SECTION 44-7111.

Section 4. Effect of judicial action.

If section 3, subparagraph (b), paragraph 2, subdivision (b) is held by a court of competent jurisdiction to be unconstitutional, the following provisions apply in its place:

To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

Any holding of unconstitutionality or the repeal of section 3, subparagraph (b), paragraph 2, subdivision (b) of this statute does not impair or invalidate any other portion of this statute or the application of this statute to any other person or circumstance and the remaining portions of this statute continue in full force and effect.

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

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

This state enacts the model nonparticipating manufacturers legislation as follows:

Section 1. Findings and Purpose.

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

Section 2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

Section 3. Certifications; Directory; Tax Stamps.

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

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

(2) A nonparticipating manufacturer shall include in its certification (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year, (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year, (iii) indicating by an asterisk,

any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification and (iv) identifying by name and address any other manufacturer of the brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general and director.

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

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

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

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

(d) (i) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to section 44-7101, section 3(b) and all regulations promulgated pursuant thereto, (ii) the account number of the qualified escrow fund and any subaccount number for the state, (iii) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing and (iv) the amount of and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to section 44-7101, section 3(b) and all regulations promulgated pursuant thereto.

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

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

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

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

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

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

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

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

(6) A tobacco product manufacturer included in the directory may request that a new brand family be added to the directory by executing and delivering a supplemental certification with the necessary information to the attorney general and the director. Not later than forty-five business days after receiving such a request, and at such earlier time as is reasonable to do so, the attorney general shall either (i) certify the new brand family or

(ii) deny the request. However, in cases where the attorney general reasonably determines that it needs additional information to ascertain whether the requestor is the tobacco product manufacturer of the new brand family, the attorney general may take whatever additional time is reasonably needed to process the request, to locate and assemble information or documents needed to process the request, and to notify persons or agencies affected by the request.

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

(d) A NONPARTICIPATING MANUFACTURER SHALL POST A BOND FOR THE EXCLUSIVE BENEFIT OF THIS STATE IF (i) ITS CIGARETTES WERE NOT SOLD IN THE STATE DURING ANY ONE OF THE FOUR PRECEDING CALENDAR QUARTERS, (ii) IT OR ANY PERSON AFFILIATED WITH IT FAILED TO MAKE A FULL AND TIMELY ESCROW DEPOSIT DUE UNDER SECTION 44-7101 DURING ANY OF THE FIVE PRECEDING CALENDAR YEARS, UNLESS THE FAILURE WAS NOT KNOWING OR RECKLESS AND WAS PROMPTLY CURED ON NOTICE OR (iii) IT OR ANY PERSON AFFILIATED WITH IT, OR ANY OF ITS BRANDS OR BRANDS OF A PERSON AFFILIATED WITH IT, WERE REMOVED FROM THE STATE DIRECTORY OF ANY STATE DURING ANY OF THE FIVE PRECEDING CALENDAR YEARS, UNLESS THE REMOVAL WAS DETERMINED TO HAVE BEEN ERRONEOUS OR ILLEGAL. ENTITIES ARE AFFILIATED WITH EACH OTHER IF ONE DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES CONTROLS OR IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH THE OTHER.

(e) THE BOND SHALL BE POSTED AT LEAST TEN DAYS IN ADVANCE OF EACH CALENDAR QUARTER AS A CONDITION TO THE NONPARTICIPATING MANUFACTURER AND ITS BRAND FAMILIES BEING INCLUDED IN THE STATE DIRECTORY FOR THAT QUARTER. THE AMOUNT OF THE BOND SHALL BE THE GREATER OF (i) THE GREATEST REQUIRED ESCROW AMOUNT DUE FROM THE NONPARTICIPATING MANUFACTURER OR ITS PREDECESSOR FOR ANY OF THE TWELVE PRECEDING CALENDAR QUARTERS OR (ii) FIFTY THOUSAND DOLLARS.

(f) IF A NONPARTICIPATING MANUFACTURER THAT POSTED A BOND HAS FAILED TO MAKE OR HAVE MADE ON ITS BEHALF DEPOSITS EQUAL TO THE FULL AMOUNT OWED FOR A QUARTER WITHIN FIFTEEN DAYS FOLLOWING THE DUE DATE OF THE QUARTER UNDER SECTION 5, SUBPARAGRAPH (g), THE STATE MAY EXECUTE ON THE BOND IN THE AMOUNT EQUAL TO ANY REMAINING AMOUNT OF THE ESCROW DUE. AMOUNTS THAT THE STATE COLLECTS ON A BOND SHALL BE DEPOSITED INTO THE STATE TREASURY AND SHALL REDUCE THE AMOUNT OF ESCROW DUE FROM THAT NONPARTICIPATING MANUFACTURER IN THE DOLLAR AMOUNT COLLECTED. ESCROW OBLIGATIONS ABOVE THE AMOUNT COLLECTED ON THE BOND REMAIN DUE FROM THAT NONPARTICIPATING MANUFACTURER AND, AS PROVIDED IN ANY JOINT AND SEVERAL PROVISION IN THIS SECTION, FROM THE IMPORTERS THAT SOLD ITS CIGARETTES DURING THAT CALENDAR QUARTER.

(g) THE OFFICE OF THE ATTORNEY GENERAL SHALL ADOPT RULES NECESSARY TO IMPLEMENT SUBPARAGRAPHS (d), (e) AND (f) OF THIS SECTION.

(h) NONPARTICIPATING MANUFACTURERS LOCATED OUTSIDE THE UNITED STATES MUST PROVIDE A DECLARATION IN A FORM PRESCRIBED BY THE ATTORNEY GENERAL FROM EACH OF ITS IMPORTERS INTO THE UNITED STATES OF ANY OF ITS BRAND FAMILIES, THAT THE IMPORTER ACCEPTS JOINT AND SEVERAL LIABILITY WITH THE NONPARTICIPATING MANUFACTURER FOR ALL ESCROW DEPOSITS DUE PURSUANT TO SECTION 44-7101 AS WELL AS ALL PENALTIES AND OTHER RELIEF AVAILABLE TO THE STATE PURSUANT TO SECTION 44-7101 AND THIS SECTION. THE DECLARATION SHALL APPOINT A RESIDENT AGENT FOR SERVICE OF PROCESS IN THIS STATE PURSUANT TO SECTION 4. THE DECLARATIONS SHALL BE SUBMITTED AS PART OF THE CERTIFICATIONS REQUIRED PURSUANT TO THIS SECTION AND UPDATED AT LEAST THIRTY DAYS BEFORE ANY OTHER IMPORTER BEGINS THE IMPORTATION OF THE MANUFACTURER'S CIGARETTES. FAILURE TO COMPLY WITH THIS SUBPARAGRAPH IS GROUNDS FOR REMOVAL FROM THE DIRECTORY. FOR THE PURPOSES OF THIS SUBPARAGRAPH, "IMPORTER" HAS THE SAME MEANING AS IN 27 CODE OF FEDERAL REGULATIONS SECTION 41.11 (2012).

(i) THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO NOT RETAIN OR REFUSE TO INCLUDE IN THE DIRECTORY ANY NONPARTICIPATING MANUFACTURER OR THE MANUFACTURER'S BRAND FAMILIES, THAT (i) DOES NOT CERTIFY THAT IT IS SUBJECT TO THE ENFORCEMENT OF SECTION 44-7101, THIS SECTION AND SECTION 36-798.06 WITHOUT ANY IMMUNITY, (ii) PROVIDES INCORRECT, FALSE OR MISLEADING STATEMENTS IN ANY CERTIFICATION SUBMITTED TO THIS STATE PURSUANT TO SECTION 44-7101 OR THIS SECTION WITH REGARD TO ANY YEAR OR (iii) WAS PREVIOUSLY OR IS CURRENTLY NOT IN COMPLIANCE WITH ANY OTHER FEDERAL OR STATE LAWS, INCLUDING ANOTHER STATE'S QUALIFYING STATUTE AS DEFINED IN THE MASTER SETTLEMENT AGREEMENT OR IF THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT THE TOBACCO PRODUCT MANUFACTURER WILL NOT COMPLY WITH THE LAWS.

(j) THE ATTORNEY GENERAL HAS THE AUTHORITY TO REQUIRE ANY NONPARTICIPATING MANUFACTURER TO SUBMIT ALL INFORMATION, CERTIFICATIONS, AFFIDAVITS AND OTHER MATERIALS THAT THE ATTORNEY GENERAL DEEMS APPROPRIATE TO DETERMINE COMPLIANCE WITH THIS SECTION AND OTHER RELATED LAWS, INCLUDING THE GROUNDS FOR NOT RETAINING OR NOT INCLUDING IN THE DIRECTORY ANY NONPARTICIPATING MANUFACTURER OR THE MANUFACTURER'S BRAND FAMILIES.

Section 4. Agent for Service of Process.

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

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

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

Section 5. Reporting of Information; Escrow Installments.

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

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

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

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

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

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

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

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

(2) Where manufacturers have not made escrow deposits pursuant to section 44-7101, section 3(b) during the preceding calendar year.

The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

(g) A tobacco product manufacturer that is subject to the requirements of section 3(a)(2) shall make the required escrow deposits in quarterly installments during the year in which the sales covered by the deposits are made. The attorney general may require the production of information that is sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

Section 6. Penalties and Other Remedies.

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

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

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

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

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

Section 7. Miscellaneous Provisions.

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

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

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

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

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

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

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

Sec. 8. Exemption from rulemaking

For the purposes of implementing sections 44-7101 and 44-7111, Arizona Revised Statutes, as amended by this act, the Attorney General is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.