

REFERENCE TITLE: tobacco product manufacturers; cigarette machines

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SB 1312

Introduced by
Senators Yarbrough: Worsley

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 13-3711. Unlawful commercial use of cigarette machines; civil
5 penalties; forfeiture; classification

6 A. IT IS UNLAWFUL TO USE OR MAKE AVAILABLE FOR USE FOR COMMERCIAL
7 PURPOSES A MACHINE THAT IS CAPABLE OF MAKING CIGARETTES OR OTHER TOBACCO
8 PRODUCTS EXCEPT IF THE MACHINE IS TO BE USED EXCLUSIVELY FOR THE OWNER'S
9 PERSONAL CONSUMPTION OR USE AND THE MACHINE IS NOT LOCATED ON A RETAIL OR
10 OTHER BUSINESS PREMISES.

11 B. THE DEPARTMENT OF REVENUE IS AUTHORIZED TO SEIZE THE MACHINE AND
12 ALL RELATED TUBES, PAPERS, TOBACCO PRODUCTS AND MATERIALS, WHICH SHALL BE
13 FORFEITED TO THIS STATE FOLLOWING THE PROCESS PRESCRIBED IN SECTION 42-1124.
14 ALL FORFEITED TOBACCO PRODUCTS SHALL ALSO BE DESTROYED PURSUANT TO SECTION
15 42-1124.

16 C. A PERSON WHO KNOWINGLY VIOLATES THIS SECTION IS GUILTY OF A CLASS 6
17 FELONY AND IS ALSO SUBJECT TO THE FOLLOWING:

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

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

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

24 4. RECOVERY BY THIS STATE FOR ALL OF THE FOLLOWING:

25 (a) THE COST OF ANY INVESTIGATION RELATED TO A VIOLATION OF THIS
26 SECTION.

27 (b) THE COST OF THE ACTION RELATED TO A VIOLATION OF THIS SECTION.

28 (c) REASONABLE ATTORNEY FEES.

29 Sec. 2. Section 44-7101, Arizona Revised Statutes, is amended to read:

30 44-7101. Tobacco product manufacturers escrow accounts; model
31 statute

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

35 Section 1. Findings and Purpose.

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

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

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

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

9 (e) On November 23, 1998, leading United States tobacco product
10 manufacturers entered into a settlement agreement, entitled the "master
11 settlement agreement," with the state. The master settlement agreement
12 obligates these manufacturers, in return for a release of past, present and
13 certain future claims against them as described therein, to pay substantial
14 sums to the state (tied in part to their volume of sales); to fund a national
15 foundation devoted to the interests of public health; and to make substantial
16 changes in their advertising and marketing practices and corporate culture,
17 with the intention of reducing underage smoking.

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

27 Section 2. Definitions.

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

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

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

40 (d) "Cigarette" means any product that contains nicotine, is intended
41 to be burned or heated under ordinary conditions of use, and consists of or
42 contains (1) any roll of tobacco wrapped in paper or in any substance not
43 containing tobacco; or (2) tobacco, in any form, that is functional in the
44 product, which, because of its appearance, the type of tobacco used in the
45 filler, or its packaging and labeling, is likely to be offered to, or
46 purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in

1 any substance containing tobacco which, because of its appearance, the type
2 of tobacco used in the filler, or its packaging and labeling, is likely to be
3 offered to, or purchased by, consumers as a cigarette described in clause (1)
4 of this definition. The term "cigarette" includes "roll-your-own" (i.e., any
5 tobacco which, because of its appearance, type, packaging, or labeling is
6 suitable for use and likely to be offered to, or purchased by, consumers as
7 tobacco for making cigarettes). For purposes of this definition of
8 "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one
9 individual "cigarette."

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

13 (f) "Qualified escrow fund" means an escrow arrangement with a
14 federally or state chartered financial institution having no affiliation with
15 any tobacco product manufacturer and having assets of at least \$1,000,000,000
16 where such arrangement requires that such financial institution hold the
17 escrowed funds' principal for the benefit of releasing parties and prohibits
18 the tobacco product manufacturer placing the funds into escrow from using,
19 accessing or directing the use of the funds' principal except as consistent
20 with section 3(B)(2) of this act.

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

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

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

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

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

41 (3) Becomes a successor of an entity described in paragraph (1) or
42 (2).

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

1 (j) "Units sold" means the number of individual cigarettes sold in the
2 state by the applicable tobacco product manufacturer (whether directly or
3 through a distributor, retailer or similar intermediary or intermediaries)
4 during the year in question, as measured by:

5 (1) WITH REGARD TO CIGARETTES, STATE TOBACCO excise taxes AND TRIBAL
6 TOBACCO LUXURY TAXES collected ~~by the state~~ OR PRE-COLLECTED on packs ~~(or~~
7 ~~"roll-your-own" tobacco containers)~~ bearing the A TOBACCO excise tax stamp of
8 the state.

9 (2) WITH REGARD TO ROLL-YOUR-OWN TOBACCO, STATE TOBACCO EXCISE TAXES
10 COLLECTED BY THE STATE AND TRIBAL TOBACCO LUXURY TAXES PAID PURSUANT TO
11 SECTION 42-3302.

12 The department of revenue shall promulgate such regulations as are
13 necessary to ascertain the amount of state excise tax paid on the cigarettes
14 of such tobacco product manufacturer for each year. THE TERM UNITS SOLD DOES
15 NOT INCLUDE CIGARETTES OR ROLL-YOUR-OWN TOBACCO THAT ARE EXEMPT FROM STATE
16 TOBACCO EXCISE TAXES PURSUANT TO SECTION 42-3304.

17 Section 3. Requirements.

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

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

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

28 2000: \$.0104712 per unit sold after the date of enactment of this act;

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

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

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

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

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

42 (b) To the extent that a tobacco product manufacturer establishes that
43 the amount it was required to place into escrow on account of units sold in
44 the state in a particular year was greater than the master settlement
45 agreement payments, as determined pursuant to section IX(i) of that agreement
46 including after final determination of all adjustments, that such

1 manufacturer would have been required to make on account of such units sold
2 had it been a participating manufacturer, the excess shall be released from
3 escrow and revert back to such tobacco product manufacturer; or

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

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

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

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

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

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

37 (c) NOTWITHSTANDING SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION, A
38 TOBACCO PRODUCT MANUFACTURER THAT ELECTS TO PLACE FUNDS INTO ESCROW PURSUANT
39 TO SUBPARAGRAPH (b), PARAGRAPH 1 OF THIS SECTION MAY MAKE AN IRREVOCABLE
40 ASSIGNMENT OF ITS INTEREST IN THE FUNDS TO THE BENEFIT OF THIS STATE. THE
41 ASSIGNMENT SHALL BE PERMANENT AND APPLY TO ALL FUNDS IN THE ESCROW ACCOUNT OR
42 THAT MAY SUBSEQUENTLY COME INTO THE ACCOUNT, INCLUDING THOSE FUNDS DEPOSITED
43 INTO THE ESCROW ACCOUNT BEFORE THE ASSIGNMENT IS EXECUTED, THOSE FUNDS
44 DEPOSITED INTO THE ESCROW ACCOUNT AFTER THE ASSIGNMENT IS EXECUTED AND
45 INTEREST OR OTHER APPRECIATION ON THE FUNDS. THE TOBACCO PRODUCT
46 MANUFACTURER, THE ATTORNEY GENERAL AND THE FINANCIAL INSTITUTION WHERE THE

1 ESCROW ACCOUNT IS MAINTAINED MAY MAKE AMENDMENTS TO THE QUALIFIED ESCROW
2 ACCOUNT AGREEMENT AS MAY BE NECESSARY TO EFFECTUATE AN ASSIGNMENT OF RIGHTS
3 EXECUTED PURSUANT TO THIS SUBPARAGRAPH OR A WITHDRAWAL OF MONIES FROM THE
4 ESCROW AMOUNT PURSUANT TO SUBPARAGRAPH (b), PARAGRAPH 2 OF THIS SECTION. AN
5 ASSIGNMENT OF RIGHTS EXECUTED PURSUANT TO THIS SUBPARAGRAPH SHALL BE IN
6 WRITING, SHALL BE SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE TOBACCO
7 PRODUCTS MANUFACTURER MAKING THE ASSIGNMENT AND SHALL BECOME EFFECTIVE ON
8 DELIVERY OF THE ASSIGNMENT TO THE ATTORNEY GENERAL AND THE FINANCIAL
9 INSTITUTION WHERE THE ESCROW ACCOUNT IS MAINTAINED. AN ASSIGNMENT OF ESCROW
10 FUNDS SHALL NOT BE MADE BY A TOBACCO PRODUCT MANUFACTURER UNLESS AND UNTIL
11 THE ATTORNEY GENERAL PROVIDES WRITTEN APPROVAL TO THE TOBACCO PRODUCT
12 MANUFACTURER.

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

25 Section 4. Effect of judicial action.

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

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

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

1 payments required by regulations as may be promulgated by the attorney
2 general pursuant to section 5(f) of this article.

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

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

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

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

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

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

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

45 (4) A tobacco product manufacturer may not include a brand family in
46 its certification unless (i) in the case of a participating manufacturer, the

1 participating manufacturer affirms that the brand family is to be deemed to
2 be its cigarettes for purposes of calculating its payments under the master
3 settlement agreement for the relevant year, in the volume and shares
4 determined pursuant to the master settlement agreement, and (ii) in the case
5 of a nonparticipating manufacturer, the nonparticipating manufacturer affirms
6 that the brand family is to be deemed to be its cigarettes for purposes of
7 section 44-7101, section 3(b). Nothing in this section shall be construed as
8 limiting or otherwise affecting the state's right to maintain that a brand
9 family constitutes cigarettes of a different tobacco product manufacturer for
10 purposes of calculating payments under the master settlement agreement or for
11 purposes of section 44-7101.

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

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

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

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

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

43 (4) A distributor that has lawfully affixed stamps to cigarettes and
44 subsequently is unable to sell those cigarettes lawfully because the
45 cigarettes have been removed from the directory pursuant to section 3(b)(2)

1 of this article, may apply to the department for a refund of the cost of such
2 stamps.

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

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

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

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

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

43 (f) IF A NONPARTICIPATING MANUFACTURER THAT POSTED A BOND HAS FAILED
44 TO MAKE OR HAVE MADE ON ITS BEHALF DEPOSITS EQUAL TO THE FULL AMOUNT OWED FOR
45 A QUARTER WITHIN FIFTEEN DAYS FOLLOWING THE DUE DATE OF THE QUARTER UNDER
46 SECTION 5, SUBPARAGRAPH (g), THE STATE MAY EXECUTE ON THE BOND IN THE AMOUNT

1 EQUAL TO ANY REMAINING AMOUNT OF THE ESCROW DUE. AMOUNTS THAT THE STATE
2 COLLECTS ON A BOND SHALL BE DEPOSITED INTO THE STATE TREASURY AND SHALL
3 REDUCE THE AMOUNT OF ESCROW DUE FROM THAT NONPARTICIPATING MANUFACTURER IN
4 THE DOLLAR AMOUNT COLLECTED. ESCROW OBLIGATIONS ABOVE THE AMOUNT COLLECTED
5 ON THE BOND REMAIN DUE FROM THAT NONPARTICIPATING MANUFACTURER AND, AS
6 PROVIDED IN ANY JOINT AND SEVERAL PROVISION IN THIS SECTION, FROM THE
7 IMPORTERS THAT SOLD ITS CIGARETTES DURING THAT CALENDAR QUARTER.

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

10 (h) NONPARTICIPATING MANUFACTURERS LOCATED OUTSIDE THE UNITED STATES
11 MUST PROVIDE A DECLARATION IN A FORM PRESCRIBED BY THE ATTORNEY GENERAL FROM
12 EACH OF ITS IMPORTERS INTO THE UNITED STATES OF ANY OF ITS BRAND FAMILIES,
13 THAT THE IMPORTER ACCEPTS JOINT AND SEVERAL LIABILITY WITH THE
14 NONPARTICIPATING MANUFACTURER FOR ALL ESCROW DEPOSITS DUE PURSUANT TO SECTION
15 44-7101 AS WELL AS ALL PENALTIES AND OTHER RELIEF AVAILABLE TO THE STATE
16 PURSUANT TO SECTION 44-7101 AND THIS SECTION. THE DECLARATION SHALL APPOINT
17 A RESIDENT AGENT FOR SERVICE OF PROCESS IN THIS STATE PURSUANT TO SECTION 4.
18 THE DECLARATIONS SHALL BE SUBMITTED AS PART OF THE CERTIFICATIONS REQUIRED
19 PURSUANT TO THIS SECTION AND UPDATED AT LEAST THIRTY DAYS BEFORE ANY OTHER
20 IMPORTER BEGINS THE IMPORTATION OF THE MANUFACTURER'S CIGARETTES. FAILURE TO
21 COMPLY WITH THIS SUBPARAGRAPH IS GROUNDS FOR REMOVAL FROM THE DIRECTORY. FOR
22 THE PURPOSES OF THIS SUBPARAGRAPH, "IMPORTER" HAS THE SAME MEANING AS IN
23 27 CODE OF FEDERAL REGULATIONS 41.11.

24 (i) THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO NOT RETAIN OR
25 REFUSE TO INCLUDE ANY BRAND FAMILY OR TOBACCO PRODUCT MANUFACTURER THAT
26 (i) DOES NOT CERTIFY THAT IT IS SUBJECT TO THE ENFORCEMENT OF SECTION
27 44-7101, THIS SECTION AND SECTION 36-798.06 WITHOUT ANY IMMUNITY,
28 (ii) PROVIDES INCORRECT, FALSE OR MISLEADING STATEMENTS IN ANY CERTIFICATION
29 SUBMITTED TO THIS STATE PURSUANT TO SECTION 44-7101 OR THIS SECTION OR WITH
30 REGARD TO ANY YEAR OR (iii) WAS PREVIOUSLY OR IS CURRENTLY NOT IN COMPLIANCE
31 WITH ANY OTHER FEDERAL OR STATE LAWS, INCLUDING ANOTHER STATE'S QUALIFYING
32 STATUTE AS DEFINED IN THE MASTER SETTLEMENT AGREEMENT OR IF THE ATTORNEY
33 GENERAL HAS REASON TO BELIEVE THAT THE TOBACCO PRODUCT MANUFACTURER WILL NOT
34 COMPLY WITH THE LAWS.

35 (j) THE ATTORNEY GENERAL HAS THE AUTHORITY TO REQUIRE THE SUBMISSION
36 OF ALL INFORMATION, CERTIFICATIONS, AFFIDAVITS AND OTHER MATERIALS THAT THE
37 ATTORNEY GENERAL DEEMS APPROPRIATE TO DETERMINE COMPLIANCE WITH THIS SECTION
38 AND OTHER RELATED LAWS, INCLUDING THE GROUNDS FOR NOT RETAINING OR NOT
39 INCLUDING ANY BRAND FAMILY OR TOBACCO PRODUCT MANUFACTURER.

40 Section 4. Agent for Service of Process.

41 (a) Requirement for agent for service of process. Any nonresident or
42 foreign nonparticipating manufacturer that has not registered to do business
43 in the state as a foreign corporation or business entity shall, as a
44 condition precedent to having its brand families included or retained in the
45 directory, appoint and continually engage without interruption the services
46 of an agent in this state to act as agent for the service of process on whom

1 all process, and any action or proceeding against it concerning or arising
2 out of the enforcement of this article and section 44-7101, may be served in
3 any manner authorized by law. Such service on the agent constitutes legal
4 and valid service of process on the nonparticipating manufacturer. The
5 nonparticipating manufacturer shall provide the name, address, phone number
6 and proof of the appointment and availability of the agent to and to the
7 satisfaction of the attorney general.

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

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

25 Section 5. Reporting of Information; Escrow Installments.

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

38 (b) Disclosure of information. The department is authorized to
39 disclose to the attorney general any information received under this article
40 and requested by the attorney general for purposes of determining compliance
41 with and enforcing the provisions of this article. The department and
42 attorney general shall share with each other the information received under
43 this article, and may share the information with other federal, state or
44 local agencies only for purposes of enforcement of this article, section
45 44-7101 or corresponding laws of other states.

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

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

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

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

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

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

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

7 Section 6. Penalties and Other Remedies.

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

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

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

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

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

42 Section 7. Miscellaneous Provisions.

43 (a) Notice and review of determination. A determination of the
44 attorney general to not include or to remove from the directory a brand
45 family or tobacco product manufacturer shall be subject to review as an

1 appealable agency action in the manner prescribed by title 41, chapter 6,
2 article 10.

3 (b) Dates. For the year 2003, the first report of distributors
4 required by section 5(a) shall be due thirty calendar days after the
5 effective date of this article. The certifications by a tobacco product
6 manufacturer described in section 3(a) shall be due forty-five calendar days
7 after the effective date and the directory described in section 3(b) shall be
8 published or made available within ninety calendar days after the effective
9 date.

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

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

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

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

35 Sec. 4. Exemption from rulemaking

36 For the purposes of implementing sections 44-7701 and 44-7111, Arizona
37 Revised Statutes, as amended by this act, the Attorney General is exempt from
38 the rule making requirements of title 41, chapter 6, Arizona Revised
39 Statutes, for one year after the effective date of this act.