

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

**CHAPTER 222**  
**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)

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

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

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

17 B. THE DEPARTMENT OF REVENUE IS AUTHORIZED TO SEIZE THE MACHINE AND  
18 ALL RELATED TUBES, PAPERS, TOBACCO PRODUCTS AND MATERIALS, WHICH SHALL BE  
19 FORFEITED TO THIS STATE FOLLOWING THE PROCESS PRESCRIBED IN SECTION 42-1124.  
20 ALL FORFEITED TOBACCO PRODUCTS SHALL ALSO BE DESTROYED PURSUANT TO SECTION  
21 42-1124 AND DEEMED CONTRABAND UNDER SECTION 42-3201, SUBSECTION I.

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

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

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

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

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

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

36 42-1124. Failure to affix stamps or pay or account for tax;  
37 forfeiture of commodity; sale of forfeited  
38 commodity; effect of seizure and sale; request for  
39 administrative hearing; definitions

40 A. If the department or its authorized agents or representatives  
41 discover any luxury subject to tax under chapter 3 of this title to which  
42 official stamps have not been affixed as required or on which the tax has not  
43 been paid or accounted for, the department or its agent or representative may  
44 seize and take possession of the luxury, and it is deemed forfeited to this  
45 state. Except as provided in subsection D or E of this section, the  
46 department shall within a reasonable time thereafter, pursuant to a notice

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

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

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

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

29 E. The department may sell or otherwise dispose of any cigarettes  
30 forfeited to this state on such conditions as it deems most advantageous and  
31 just under the circumstances, unless such cigarettes are forfeited pursuant  
32 to section 13-3711, 36-798.06 or 42-3210 or section 44-7111, section  
33 6(b). The department shall deposit the proceeds of any sales made pursuant  
34 to this subsection in the state general fund.

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

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

1 notice shall display the date on which the department posts the notice to the  
2 web site, which shall serve as the date of publication of the notice.

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

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

12 H. The seizure and forfeiture of cigarettes or other tobacco products  
13 by the department is an appealable agency action as defined in section  
14 41-1092 and is governed by title 41, chapter 6, article 10 and section  
15 42-1251, except that:

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

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

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

40 Sec. 3. Section 42-2003, Arizona Revised Statutes, is amended to read:  
41 42-2003. Authorized disclosure of confidential information

42 A. Confidential information relating to:

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

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

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

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

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

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

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

22           B. Confidential information may be disclosed to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) Regarding income tax or withholding tax.

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

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

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

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

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

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

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

1 (c) Fulfilling its annual reporting responsibility pursuant to section  
2 41-1511, subsections U and V and section 41-1512, subsections U and V.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 1. May only be used for internal purposes.

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

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

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

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

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

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

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

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

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

45 O. This section does not prohibit the disclosure by the department of  
46 any information or documents submitted to the department by a bingo licensee.

1 Before disclosing the information the department shall obtain the name and  
2 address of the person requesting the information.

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

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

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

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

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

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

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

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

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

4           V. The department may disclose to the attorney general confidential  
5 information received under section 44-7111 and requested by the attorney  
6 general for purposes of determining compliance with and enforcing section  
7 44-7111. The department and attorney general shall share with each other the  
8 information received under section 44-7111, and may share the information  
9 with other federal, state or local agencies only for the purposes of  
10 enforcement of section ~~13-3711~~, 36-798.06, 44-7101, ~~OR~~ 44-7111 or  
11 corresponding laws of other states.

12           W. The department may provide the name and address of qualifying  
13 hospitals and qualifying health care organizations, as defined in section  
14 42-5001, to a business classified and reporting transaction privilege tax  
15 under the utilities classification.

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

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

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

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

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

32           42-3201. Licenses

33           A. Every distributor acquiring or possessing for the purpose of making  
34 the initial sale or distribution in this state of any tobacco products on  
35 which a tax is imposed by this chapter shall obtain from the department a  
36 license to sell tobacco products. The application for the license shall be  
37 in the form provided by the department and shall be accompanied by a fee of  
38 twenty-five dollars. The form shall state that the identity of the applicant  
39 may be posted to the department's web site for public inspection. The  
40 application for a license shall include the applicant's name and address, the  
41 applicant's principal place of business, locations where the applicant's  
42 business is conducted in this state and any other information required by the  
43 department. If the applicant is a firm, partnership, limited liability  
44 company, limited liability partnership or association, the applicant shall  
45 list the name and address of each of the applicant's members. If the  
46 applicant is a corporation, the application shall list the name and address

1 of the applicant's officers and any person who directly or indirectly owns an  
2 aggregate amount of ten per cent or more of the ownership interest in the  
3 corporation. If a licensee changes its business location, the licensee under  
4 this subsection shall notify the department within thirty days after a change  
5 in location.

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

10 1. Shall be nontransferable.

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

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

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

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

28 E. A person who is convicted of an offense described in section  
29 42-1127, subsection E is permanently ineligible to hold a license issued  
30 under this section.

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

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

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

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

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

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

1           6. The applicant is in violation of section [13-3711 OR](#) 36-798.06,  
2 subsection A.

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

5           G. In addition to any other civil or criminal penalty and except as  
6 otherwise provided in this section, the department may suspend or revoke a  
7 license issued under subsection B of this section if the person violates any  
8 requirement under this title more than two times within a three-year period.  
9 A suspension or revocation under this subsection shall comply with section  
10 41-1092.11, subsection B.

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

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

19           Sec. 5. Section 42-3208, Arizona Revised Statutes, is amended to read:  
20 [42-3208. Return and payment by distributors of tobacco products](#)  
21 [other than cigarettes](#)

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

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

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

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

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

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

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

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

45           F. Tobacco products that are [ORDERED, PURCHASED OR TRANSPORTED](#) in A  
46 violation of section [13-3711](#), 36-798.06 or 42-3210 or section 44-7111,

1 section 3(c) or any other statute for which the tobacco products are subject  
2 to seizure and destruction are deemed contraband for which taxes that are  
3 imposed under this chapter cannot be reported and remitted.

4 Sec. 6. Section 44-7101, Arizona Revised Statutes, is amended to read:  
5 44-7101. Tobacco product manufacturers escrow accounts: model  
6 statute

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

10 Section 1. Findings and Purpose.

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

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

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

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

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

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

1 and to prevent such manufacturers from deriving large, short-term profits and  
2 then becoming judgment-proof before liability may arise.

3 Section 2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

17 (3) Becomes a successor of an entity described in paragraph (1) or  
18 (2).

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

22 (j) "TRIBAL LUXURY TAXES" MEANS THOSE TAXES REFERENCED IN SECTION  
23 42-3302, SUBSECTION C.

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

36 Section 3. Requirements.

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

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

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

1           2000: \$.0104712 per unit sold after the date of enactment of this act;  
2           For each of 2001 and 2002: \$.0136125 per unit sold;  
3           For each of 2003 through 2006: \$.0167539 per unit sold;  
4           For each of 2007 and each year thereafter: \$.0188482 per unit sold.

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

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

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

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

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

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

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

1 per day of the violation and in a total amount not to exceed 300 percent of  
2 the original amount improperly withheld from escrow; and

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

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

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

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

45 Section 4. Effect of judicial action.

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

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

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

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

21 44-7111. Tobacco; nonparticipating manufacturers; civil  
22 penalty; violation; classification

23 This state enacts the model nonparticipating manufacturers legislation  
24 as follows:

25 Section 1. Findings and Purpose.

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

32 Section 2. Definitions.

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

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

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

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

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

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

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

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

5 (i) "Qualified escrow fund" has the same meaning prescribed in section  
6 44-7101.

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

9 (k) "Units sold" has the same meaning prescribed in section 44-7101.  
10 Section 3. Certifications; Directory; Tax Stamps.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (d) A NONPARTICIPATING MANUFACTURER SHALL POST A BOND FOR THE  
43 EXCLUSIVE BENEFIT OF THIS STATE IF (i) ITS CIGARETTES WERE NOT SOLD IN THE  
44 STATE DURING ANY ONE OF THE FOUR PRECEDING CALENDAR QUARTERS, (ii) IT OR ANY  
45 PERSON AFFILIATED WITH IT FAILED TO MAKE A FULL AND TIMELY ESCROW DEPOSIT DUE  
46 UNDER SECTION 44-7101 DURING ANY OF THE FIVE PRECEDING CALENDAR YEARS, UNLESS

1 THE FAILURE WAS NOT KNOWING OR RECKLESS AND WAS PROMPTLY CURED ON NOTICE OR  
2 (iii) IT OR ANY PERSON AFFILIATED WITH IT, OR ANY OF ITS BRANDS OR BRANDS OF  
3 A PERSON AFFILIATED WITH IT, WERE REMOVED FROM THE STATE DIRECTORY OF ANY  
4 STATE DURING ANY OF THE FIVE PRECEDING CALENDAR YEARS, UNLESS THE REMOVAL WAS  
5 DETERMINED TO HAVE BEEN ERRONEOUS OR ILLEGAL. ENTITIES ARE AFFILIATED WITH  
6 EACH OTHER IF ONE DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES  
7 CONTROLS OR IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH THE OTHER.

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

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

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

27 (h) NONPARTICIPATING MANUFACTURERS LOCATED OUTSIDE THE UNITED STATES  
28 MUST PROVIDE A DECLARATION IN A FORM PRESCRIBED BY THE ATTORNEY GENERAL FROM  
29 EACH OF ITS IMPORTERS INTO THE UNITED STATES OF ANY OF ITS BRAND FAMILIES,  
30 THAT THE IMPORTER ACCEPTS JOINT AND SEVERAL LIABILITY WITH THE  
31 NONPARTICIPATING MANUFACTURER FOR ALL ESCROW DEPOSITS DUE PURSUANT TO SECTION  
32 44-7101 AS WELL AS ALL PENALTIES AND OTHER RELIEF AVAILABLE TO THE STATE  
33 PURSUANT TO SECTION 44-7101 AND THIS SECTION. THE DECLARATION SHALL APPOINT  
34 A RESIDENT AGENT FOR SERVICE OF PROCESS IN THIS STATE PURSUANT TO SECTION 4.  
35 THE DECLARATIONS SHALL BE SUBMITTED AS PART OF THE CERTIFICATIONS REQUIRED  
36 PURSUANT TO THIS SECTION AND UPDATED AT LEAST THIRTY DAYS BEFORE ANY OTHER  
37 IMPORTER BEGINS THE IMPORTATION OF THE MANUFACTURER'S CIGARETTES. FAILURE TO  
38 COMPLY WITH THIS SUBPARAGRAPH IS GROUNDS FOR REMOVAL FROM THE DIRECTORY. FOR  
39 THE PURPOSES OF THIS SUBPARAGRAPH, "IMPORTER" HAS THE SAME MEANING AS IN  
40 27 CODE OF FEDERAL REGULATIONS SECTION 41.11 (2012).

41 (i) THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO NOT RETAIN OR  
42 REFUSE TO INCLUDE IN THE DIRECTORY ANY NONPARTICIPATING MANUFACTURER OR THE  
43 MANUFACTURER'S BRAND FAMILIES, THAT (i) DOES NOT CERTIFY THAT IT IS SUBJECT  
44 TO THE ENFORCEMENT OF SECTION 44-7101, THIS SECTION AND SECTION 36-798.06  
45 WITHOUT ANY IMMUNITY, (ii) PROVIDES INCORRECT, FALSE OR MISLEADING STATEMENTS  
46 IN ANY CERTIFICATION SUBMITTED TO THIS STATE PURSUANT TO SECTION 44-7101 OR

1 THIS SECTION WITH REGARD TO ANY YEAR OR (iii) WAS PREVIOUSLY OR IS CURRENTLY  
2 NOT IN COMPLIANCE WITH ANY OTHER FEDERAL OR STATE LAWS, INCLUDING ANOTHER  
3 STATE'S QUALIFYING STATUTE AS DEFINED IN THE MASTER SETTLEMENT AGREEMENT OR  
4 IF THE ATTORNEY GENERAL HAS REASON TO BELIEVE THAT THE TOBACCO PRODUCT  
5 MANUFACTURER WILL NOT COMPLY WITH THE LAWS.

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

12 Section 4. Agent for Service of Process.

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

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

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

43 Section 5. Reporting of Information; Escrow Installments.

44 (a) Reporting by distributors. Not later than twenty calendar days  
45 after the end of each calendar quarter, and more frequently if so directed by  
46 the director, each distributor shall submit such information as the director

1 requires to facilitate compliance with this article, including, but not  
2 limited to, a list by brand family of the total number of cigarettes or, in  
3 the case of roll your own, the equivalent stick count, for which the  
4 distributor affixed stamps during the previous calendar quarter or otherwise  
5 paid the tax due for the cigarettes. The distributor shall maintain, and  
6 make available to the director and the attorney general, all invoices and  
7 documentation of sales of all nonparticipating manufacturer cigarettes and  
8 any other information relied upon in reporting to the director for a period  
9 of five years.

10 (b) Disclosure of information. The department is authorized to  
11 disclose to the attorney general any information received under this article  
12 and requested by the attorney general for purposes of determining compliance  
13 with and enforcing the provisions of this article. The department and  
14 attorney general shall share with each other the information received under  
15 this article, and may share the information with other federal, state or  
16 local agencies only for purposes of enforcement of this article, section  
17 44-7101 or corresponding laws of other states.

18 (c) If a tobacco product manufacturer required to establish a  
19 qualified escrow fund under section 44-7101, section 3(b) disputes the  
20 attorney general's determination of the amount that the manufacturer is  
21 required to deposit into escrow and the attorney general determines that the  
22 dispute can likely be resolved by information contained in reports submitted  
23 by distributors to the department indicating sales or purchases of the  
24 manufacturer's cigarettes, then the attorney general shall produce the  
25 relevant portions of the reports to the manufacturer. However, before  
26 disclosing the foregoing information, the attorney general may require the  
27 manufacturer to provide all records related to its sales of the cigarettes in  
28 dispute. The disclosure provided by the attorney general to a tobacco  
29 product manufacturer pursuant to this subsection shall be limited to  
30 information concerning the cigarettes alleged by the state to be subject to  
31 the requirements of section 44-7101, section 3(b), may be used by the  
32 manufacturer only for the limited purpose of determining the appropriate  
33 escrow deposit, and may not be disclosed by the manufacturer to any third  
34 parties.

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

42 (e) Requests for additional information. In addition to the  
43 information required to be submitted pursuant to this article, the director  
44 and attorney general may require a distributor or tobacco product  
45 manufacturer to submit any additional information including, but not limited  
46 to, samples of the packaging or labeling of each brand family, as is

1 necessary to enable the attorney general to determine whether a tobacco  
2 product manufacturer is in compliance with this article.

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

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

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

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

23 Section 6. Penalties and Other Remedies.

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

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

42 (c) Injunction. The attorney general, on behalf of the director, may  
43 seek an injunction to restrain a threatened or actual violation of  
44 section 3(c), 5(a) or 5(d) by a distributor and to compel the distributor to  
45 comply with those sections. In any action brought pursuant to this section,

1 the state shall be entitled to recover the costs of investigation, costs of  
2 the action and reasonable attorney fees.

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

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

13 Section 7. Miscellaneous Provisions.

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

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

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

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

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

40 (f) Construction and severability. If a court of competent  
41 jurisdiction finds that the provisions of this article and section 44-7101  
42 conflict and cannot be harmonized, then the provisions of section 44-7101  
43 shall control. If any section, subsection, subdivision, paragraph, sentence,  
44 clause or phrase of this article causes section 44-7101 to no longer  
45 constitute a qualifying or model statute, as those terms are defined in the  
46 master settlement agreement, then that portion of this article shall not be

1 valid. If any section, subsection, subdivision, paragraph, sentence, clause  
2 or phrase of this article is for any reason held to be invalid, unlawful or  
3 unconstitutional, the decision shall not affect the validity of the remaining  
4 portions of this article or any part thereof.

5 Sec. 8. Exemption from rulemaking

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

APPROVED BY THE GOVERNOR JUNE 19, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 19, 2013.