

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1352 Session of
2003

INTRODUCED BY LaGROTTA, THOMAS, BEBKO-JONES, JAMES, CLYMER,
CURRY, DALEY, FABRIZIO, FRANKEL, FREEMAN, GERGELY, HARHAI,
KIRKLAND, LAUGHLIN, MELIO, MUNDY, PHILLIPS, RUBLEY, SAYLOR,
SCAVELLO, SCRIMENTI, SHANER, SOLOBAY, TANGRETTI, WATERS,
JOSEPHS AND HORSEY, MAY 6, 2003

REFERRED TO COMMITTEE ON JUDICIARY, MAY 6, 2003

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, defining the offense of unlawful
3 delivery of tobacco products; and prescribing a penalty.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 18 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 7516. Unlawful delivery of tobacco products.

9 (a) Offense defined.--

10 (1) Except as otherwise provided in subsection (b), it
11 is unlawful for a person in the business of selling tobacco
12 products to deliver or cause to be delivered any tobacco
13 products to any person in this Commonwealth, unless the
14 delivery of tobacco products is made to one of the following
15 persons for purposes other than personal consumption by the
16 recipient:

17 (i) a person licensed by the Department of Revenue

1 under Article II-A of the act of April 9, 1929 (P.L.343,
2 No.176), known as The Fiscal Code.

3 (ii) A manufacturer or importer of tobacco products
4 or an export warehouse proprietor with a Federal permit
5 to do business pursuant to section 5712 of the Internal
6 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
7 5712) or an operator of a federally designated customs
8 bonded warehouse pursuant to section 311 or 555 of the
9 Tariff Act of 1930 (46 Stat. 590, 19 U.S.C. §§ 1311 and
10 1555).

11 (iii) A person who is an officer, employee or agent
12 of the Federal Government, this Commonwealth or a
13 department, agency, instrumentality or political
14 subdivision of the Federal Government or this
15 Commonwealth, when acting in accordance with that
16 person's official duties.

17 (2) This subsection does not apply to a face-to-face
18 transaction at the time of purchase of any tobacco products.

19 (b) Residential delivery.--It shall be unlawful for a person
20 in the business of selling tobacco products to deliver or cause
21 to be delivered any tobacco products to a home or residence.

22 (c) Containers and wrapping.--It shall be unlawful for a
23 person in the business of selling tobacco products to deliver or
24 cause to be delivered any tobacco products to any person in this
25 Commonwealth except in a container or wrapping plainly and
26 visibly marked with the word "tobacco products."

27 (d) Commercial delivery services.--

28 (1) It shall be unlawful for a person within the
29 jurisdiction of this Commonwealth, including a commercial
30 delivery service, to knowingly transport any tobacco products

1 to any person in this Commonwealth, other than a person
2 described in subsection (a).

3 (2) Notwithstanding paragraph (1), it shall be unlawful
4 for a person within the jurisdiction of this Commonwealth,
5 including a commercial delivery service, to knowingly
6 transport any tobacco products to a home or residence.

7 (e) Government publication.--The Department of Revenue shall
8 make public, by posting on the Internet and by other means, a
9 list of all persons who are currently licensed or registered by
10 this Commonwealth as agents, dealers or distributors, as
11 described in subsection (a)(1).

12 (f) Enforcement.--

13 (1) The Attorney General or his designee may bring an
14 action in the appropriate court in this Commonwealth to
15 enforce this section, to seek fines, penalties and related
16 damages and equitable relief or to prevent or restrain
17 violations of this section by any person or any person
18 controlling such person.

19 (2) Upon providing at least 15 days' prior notice to the
20 Attorney General, a district attorney may bring an action in
21 the appropriate court in this Commonwealth, or join an action
22 being brought by the Attorney General or his or her designee,
23 to seek damages and equitable relief or to prevent or
24 restrain violations of this section by any person or any
25 person controlling such person.

26 (3) Upon providing at least 15 days' prior notice to the
27 Attorney General, a person who holds a valid permit under
28 section 5712 of the Internal Revenue Code of 1986 may bring
29 an action in the appropriate court in this Commonwealth, or
30 join an action being brought by the Attorney General or his

1 designee, to prevent or restrain violations of this section
2 by any person or any person controlling such person.

3 (4) Upon receiving notice from another person of that
4 person's intent to bring an action pursuant to this section,
5 the Attorney General or his designee may choose to join in
6 the other person's action or bring an action by this
7 Commonwealth in its stead and shall inform the person
8 providing notice of how the Attorney General or the designee
9 will proceed within 15 days of receiving the notice.

10 (g) List of violators.--The Attorney General shall make
11 public, by posting on the Internet and other means, a list of
12 all actions taken to enforce this section and a list of all
13 persons found to have violated this section, including those
14 persons' names, addresses and any other information the Attorney
15 General believes may be useful to other jurisdictions enforcing
16 laws prohibiting or restricting tobacco product sales for
17 personal consumption in which the seller and buyer do not
18 initiate and complete the entire transaction when in each
19 other's physical presence.

20 (h) Penalties.--

21 (1) A person who violates the provisions of this section
22 shall be subject to a civil fine of not less than \$500 and
23 not more than \$5,000 or five times the value of the tobacco
24 products at issue, whichever is highest, for each such
25 violation.

26 (2) A person engaged in the business of selling tobacco
27 products who violates subsection (a), (b) or (c) shall also
28 be required to reimburse this Commonwealth and its political
29 subdivisions for all unpaid taxes of this Commonwealth or its
30 political subdivisions relating to the tobacco products at

1 issue, plus interest and for any other damages.

2 (3) A person engaged in the business of selling tobacco
3 products who knowingly violates subsection (a), (b) or (c)
4 shall also be fined up to \$5,000 or ten times the value of
5 the tobacco products at issue, whichever is highest, or
6 imprisoned for up to one year, or both, for a first
7 violation, and fined not less than \$10,000, or imprisoned for
8 up to five years, or both, for a second or subsequent
9 violation.

10 (4) Any tobacco products sold or attempted to be sold in
11 this Commonwealth in a manner that does not meet the
12 requirements of this section shall be forfeited to this
13 Commonwealth in accordance with law.

14 (i) Definitions.--As used in this section, the words and
15 phrases shall have the meanings given to them in section 6305
16 (relating to sale of tobacco).

17 Section 2. This act shall take effect in 60 days.