

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 921 Session of
2003

INTRODUCED BY A. WILLIAMS, BRIGHTBILL, MOWERY, RAFFERTY,
SCHWARTZ, TARTAGLIONE, COSTA, MUSTO, BOSCOLA AND C. WILLIAMS,
SEPTEMBER 24, 2003

REFERRED TO FINANCE, SEPTEMBER 24, 2003

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,
2 as amended, "An act relating to the finances of the State
3 government; providing for the settlement, assessment,
4 collection, and lien of taxes, bonus, and all other accounts
5 due the Commonwealth, the collection and recovery of fees and
6 other money or property due or belonging to the Commonwealth,
7 or any agency thereof, including escheated property and the
8 proceeds of its sale, the custody and disbursement or other
9 disposition of funds and securities belonging to or in the
10 possession of the Commonwealth, and the settlement of claims
11 against the Commonwealth, the resettlement of accounts and
12 appeals to the courts, refunds of moneys erroneously paid to
13 the Commonwealth, auditing the accounts of the Commonwealth
14 and all agencies thereof, of all public officers collecting
15 moneys payable to the Commonwealth, or any agency thereof,
16 and all receipts of appropriations from the Commonwealth,
17 authorizing the Commonwealth to issue tax anticipation notes
18 to defray current expenses, implementing the provisions of
19 section 7(a) of Article VIII of the Constitution of
20 Pennsylvania authorizing and restricting the incurring of
21 certain debt and imposing penalties; affecting every
22 department, board, commission, and officer of the State
23 government, every political subdivision of the State, and
24 certain officers of such subdivisions, every person,
25 association, and corporation required to pay, assess, or
26 collect taxes, or to make returns or reports under the laws
27 imposing taxes for State purposes, or to pay license fees or
28 other moneys to the Commonwealth, or any agency thereof,
29 every State depository and every debtor or creditor of the
30 Commonwealth," providing for delivery sales of cigarettes.

31 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The act of April 9, 1929 (P.L.343, No.176), known
3 as The Fiscal Code, is amended by adding a section to read:

4 Section 231-A. Delivery Sales of Cigarettes.--(a) It shall
5 be unlawful for any person in the business of selling cigarettes
6 to take an order for cigarettes, other than from a person who is
7 a licensed dealer, through the mail or through any
8 telecommunications means, including by telephone, facsimile or
9 the Internet, if in providing for the sale or delivery of the
10 cigarettes pursuant to the order the person mails the
11 cigarettes, or ships the cigarettes sold by him to the purchaser
12 by carrier in or affecting interstate commerce, and the person
13 fails to comply with each of the following procedures for the
14 first delivery sales to the individual:

15 (1) Before mailing or shipping the cigarettes, the person
16 receives from the individual who places the order the following:

17 (i) A copy of a valid government-issued document, whether an
18 operator's permit or otherwise, that provides the name, address
19 and date of birth of the individual.

20 (ii) A signed statement in writing from the individual
21 providing a certification that the individual:

22 (A) is of legal minimum purchase age in this Commonwealth;

23 (B) wants to receive mailings from a tobacco company; and

24 (C) understands that providing false information constitutes
25 a violation of law.

26 (2) Before mailing or shipping the cigarettes, the person:

27 (i) verifies the date of birth or age of the individual
28 against a commercially available database; or

29 (ii) obtains a photocopy or other image of the valid,
30 government-issued identification stating the date of birth or

1 age of the individual placing the order.

2 (3) In the case of an order for cigarettes pursuant to an
3 advertisement on the Internet or in any newspaper or print
4 media, the person receives payment by credit card or check for
5 the order before mailing or shipping the cigarettes. Payment
6 must be made by credit card issued to or check issued by the
7 person purchasing the cigarettes.

8 (4) The person employs a method of mailing or shipping the
9 cigarettes requiring that the individual purchasing the
10 cigarettes:

11 (i) Be the addressee.

12 (ii) Have the addressee who purchased the cigarettes sign
13 for delivery of the package.

14 (iii) If the individual appears to the carrier making the
15 delivery to be under twenty-seven years of age, take delivery of
16 the package only after producing valid, government-issued
17 identification that:

18 (A) Bears a photograph of the individual.

19 (B) Indicates that the individual is not under the legal age
20 to purchase cigarettes.

21 (C) Indicates that the individual is not younger than the
22 age indicated on the government-issued document received under
23 paragraph (1).

24 (5) The bill of lading clearly states the requirements in
25 paragraph (4) and specifies that State law requires compliance
26 with the requirements.

27 (6) The person notifies the carrier for the mailing or
28 shipping, in writing, of the age of the addressee as indicated
29 by the government-issued document received under paragraph (1).

30 (7) This section shall not be construed as imposing

liability upon any common carrier, or officers or employees thereof, when acting within the scope of business of the common carrier.

(8) Persons taking delivery sale orders may request that prospective purchasers provide their e-mail addresses.

(b) Prior to making delivery sales or shipping cigarettes in connection with any such sales, every person shall file with the department a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

(c) Not later than the tenth day of each calendar month, each person that has made a delivery sale or shipped or delivered cigarettes in connection with any such sale during the previous calendar month shall file with the department a memorandum or a copy of the invoice, which provides for each and every such delivery sale:

(1) The name and address of the individual to whom such delivery sale was made.

(2) The brand or brands of cigarettes that were sold in such delivery sale.

(3) The quantity of cigarettes that was sold in such delivery sale.

(d) Any person that satisfies the requirements of 15 U.S.C. § 376 (relating to reports to State tobacco tax administrator) shall be deemed to satisfy the requirements of this section.

(e) Each person making a delivery sale shall collect and remit to the department any taxes levied by the State with respect to such sale pursuant to law, except that such collection and remission shall not be required to the extent such person has obtained proof, in the form of the presence of

applicable tax stamps or otherwise, that such taxes already have been paid to the Commonwealth.

(f) (1) Except as otherwise provided in this section, the first time a person violates any provision of this act, such person shall be fined not more than one thousand dollars (\$1,000).

(2) In the case of a second or subsequent violation of this act, such person shall be fined not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000).

(3) Any person who knowingly violates any provision of this section, or who knowingly and falsely submits a certification under this section in another person's name, shall, for each such offense, be fined not more than ten thousand dollars (\$10,000) or imprisoned for not more than five years, or both.

(4) Whoever fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of fifty per centum of the tax due but unpaid.

(5) Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this act shall be forfeited to the Commonwealth and destroyed, pursuant to law.

(g) The department or its designee, the Attorney General or his or her designee, or any person who holds a permit under 26 U.S.C. § 5712 (relating to application for permit) or 19 U.S.C. § 1311 (relating to bonded manufacturing warehouses) or 1555 (relating to bonded warehouses), may bring an action in the appropriate court in this Commonwealth to prevent or restrain violations of this section by any person or any person controlling such person.

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