

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

SENATOR EARLL, FINANCE, AS AMENDED, DECEMBER 17, 2003

AN ACT

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

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 PURCHASER: <—

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

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

21 (ii) A signed statement in writing from the individual <—
22 PURCHASER providing a certification that the individual <—
23 PURCHASER: <—

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

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

26 (C) understands that providing false information constitutes
27 a violation of law.

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

29 (i) verifies the date of birth or age of the individual <—
30 PURCHASER against a commercially available database; or <—

(ii) obtains a photocopy or other image of the valid,
government-issued identification stating the date of birth or
age of the individual PURCHASER placing the order.

<—

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

<—

<—

(4) The person employs a method of mailing or shipping the
cigarettes requiring that the individual purchasing PURCHASER OF
the cigarettes:

<—

(i) Be the addressee.

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

<—

(II) SIGNS FOR THE DELIVERY OF THE CIGARETTES.

<—

(iii) If the individual PURCHASER appears to the carrier
making the delivery to be under ~~twenty seven~~ TWENTY-FIVE years
of age, take delivery of the package only after producing valid,
government-issued identification that BEARS A PHOTO OF THE
PURCHASER AND INDICATES THAT THE PURCHASER IS AT LEAST 18 YEARS
OF AGE.

<—

<—

<—

~~(A) Bears a photograph of the individual.~~

<—

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

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

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

1 with the requirements.

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

5 (7) This section shall not be construed as imposing
6 liability upon any common carrier, or officers or employees
7 thereof, when acting within the scope of business of the common
8 carrier.

9 ~~(8) Persons taking delivery sale orders may request that~~ <—
10 ~~prospective purchasers provide their e mail addresses.~~

11 (b) Prior to making delivery sales or shipping cigarettes in
12 connection with any such sales SALES SUBJECT TO THIS SECTION, <—
13 every person shall file with the department a statement setting
14 forth such person's name, trade name, and the address of such
15 person's principal place of business and any other place of
16 business.

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

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

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

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

29 ~~(d) (C) Any person that satisfies the requirements of 15~~ <—
30 ~~U.S.C. § 376 (relating to reports to State tobacco tax~~

1 ~~administrator) shall be deemed to satisfy the requirements of~~ <—
2 ~~this section.~~ SHALL SIMULTANEOUSLY FILE SUCH REPORT WITH THE <—
3 DEPARTMENT.

4 ~~(e)~~ (D) Each person making a delivery sale shall collect and <—
5 remit to the department any taxes levied by the State with
6 respect to such sale pursuant to law, except that such
7 collection and remission shall not be required to the extent
8 such person has obtained proof, in the form of the presence of
9 applicable tax stamps or otherwise, that such taxes already have
10 been paid to the Commonwealth.

11 ~~(f)~~ (E) (1) Except as otherwise provided in this section, <—
12 the first time a person violates any provision of this act, such
13 person shall be fined not more than one thousand dollars
14 (\$1,000).

15 (2) In the case of a second or subsequent violation of this
16 act, such person shall be fined not less than one thousand
17 dollars (\$1,000) and not more than five thousand dollars
18 (\$5,000).

19 (3) Any person who knowingly violates any provision of this
20 section, or who knowingly and falsely submits a certification
21 under this section in another person's name, shall, for each
22 such offense, be fined not more than ten thousand dollars
23 (\$10,000) or imprisoned for not more than five years, or both.

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

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

1 ~~(g)~~ (F) The department or its designee, the Attorney General <—
2 or his or her designee, or any person who holds a permit under
3 26 U.S.C. § 5712 (relating to application for permit) or 19
4 U.S.C. § 1311 (relating to bonded manufacturing warehouses) or
5 1555 (relating to bonded warehouses), may bring an action in the
6 appropriate court in this Commonwealth to prevent or restrain
7 violations of this section by any person or any person
8 controlling such person.

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