

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

As Engrossed: S3/12/03

A Bill

SENATE BILL 456

4
5 By: Senator Faris

For An Act To Be Entitled

9 AN ACT TO ENSURE THE COLLECTION OF TAXES ON
10 CIGARETTES; AND FOR OTHER PURPOSES.

Subtitle

13 AN ACT TO ENSURE THE COLLECTION OF TAXES
14 ON CIGARETTES.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Definitions.

20 For purposes of this act:

21 (1) "Adult" means a person who is at least the legal minimum
22 purchase age;

23 (2) "Consumer" means an individual who is not licensed by the
24 Arkansas Tobacco Control Board as a cigarette wholesaler or retailer;

25 (3)(A) "Delivery sale" means any sale of cigarettes to a
26 consumer in this state if either:

27 (i) The purchaser submits the order for the sale by
28 means of a telephonic or other method of voice transmission, the mails or any
29 other delivery service, or the Internet or other online service; or

30 (ii) The cigarettes are delivered by use of the
31 mails or a delivery service.

32 (B) A sale of cigarettes is a delivery sale regardless of
33 whether the seller is located within the state.

34 (C) A sale of cigarettes not for personal consumption to a
35 wholesale dealer or retail dealer is not a delivery sale;

36 (4) "Delivery service" means any person who is engaged in the



1 commercial delivery of letters, packages, or other containers;

2 (5) "Department" means the Department of Finance and
3 Administration;

4 (6) "Legal minimum purchase age" means the minimum age at which
5 an individual may legally purchase cigarettes in Arkansas;

6 (7) "Mailing" means the shipment of cigarettes through the
7 United States Postal Service;

8 (8) "Person" means any individual, partnership, association,
9 fiduciary, corporation, or any organized group of persons whether
10 incorporated or not;

11 (9) "Shipping container" means a container in which cigarettes
12 are shipped in connection with a delivery sale; and

13 (10) "Shipping documents" means bills of lading, airbills, or
14 any other documents used to evidence the undertaking by a delivery service to
15 deliver letters, packages, or other containers.

16
17 SECTION 2. Requirements for delivery sales.

18 (a) No person may make a delivery sale of cigarettes to any individual
19 who is under the legal minimum purchase age.

20 (b) Each person accepting a purchase order for a delivery sale shall
21 comply with:

22 (1) The age verification requirements in section 3;

23 (2) The disclosure requirements in section 4;

24 (3) The shipping requirements in section 5;

25 (4) The registration and reporting requirements in section 6;

26 (5) The tax collection requirements in section 7; and

27 (6) All other laws of this state generally applicable to sales
28 of cigarettes that occur entirely within this state, including, but not
29 limited to, those laws imposing:

30 (A) Excise taxes;

31 (B) Sales taxes and revenue-stamping requirements; and

32 (C) Escrow payment obligations in Arkansas Code §§ 26-57-
33 260 and 26-57-261.

34
35 SECTION 3. Age verification requirements.

36 (a) No person shall mail, ship, or otherwise deliver cigarettes in

1 connection with a delivery sale unless, prior to the first delivery sale to a
2 consumer, the person:

3 (1) Obtains from the prospective consumer a certification that
4 includes:

5 (A) A reliable confirmation that the consumer is at least
6 the legal minimum purchase age;

7 (B) A statement signed by the prospective consumer in
8 writing that certifies the prospective consumer's address;

9 (C) A reliable confirmation that the prospective consumer
10 understands that signing another person's name to the certification is
11 illegal, that the sale of cigarettes to individuals under the legal minimum
12 purchase age is illegal, and that the purchase of cigarettes by individuals
13 under the legal minimum purchase age is illegal;

14 (D) A statement that the prospective consumer wants to
15 receive mailings from a tobacco company;

16 (2) Makes a good faith effort to verify the information
17 contained in the certification provided by the prospective consumer against a
18 commercially available database, or obtains a photocopy or other image of a
19 valid, government issued identification stating the date of birth or age of
20 the individual placing the order;

21 (3) Provides to the prospective consumer, by e-mail or other
22 means, a notice that meets the requirements of section 4; and

23 (4) In the case of an order for cigarettes pursuant to an
24 advertisement on the Internet, receives payment for the delivery sale from
25 the prospective consumer by a credit or debit card that has been issued in
26 the consumer's name or by check.

27 (b) A person accepting purchase orders for delivery sales may request
28 that a prospective consumer provide his or her e-mail address.

29
30 SECTION 4. Disclosure requirements.

31 The notice required under section 3(a)(3) shall include a prominent and
32 clearly legible statement that:

33 (1) Cigarette sales to consumers below the legal minimum
34 purchase age are illegal;

35 (2) Consists of one of the warnings set forth in section 4(a)(1)
36 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1)

1 as it existed on January 1, 2003, rotated on a quarterly basis;

2 (3) Sales of cigarettes are restricted to those consumers who
3 provide verifiable proof of age in accordance with section 3; and

4 (4) Cigarette sales are subject to tax under the Arkansas
5 Tobacco Products Tax Act of 1977 as amended, and an explanation of how the
6 tax has been, or is to be, paid with respect to the delivery sale.

7
8 SECTION 5. Shipping requirements.

9 (a) Each person who mails, ships, or otherwise delivers cigarettes in
10 connection with a delivery sale:

11 (1) Shall include as part of the shipping documents a clear and
12 conspicuous statement as follows: "Cigarettes: Arkansas Law Prohibits
13 Shipping to Individuals Under Eighteen (18) Years of Age, and Requires the
14 Payment of all Applicable Taxes";

15 (2) Shall use a method of mailing, shipping, or delivery that
16 obligates the delivery service to:

17 (A) Require the consumer placing the purchase order for
18 the delivery sale, or an adult of legal minimum purchase age residing at the
19 consumer's address, to sign to accept delivery of the shipping container; and

20 (B) If the person appears to be under twenty-seven (27)
21 years of age, furnish proof, in the form of a valid government issued
22 identification bearing a photograph of the individual who signs to accept
23 delivery of the shipping container, that he or she is either the addressee or
24 an adult of legal minimum purchase age residing at the consumer's address;
25 and

26 (3) Shall provide to the delivery service evidence of full
27 compliance with section 7.

28 (b) If the person accepting a purchase order for a delivery sale
29 delivers the cigarettes without using a delivery service, the person shall
30 comply with all requirements of this act applicable to a delivery service and
31 shall be in violation of the provisions of this act if he or she fails to
32 comply with any requirement.

33
34 SECTION 6. Registration and reporting requirements.

35 (a) Prior to making delivery sales or mailing, shipping, or otherwise
36 delivering cigarettes in connection with any delivery sales, a person shall

1 file with the Department of Finance and Administration a statement setting
2 forth the person's name, trade name, and the address of the person's
3 principal place of business and any other place of business and shall pay to
4 the department a registration fee in an amount equal to the amount paid by an
5 Arkansas licensee.

6 (b) Not later than the tenth day of each calendar month, each person
7 who has made a delivery sale or mailed, shipped, or otherwise delivered
8 cigarettes in connection with any delivery sale during the previous calendar
9 month shall file with the department a memorandum or a copy of the invoice
10 that provides for each delivery sale:

11 (1) The name and address of the consumer to whom the delivery
12 sale was made;

13 (2) The brand or brands of the cigarettes that were sold in the
14 delivery sale; and

15 (3) The quantity of cigarettes that were sold in the delivery
16 sale.

17 (c) Any person who satisfies the requirements of § 376 of Title 15 of
18 the United States Code as it existed on January 1, 2003, shall be deemed to
19 satisfy the requirements of this section.

20
21 SECTION 7. Collection of taxes.

22 Each person accepting a purchase order for a delivery sale shall
23 collect and remit to the Department of Finance and Administration all
24 cigarette taxes imposed by the state with respect to the delivery sale,
25 except that the collection and remission shall not be required to the extent
26 the person has obtained proof, in the form of the presence of applicable tax
27 stamps or otherwise, that the taxes already have been paid to the state.

28
29 SECTION 8. Penalties.

30 (a)(1) Except as otherwise provided in this section, a first violation
31 of any provision of this act shall be an unclassified misdemeanor punishable
32 by a fine of one thousand dollars (\$1,000) or five (5) times the retail value
33 of the cigarettes involved, whichever is greater.

34 (2) A second or subsequent violation of any provision of this
35 act shall be an unclassified misdemeanor punishable by a fine of five
36 thousand dollars (\$5,000) or five (5) times the retail value of the

1 cigarettes involved, whichever is greater.

2 (b) Any person who knowingly and falsely submits a certification under
3 section 3(a)(1) in another person's name, shall, for each offense, be deemed
4 to have committed an unclassified felony and be fined ten thousand dollars
5 (\$10,000) or five (5) times the retail value of the cigarettes involved,
6 whichever is greater, or imprisoned not more than five (5) years, or both.

7 (c) Any person failing to collect or remit to the department any tax
8 required in connection with a delivery sale shall be assessed, in addition to
9 any other penalty, a penalty of five (5) times the retail value of the
10 cigarettes involved.

11 (d)(1) Any cigarettes sold or attempted to be sold in a delivery sale
12 that do not meet the requirements of this act shall be forfeited to the state
13 and destroyed.

14 (2) All fixtures, equipment, and all other materials and
15 personal property on the premises of any person who, with the intent to
16 defraud the state, violates any of the requirements of this act shall be
17 forfeited to the state.

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19 SECTION 9. Enforcement.

20 The Attorney General or any person who holds a valid federal or State
21 of Arkansas permit to manufacture or import tobacco products may bring an
22 action in the appropriate court in this state to prevent or restrain
23 violations of this act by any person, or any person controlling the person.

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25 */s/ Faris*
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