

SECOND REGULAR SESSION

# SENATE BILL NO. 1321

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CALLAHAN.

Read 1st time February 26, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4757S.011

## AN ACT

To amend chapter 407, RSMo, by adding thereto five new sections relating to cigarette sales, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto five new sections, to be known as sections 407.1500, 407.1501, 407.1502, 407.1503, and 407.1504, to read as follows:

**407.1500. As used in sections 407.1500 to 407.1504, the following terms mean:**

(1) "Consumer", any person who is not licensed to sell cigarettes at wholesale or retail under chapter 149, RSMo;

(2) "Delivery sale", any sale of cigarettes to a consumer in this state, in which the consumer submits an order for the cigarettes by any means of voice transmission, the United States Postal Service or any other delivery service, the Internet, or any other online method, and the cigarettes are delivered by use of the United States Postal Service or any other delivery service. "Delivery sale" shall not include any sale of cigarettes not for personal consumption to any person who is a wholesale or retail dealer;

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

**407.1501. 1. No person shall mail, ship, or otherwise deliver cigarettes unless, before the first delivery sale to the consumer, the person:**

(1) Obtains from the consumer a reliable, written certification signed by the consumer with the following information:

(a) An affirmation that the consumer is not a minor;

(b) The consumer's address;

(c) A statement that the consumer understands that signing another person's name to the certification is illegal;

(d) A statement that the consumer understands that the sale of cigarettes to minors is illegal;

(e) A statement that the consumer understands that the purchase of cigarettes by minors is illegal under state law; and

(f) A statement indicating whether the consumer wishes to receive mailings from a tobacco company;

(2) Makes a good faith effort to verify the information contained in the certification against any commercially available database, or attempts to verify by obtaining a photocopy or other image of a valid, government-issued photo identification stating the age or date of birth of the consumer;

(3) Provides the consumer, by mail, e-mail, or any other means, a notice containing the following information:

(a) A prominent and clearly legible statement that tobacco sales to minors are illegal;

(b) A prominent and clearly legible warning statement identical to one of the four warnings set forth in 15 U.S.C. 1333(a)(3), as amended, with the statement being rotated on a quarterly basis;

(c) A prominent and clearly legible statement that cigarette sales are restricted to those consumers who provide verifiable proof of age as required in section 407.929; and

(d) A prominent and clearly legible statement that cigarette sales are subject to tax under chapter 149, RSMo, and an explanation of how the tax has been or shall be paid with respect to such delivery sale; and

(4) For orders for cigarettes placed in response to an advertisement received by e-mail or the Internet, receives payment for the delivery sale from the consumer by a check or by a debit or credit card issued in the consumer's name.

2. Any person accepting purchase orders for delivery sales of cigarettes may request that consumers provide their e-mail address with the order.

407.1502. 1. Any person mailing, shipping, or otherwise delivering cigarettes in connection with a delivery sale shall:

(1) Include as part of the bill of lading, invoice, or other shipping documents a clear and conspicuous statement consisting of the following: "Cigarettes: Missouri Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of All Applicable Taxes";

(2) Use a method of mailing, shipping, or other delivery that obligates the delivery service to require the signature and acceptance of the package by the consumer or by another person eighteen years of age or older residing at the consumer's address and to require proof of age of the consumer or the person

accepting the package in the form of a valid, government-issued photo identification stating the age or date of birth. Proof of age shall be required under this subsection only if the person accepting the package appears to be under twenty-seven years of age; and

(3) Provide to the delivery service used for the delivery sale evidence that any taxes due under chapter 149, RSMo, have been paid.

2. Any person accepting a purchase order for a delivery sale of cigarettes who delivers the cigarettes without using a delivery service shall comply with all requirements of this section.

407.1503. 1. Before making delivery sales or mailing, shipping, or otherwise delivering cigarettes in connection with delivery sales, any person engaging in delivery sales shall file the person's name, trade name, and address of the place of business with the division of alcohol and tobacco control.

2. Not later than the tenth day of each month, any person that has made a delivery sale or has mailed, shipped, or otherwise delivered cigarettes in connection with a delivery sale during the previous month shall file with the division of alcohol and tobacco control a copy of the invoice of each delivery sale or a listing of each delivery sale containing the following information:

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

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

(3) The quantity of cigarettes sold in the delivery sale.

Any person satisfying the reporting requirements in 15 U.S.C. 376, as amended, shall be deemed to satisfy the requirements of this subsection.

3. Any person accepting a purchase order for a delivery sale of cigarettes shall collect and pay to the director of the department of revenue all cigarette taxes imposed on the delivery sale under chapter 149, RSMo, except that such collection and payment of taxes shall not be required to the extent the person making the delivery sale has obtained proof, acceptable under chapter 149, RSMo, that the taxes have been paid on the sale.

407.1504. 1. Except as otherwise provided in this section, any person convicted of a first violation of sections 407.1500 to 407.1504 shall be fined an amount equal to one thousand dollars or five times the retail value of the cigarettes involved in the delivery sale, whichever amount is greater. Any person convicted of a second or subsequent violation of sections 407.1500 to 407.1504 shall be fined an amount equal to five thousand dollars or five times the retail value of the cigarettes involved in the delivery sale, whichever amount is greater.

2. Any person who knowingly violates sections 407.1500 to 407.1504 shall, for

each offense, be fined an amount equal to ten thousand dollars or five times the retail value of the cigarettes involved in the delivery sale, whichever amount is greater, or imprisoned for a term not to exceed five years, or both.

3. Any person failing to collect or pay to the director of the department of revenue any tax required in connection with a delivery sale of cigarettes shall be assessed, in addition to any other penalty assessed under chapter 149, RSMo, a penalty of five times the retail value of the cigarettes involved in the delivery sale.

4. Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements in sections 407.1500 to 407.1504 shall be forfeited to the state and destroyed.

5. The attorney general, or any person holding a valid permit under 26 U.S.C. 5713, as amended, may bring an action in the appropriate court in this state to prevent or restrain violations of sections 407.1500 to 407.1504.

Unofficial

Bill

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