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CRIMINAL OFFENSES

(720 ILCS 678/) Prevention of Cigarette Sales to Minors Act.

(720 ILCS 678/1)

Sec. 1. Short title. This Act may be cited as the Prevention of Cigarette Sales to Minors Act.
(Source: P.A. 93-960, eff. 8-20-04.)

(720 ILCS 678/2)

Sec. 2. Definitions. For the purpose of this Act:

"Cigarette", when used in this Act, means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except whole leaf tobacco.

"Clear and conspicuous statement" means the statement is of sufficient type size to be clearly readable by the recipient of the communication.

"Consumer" means an individual who acquires or seeks to acquire cigarettes for personal use.

"Delivery sale" means any sale of cigarettes to a consumer if:

(a) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(b) the cigarettes are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes.

"Delivery service" means any person (other than a person that makes a delivery sale) who delivers to the consumer the cigarettes sold in a delivery sale.

"Department" means the Department of Revenue.

"Government-issued identification" means a State driver's license, State identification card, passport, a military identification or an official naturalization or immigration document, such as an alien registration recipient card (commonly known as a "green card") or an immigrant visa.

"Mails" or "mailing" mean the shipment of cigarettes through the United States Postal Service.

"Out-of-state sale" means a sale of cigarettes to a consumer located outside of this State where the consumer submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other

delivery service, facsimile transmission, or the Internet or other online service and where the cigarettes are delivered by use of the mails or other delivery service.

"Person" means any individual, corporation, partnership, limited liability company, association, or other organization that engages in any for-profit or not-for-profit activities.

"Shipping package" means a container in which packs or cartons of cigarettes are shipped in connection with a delivery sale.

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

(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

(720 ILCS 678/5)

Sec. 5. Unlawful shipment or transportation of cigarettes.

(a) It is unlawful for any person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes unless the person shipping the cigarettes:

(1) is licensed as a distributor under either the Cigarette Tax Act, or the Cigarette Use Tax Act; or delivers the cigarettes to a distributor licensed under either the Cigarette Tax Act or the Cigarette Use Tax Act; or

(2) ships them to an export warehouse proprietor pursuant to Chapter 52 of the Internal Revenue Code, or an operator of a customs bonded warehouse pursuant to Section 1311 or 1555 of Title 19 of the United States Code.

For purposes of this subsection (a), a person is a licensed distributor if the person's name appears on a list of licensed distributors published by the Illinois Department of Revenue. The term cigarette has the same meaning as defined in Section 1 of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax Act. Nothing in this Act prohibits a person licensed as a distributor under the Cigarette Tax Act or the Cigarette Use Tax Act from shipping or causing to be shipped any cigarettes to a registered retailer under the Retailers' Occupation Tax Act provided the cigarette tax or cigarette use tax has been paid.

(b) A common or contract carrier may transport cigarettes to any individual person in this State only if the carrier reasonably believes such cigarettes have been received from a person described in paragraph (a)(1). Common or contract carriers may make deliveries of cigarettes to licensed distributors described in paragraph (a)(1) of this Section. Nothing in this subsection (b) shall be construed to prohibit a person other than a common or contract carrier from transporting not more than 1,000 cigarettes at any one time to any person in this State.

(c) A common or contract carrier may not complete the delivery of any cigarettes to persons other than those described in paragraph (a)(1) of this Section without first obtaining from the purchaser an official written identification from any state or federal agency that displays the person's date of birth or a birth certificate that includes a reliable confirmation that the purchaser is at least 18 years of age; that the cigarettes purchased are not intended for consumption by an individual who is younger than 18 years of age; and a written statement signed by the

purchaser that certifies the purchaser's address and that the purchaser is at least 18 years of age. The statement shall also confirm: (1) that the purchaser understands that signing another person's name to the certification is illegal; (2) that the sale of cigarettes to individuals under 18 years of age is illegal; and (3) that the purchase of cigarettes by individuals under 18 years of age is illegal under the laws of Illinois.

(d) When a person engaged in the business of selling cigarettes ships or causes to be shipped any cigarettes to any person in this State, other than in the cigarette manufacturer's or tobacco products manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the word "cigarettes".

(e) When a peace officer of this State or any duly authorized officer or employee of the Illinois Department of Public Health or Department of Revenue discovers any cigarettes which have been or which are being shipped or transported in violation of this Section, he or she shall seize and take possession of the cigarettes, and the cigarettes shall be subject to a forfeiture action pursuant to the procedures provided under the Cigarette Tax Act or Cigarette Use Tax Act.

(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

(720 ILCS 678/6)

Sec. 6. Prevention of delivery sales to minors.

(a) No person shall make a delivery sale of cigarettes to any individual who is under 18 years of age.

(b) Each person accepting a purchase order for a delivery sale shall comply with the provisions of this Act and all other laws of this State generally applicable to sales of cigarettes that occur entirely within this State.

(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

(720 ILCS 678/7)

Sec. 7. Age verification and shipping requirements to prevent delivery sales to minors.

(a) No person, other than a delivery service, shall mail, ship, or otherwise cause to be delivered a shipping package in connection with a delivery sale unless the person:

(1) prior to the first delivery sale to the prospective consumer, obtains from the prospective consumer a written certification which includes a statement signed by the prospective consumer that certifies:

(A) the prospective consumer's current address;
and

(B) that the prospective consumer is at least the legal minimum age;

(2) informs, in writing, such prospective consumer that:

(A) the signing of another person's name to the certification described in this Section is illegal;

(B) sales of cigarettes to individuals under 18 years of age are illegal;

(C) the purchase of cigarettes by individuals under 18 years of age is illegal; and

(D) the name and identity of the prospective

consumer may be reported to the state of the consumer's current address under the Act of October 19, 1949 (15 U.S.C. § 375, et seq.), commonly known as the Jenkins Act;

(3) makes a good faith effort to verify the date of birth of the prospective consumer provided pursuant to this Section by:

(A) comparing the date of birth against a commercially available database; or

(B) obtaining a photocopy or other image of a valid, government-issued identification stating the date of birth or age of the prospective consumer;

(4) provides to the prospective consumer a notice that meets the requirements of subsection (b);

(5) receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name, or by a check or other written instrument in such consumer's name; and

(6) ensures that the shipping package is delivered to the same address as is shown on the government-issued identification or contained in the commercially available database.

(b) The notice required under this Section shall include:

(1) a statement that cigarette sales to consumers below 18 years of age are illegal;

(2) a statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (a);

(3) a statement that cigarette sales are subject to tax under Section 2 of the Cigarette Tax Act (35 ILCS 130/2), Section 2 of the Cigarette Use Tax Act, and Section 3 of the Use Tax Act and an explanation of how the correct tax has been, or is to be, paid with respect to such delivery sale.

(c) A statement meets the requirement of this Section if:

(1) the statement is clear and conspicuous;

(2) the statement is contained in a printed box set apart from the other contents of the communication;

(3) the statement is printed in bold, capital letters;

(4) the statement is printed with a degree of color contrast between the background and the printed statement that is no less than the color contrast between the background and the largest text used in the communication; and

(5) for any printed material delivered by electronic means, the statement appears at both the top and the bottom of the electronic mail message or both the top and the bottom of the Internet website homepage.

(d) Each person, other than a delivery service, who mails, ships, or otherwise causes to be delivered a shipping package in connection with a delivery sale shall:

(1) include as part of the shipping documents a clear and conspicuous statement stating: "Cigarettes: Illinois Law Prohibits Shipping to Individuals Under 18 and Requires the Payment of All Applicable Taxes";

(2) use a method of mailing, shipping, or delivery that requires a signature before the shipping package is released to the consumer; and

(3) ensure that the shipping package is not delivered

to any post office box.
(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

(720 ILCS 678/8)

Sec. 8. Registration and reporting requirements to prevent delivery sales to minors.

(a) Not later than the 15th day of each month, each person making a delivery sale during the previous calendar month shall file a report with the Department containing the following information:

(1) the seller's name, trade name, and the address of such person's principal place of business and any other place of business;

(2) the name and address of the consumer to whom such delivery sale was made;

(3) the brand style or brand styles of the cigarettes that were sold in such delivery sale;

(4) the quantity of cigarettes that were sold in such delivery sale;

(5) an indication of whether or not the cigarettes sold in the delivery sale bore a tax stamp evidencing payment of the tax under Section 2 of the Cigarette Tax Act (35 ILCS 130/2); and

(6) such other information the Department may require.

(b) Each person engaged in business within this State who makes an out-of-state sale shall, for each individual sale, submit to the appropriate tax official of the state in which the consumer is located the information required in subsection (a).

(c) Any person that satisfies the requirements of 15 U.S.C. Section 376 shall be deemed to satisfy the requirements of subsections (a) and (b).

(d) The Department is authorized to disclose to the Attorney General any information received under this title and requested by the Attorney General. The Department and the Attorney General shall share with each other the information received under this title and may share the information with other federal, State, or local agencies for purposes of enforcement of this title or the laws of the federal government or of other states.

(e) This Section shall not be construed to impose liability upon any delivery service, or officers or employees thereof, when acting within the scope of business of the delivery service.

(f) The Department may establish procedures requiring electronic transmission of the information required by this Section directly to the Department on forms prescribed and furnished by the Department.

(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

(720 ILCS 678/9)

Sec. 9. Statements for delivery sales.

(a) Each person who makes a delivery sale shall collect and remit to the Department all excise taxes imposed by this State with respect to such delivery sale and maintain evidence of such payment unless the person is located outside the State and includes a statement on the outside of the shipping package stating: "Illinois law requires the payment of state

taxes on this shipment of cigarettes. You are legally responsible for all applicable unpaid state taxes on these cigarettes."

(b) A statement meets the requirements of subsection (a) if the statement is:

- (1) clear and conspicuous;
- (2) contained in a printed box set apart from the shipping label and other markings contained on the shipping package;
- (3) printed in bold, capital letters;
- (4) printed with a degree of color contrast between the background and the printed statement that is no less than the color contrast between the background and the largest text used on the shipping label; and
- (5) located on the same side of the shipping package as the shipping label.

(Source: P.A. 95-1053, eff. 1-1-10.)

(720 ILCS 678/10)

Sec. 10. Violation.

(a) A person who violates subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is guilty of a Class A misdemeanor. A second or subsequent violation of subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is a Class 4 felony.

(b) The Department of Revenue shall impose a civil penalty not to exceed \$5,000 on any person who violates subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9. The Department of Revenue shall impose a civil penalty not to exceed \$5,000 on any person engaged in the business of selling cigarettes who ships or causes to be shipped any such cigarettes to any person in this State in violation of subsection (d) of Section 5. Civil penalties imposed and collected by the Department shall be deposited into the Tax Compliance and Administration Fund.

(c) All 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 State. All cigarettes forfeited to this State under this Act shall be destroyed or maintained and used in an undercover capacity. The Department may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist the Department in any investigation regarding such cigarettes.

(d) Any person aggrieved by any decision of the Department of Revenue may, within 60 days after notice of that decision, protest in writing and request a hearing. The Department of Revenue shall give notice to the person of the time and place for the hearing and shall hold a hearing before it issues a final administrative decision. Absent a written protest within 60 days, the Department's decision shall become final without any further determination made or notice given.

(e) The penalties provided for in this Section are in addition to any other penalties provided for by law.

(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

(720 ILCS 678/20)

Sec. 20. Tip line.

(a) Not later than 120 days after the effective date of

this amendatory Act of the 95th General Assembly, the Department shall establish, publicize, and maintain a toll-free telephone number to receive information related to the sale and delivery of contraband cigarettes.

(b) The Attorney General may pay a reward of up to \$5,000 to any person who furnishes information leading to the Department's collection of excise taxes imposed upon delivery sales which otherwise would not have been collected but for the information provided by the person.

(Source: P.A. 95-1053, eff. 1-1-10.)

(720 ILCS 678/25)

Sec. 25. Construction. The requirements imposed by this Act shall not apply where such application would be contrary to the Constitution and laws of the United States.

(Source: P.A. 95-1053, eff. 1-1-10.)

(720 ILCS 678/30)

Sec. 30. Severability. If any provision of this Act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining provisions of this Act, and to this end the provisions of this Act are expressly declared to be severable.

(Source: P.A. 95-1053, eff. 1-1-10.)

(720 ILCS 678/33)

Sec. 33. Rulemaking. The Department may adopt rules to implement and administer this Act.

(Source: P.A. 96-782, eff. 1-1-10.)

(720 ILCS 678/35)

Sec. 35. Rulemaking. Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

(Source: P.A. 95-1053, eff. 1-1-10.)

(720 ILCS 678/99)

Sec. 99. Effective date. This Act takes effect July 1, 2004.

(Source: P.A. 93-960, eff. 8-20-04.)