

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

# A Bill

SENATE BILL 456

4  
5 By: Senator Faris  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO ENSURE THE COLLECTION OF TAXES ON  
10 CIGARETTES; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT TO ENSURE THE COLLECTION OF TAXES  
14 ON CIGARETTES.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

### 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.

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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 license and revenue-stamping  
32 requirements; and

33 (C) Escrow payment obligations in Arkansas Code §§ 26-57-  
34 260 and 26-57-261.

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36 SECTION 3. Age verification requirements.

1           (a) No person shall mail, ship, or otherwise deliver cigarettes in  
 2 connection with a delivery sale unless, prior to the first delivery sale to a  
 3 consumer, the person:

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

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

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

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

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

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

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

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

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

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 31           SECTION 4. Disclosure requirements.

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

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

36                          (2) Consists of one of the warnings set forth in section 4(a)(1)

1 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1)  
 2 as it existed on January 1, 2003, rotated on a quarterly basis;

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

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

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 9 SECTION 5. Shipping requirements.

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

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

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

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

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

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

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

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 35 SECTION 6. Registration and reporting requirements.

36 (a) Prior to making delivery sales or mailing, shipping, or otherwise

1 delivering cigarettes in connection with any delivery sales, a person shall  
2 file with the Department of Finance and Administration a statement setting  
3 forth the person's name, trade name, and the address of the person's  
4 principal place of business and any other place of business.

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

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

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

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

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

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20 SECTION 7. Collection of taxes.

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

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28 SECTION 8. Penalties.

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

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

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

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

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

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

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18       SECTION 9. Enforcement.

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

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