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Section 4 – RETAIL PERMIT HOLDERS

4.1 Server Awareness Forms. It shall be the obligation of each retail permit holder to obtain from every employee, permittee or owner who may or does sell cigarettes and tobacco products, upon commencement of such employment, a signed acknowledgement that he/she has read and understands the content of a form entitled “Tobacco Server Awareness Form”, such form being provided at the time of issuance of any permit by the Director of the Tobacco Control Board. The Tobacco Server Awareness Form shall set forth pertinent rules and laws governing the sale of tobacco products and other related information as determined appropriate by the Director. Executed server awareness forms or copies thereof shall be maintained at each permitted retail location and shall be available for inspection upon request by any agent of Arkansas Tobacco Control during normal business hours. Failure to have executed server awareness forms available for inspection shall be deemed a violation of this rule.

4.2 Prohibition on Loose Cigarette Sales. The sale of individual cigarettes or "loosies" is prohibited. Individual cigarettes or "loosies" are defined as any cigarette not contained in its original, unopened pack.

4.3 Online Cigar Sales. Pursuant to A.C.A. § 26-57-203(27)(B), a retailer may sell cigars online to a buyer who is twenty-one (21) years of age or older, whether that buyer is inside or outside the state of Arkansas, when that retailer (1) has a physical presence in the state of Arkansas and when that retailer (2) purchases cigars from a permitted wholesaler.

“Cigar” or “Cigars” as used in this rule means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette, as defined by Ark. Code Ann. § 26-57-260(4)(A)–(C).

To “sell cigars online” means a sale of, an advertisement of, a solicitation to sell, a purchase of, or an offer to purchase cigars to consumers who submit orders all or in part online through the internet. “Sale” or “Sell” has the same meaning as provided in A.C.A. § 26-57-203(28)(A).

4.4 Permit Required. Prior to making an online sale for delivery and prior to shipping cigars in connection with any online sales, a person must obtain and maintain a permit with the Arkansas Tobacco Control.

4.5 Requirements for accepting order for delivery sale. When accepting an order for a delivery of an online cigar sale from a buyer, the retailer must obtain the following information from the buyer placing the order:

- (a) A certification from the buyer documenting that the buyer:
 - (i) Is of legal age to purchase tobacco products in the State of Arkansas;
 - (ii) Understands that providing false information may be a violation of law; and
 - (iii) Understands that it is a violation of law to purchase cigars for subsequent resale or for delivery to persons who are under the legal age to purchase cigars.

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- (b) The name of the person making the order;
- (c) The address where delivery is to occur;
- (d) The phone number of the person making the order;
- (e) The date of birth for the person making the order; and
- (f) The payment information.

4.6 Requirements for shipping a delivery sale. When shipping an order of an online sale from a buyer, the retailer must undertake the following prior to shipping:

(a) The retailer must clearly mark the outside of the package of cigars to be shipped “Adult signature required.”

(b) The retailer must utilize a delivery service that imposes the following requirements:

(i) Someone twenty-one (21) years of age or older must sign for the delivery;

and

(ii) The person signing for the delivery must show valid government-issued identification that contains a photograph of the person signing for the delivery and indicates that the person signing for the delivery is twenty-one (21) years of age or older and resides at the delivery address.

(c) The retailer must provide delivery instructions that clearly indicate the requirements of this Subsection 4.6 and must declare that state law requires compliance with the requirements.

4.7 Common Carriers. This section may not be construed as imposing liability upon any common carrier, or officers or employees of the common carrier, when acting within the scope of business of the common carrier and when otherwise acting in compliance with Arkansas law, including, but not limited to, the provisions of A.C.A. § 26-57-230.

4.8 Civil Penalties. The board may levy a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation of this section, pursuant to A.C.A. § 26-57-255, in addition to other civil penalties, suspensions or revocations as authorized by Arkansas Law.

4.9 Collection of Taxes. A retailer selling cigars online pursuant to this rule is responsible for the applicable sales taxes and excise taxes.

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

SENATE BILL 628

5 By: Senator Hester
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT
9 OF 1977; TO AMEND THE DEFINITION OF “RETAILER”; TO
10 PERMIT ARKANSAS-BASED CIGAR SHOPS TO SELL CIGARS AT
11 RETAIL ONLINE; AND FOR OTHER PURPOSES.
12
13

Subtitle

14 TO PERMIT ARKANSAS-BASED CIGAR SHOPS TO
15 SELL CIGARS AT RETAIL ONLINE.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 26-57-203(27), concerning the definitions
22 used under the Arkansas Tobacco Products Act of 1977, is amended to read as
23 follows:

24 (27) “Retailer” means a person that:

25 (A) purchases ~~Purchases~~ tobacco products, vapor products,
26 alternative nicotine products, or e-liquid products from permitted
27 wholesalers for the purpose of selling the tobacco products, vapor products,
28 alternative nicotine products, or e-liquid products in person and over the
29 counter at retail to consumers; or

30 (B) Has a physical presence in Arkansas and that purchases
31 cigars from permitted wholesalers for the purpose the online retail sale of
32 the cigars to buyers inside and outside the state.
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35 APPROVED: 4/27/21
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