

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

776L0668

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 107 - 02/11/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Kooistra, Knudson, and Nesselhuf and Representatives Sebert and Thompson

1 FOR AN ACT ENTITLED, An Act to regulate the sale and shipment of cigarettes.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 10-50-1 be amended by adding thereto NEW SUBDIVISIONS to read as
4 follows:

5 "Adult," any person who is at least the legal minimum purchase age;

6 "Consumer," any individual who is not a retailer or a licensed distributor or wholesaler
7 pursuant to § 10-50-9;

8 "Delivery sale," any sale of cigarettes to a consumer in the state where:

9 (a) The purchaser submits the order for the sale by means of a telephonic or other
10 method of voice transmission, the mail or any other delivery service, or the
11 internet or other online service; or

12 (b) The cigarettes are delivered by use of the mail or delivery service. A sale of
13 cigarettes shall be a delivery sale regardless of whether the seller is located
14 within or without the state;



1 "Delivery service," any person engaged in the commercial delivery of letters, packages, or
2 other containers;

3 "Legal minimum purchase age," the minimum age at which an individual may legally
4 purchase cigarettes in this state pursuant to § 34-46-2;

5 "Mail," or "mailing," the shipment of cigarettes through the United States Postal Office;

6 "Shipping container," any container in which cigarettes are shipped in connection with a
7 delivery sale;

8 "Shipping document," any bill of lading, airbill, or any other document used to provide
9 evidence of the undertaking by a delivery service to deliver a letter, package, or other container.

10 Section 2. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 No person may make a delivery sale of cigarettes to any individual who is under the legal
13 minimum purchase age in the state.

14 Any person accepting a purchase order for a delivery sale shall comply with:

- 15 (1) The age verification requirements provided in section 3 of this Act;
- 16 (2) The disclosure requirements provided in section 4 of this Act;
- 17 (3) The shipping requirements provided in section 5 of this Act;
- 18 (4) The registration and reporting requirements provided in section 6 of this Act; and
- 19 (5) All other statutes of the state generally applicable to sales of cigarettes that occur
20 entirely within the state, and any law imposing an excise tax, sales tax, license,
21 revenue-stamping requirement, and escrow payment obligation as provided in chapter
22 10-50B.

23 Section 3. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
24 follows:

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

3 (1) The person obtains from the consumer a statement signed by the consumer in writing
4 that certifies the consumer's address and that the consumer is at least eighteen years
5 of age. The statement shall also confirm that the consumer understands that signing
6 another person's name to the certification is illegal, the sale of cigarettes to any
7 individual under the legal minimum purchase age is illegal, the purchase of cigarettes
8 by any individual under the legal minimum purchase age is illegal, and that the
9 consumer wants to receive a mailing from a tobacco company;

10 (2) The person makes a good faith effort to verify the information contained in the
11 certification provided by the consumer pursuant to subdivision (1) against a
12 commercially available database, or obtains a photocopy or other image of the valid,
13 government-issued identification stating the date of birth or age of the individual
14 placing the order;

15 (3) The person provides to the consumer, via e-mail or other means, a notice that meets
16 the requirements of section 4 of this Act; and

17 (4) If an order for cigarettes is made pursuant to an advertisement on the internet or other
18 advertising medium, the person receives payment for the delivery sale from the
19 prospective consumer by a credit or debit card that has been issued in the consumer's
20 name, or by check.

21 Any person accepting a purchase order for a delivery sale may request that the prospective
22 consumer provide an e-mail address.

23 Section 4. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The notice required under section 3 of this Act shall include a prominent and clearly legible
2 statement that:

- 3 (1) Cigarette sales to consumers below the legal minimum purchase age are illegal;
- 4 (2) Consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette
5 Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) as of January 1, 2005, rotated
6 on a quarterly basis;
- 7 (3) Sales of cigarettes are restricted to those consumers who provide verifiable proof of
8 age in accordance with section 3 of this Act; and
- 9 (4) Cigarette sales are subject to tax under § 10-50-3, and an explanation of how the tax
10 has been or will be paid with respect to the delivery sale.

11 Section 5. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any person who mails, ships, or otherwise delivers cigarettes in connection with a delivery
14 sale shall:

- 15 (1) Include as part of the bill of lading or other shipping documents a clear and
16 conspicuous statement as follows: "Cigarettes: South Dakota Law Prohibits Shipping
17 to Individuals Under 18, and Requires the Payment of all Applicable Taxes"; and
- 18 (2) Use a method of mailing, shipping, or delivery that obligates the delivery service to
19 require the consumer placing the purchase order for the delivery sale, or another adult
20 of legal minimum purchase age residing at the consumer's address, to sign to accept
21 delivery of the shipping container, and provide proof in the form of a valid
22 government-issued identification bearing a photograph of the individual who signs
23 to accept delivery of the shipping container. The person accepting delivery shall be
24 the addressee or another adult of legal minimum purchase age residing at the

1 consumer's address.

2 If the person accepting a purchase order for a delivery sale delivers the cigarettes without
3 using a delivery service, the person shall comply with each requirement of sections 2 to 7,
4 inclusive, of this Act applicable to a delivery service. The person is in violation of the provisions
5 of sections 2 to 7, inclusive, of this Act if the person fails to comply with any such requirement.

6 Section 6. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Prior to making a delivery sale or mailing, shipping, or otherwise delivering cigarettes in
9 connection with any delivery sale, each person shall file with the department a statement
10 providing the person's name, trade name, and the address of the person's principal place of
11 business and any other place of business.

12 Not later than the tenth day of each calendar month, each person that has made a delivery
13 sale or mailed, shipped, or otherwise delivered cigarettes in connection with any delivery sale
14 during the previous calendar month shall file with the department a memorandum or a copy of
15 the invoice that provides for each delivery sale:

- 16 (1) The name and address of the consumer;
- 17 (2) The brand or brands of the cigarettes that were sold; and
- 18 (3) The quantity of cigarettes that were sold.

19 Section 7. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 In addition to any other provision of law, the secretary may assess, for a first violation of any
22 provision of sections 2 to 7, inclusive, of this Act, a civil penalty of one thousand dollars or five
23 times the retail value of the cigarettes involved, whichever is greater. A subsequent violation
24 is punishable by a civil penalty of five thousand dollars or five times the retail value of the

1 cigarettes involved, whichever is greater.

2 Any person who knowingly violates any provision pursuant to sections 2 to 7, inclusive, of
3 this Act, or who knowingly and falsely submits a certification in another person's name, shall
4 for each offense be fined ten thousand dollars or five times the retail value of the cigarettes
5 involved, whichever is greater.

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

9 Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the
10 requirements of sections 2 to 7, inclusive, of this Act shall be forfeited to the state and
11 destroyed. All fixtures, equipment, and all other materials and personal property on the premises
12 of any person who, with the intent to defraud the state, violates any of the requirements of
13 sections 2 to 7, inclusive, of this Act, shall be forfeited to the state.