

HOUSE RESEARCH

Bill Summary

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Subject: Regulation of Tobacco Delivery Sales

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Overview

This bill imposes restrictions on "delivery sales" of tobacco products to ensure that purchasers and recipients of the products are of legal age and that states excise taxes are paid. It imposes civil penalties for violations and authorizes the attorney general to enforce the law.

Section

1 Tobacco delivery sales.

Subd. 1. Definitions. Defines terms:

- **Consumer** is an individual purchasing tobacco products for personal consumption and not for resale.
- **Delivery sale** of a tobacco product means purchaser submits the order by telephone, mail, or the Internet and the products are delivered by mail or a delivery service. Whether the seller is located within or outside of the state is irrelevant. Sales are treated as consumer sales, unless the purchaser is licensed as a distributor or retailer of tobacco products.
- **Delivery service** means a person in the business of delivering letters and packages. It specifically includes the US Mail.

Section

- **Distributor** is a person (in and out of state), other than a retailer, manufacturer or common or contract carrier, who sells or distributes tobacco products in the state.
- **Retailers** are sellers (in and out of state) of tobacco products to consumers in this state.
- **Tobacco products** means cigarettes, chewing tobacco, and snuff.

Subd. 2. Requirements for accepting orders. Requires sellers of tobacco products making a delivery sales to collect the following information on the first order from a consumer:

- A copy of a government issued document with the person's name, address, photograph, and birth date;
- The original of a signed statement by the purchaser that the person is of legal age, has chosen to receive mailings from the seller, and understands that it is a violation of law to provide false information or to purchase tobacco products for resale or delivery to underage individuals;
- The email address of the purchaser, if the order resulted from an Internet advertisement.

For orders resulting from Internet advertisements, payment must be made by credit card or check before shipping the product (e.g., no use of COD or e-payment forms, other than credit card). Before shipping products, the seller must verify the information against a commercially available database, created solely from government records on age and identity.

Subd. 3. Requirements for shipping a delivery sale. Imposes requirements on sellers making delivery sales of tobacco products:

- It must mark the outside of the package to show the contents are tobacco products, require the signature of an adult, and the name of the seller.
- It must use a delivery service that requires (1) an adult to sign for the deliver and (2) if the person signing for the delivery is believed to be under 27 years of age, the person must show government photo identification indicating the person lives at the address in order to receive the package.
- The delivery instructions must clearly indicate these special requirements.

Subd. 4. Common carriers. Provides common carriers and their officers and employees are subject to liability under the section, if they act within the scope of the

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business of a common carrier.

Subd. 5. Registration requirement. Requires a seller to register with the Department of Revenue before making delivery sales.

Subd. 6. Reporting requirements. By the 10th of each month, a retailer must file with the Department of Revenue a report or copy of an each invoice showing the names and addresses of the purchasers, the brands, and quantities for sales and shipments made in the previous calendar month. Compliance with the federal Jenkins Act reporting requirements satisfies this requirement.

Subd. 7. Collection of taxes. Requires a distributor to ensure that all state excise taxes that apply to the tobacco products have been collected and paid to the state and tax stamps applied. Failure to do so is subject to a penalty equal to 50 percent of the tax.

Subd. 8. Application of state laws. Provides that all state laws that apply to in-state tobacco retailers also apply to Internet, mail-order sellers, and shipping companies that sell tobacco products in the state.

Subd. 9. Forfeiture. Provides tobacco products sold in violation of the section are contraband and subject to forfeiture under the rules for contraband under the cigarette and tobacco products excise taxes.

Subd. 10. Civil penalties. Imposes civil penalties on tobacco retailers and distributors who violate the section or administrative promulgated under it:

- A fine of up to \$1,000 for the first violation and
- For second or subsequent violations, a fine of up to \$5,000.

A person who submits ordering information under another person's name is subject to a fine of up to \$1,000.

Subd. 11. Enforcement. Authorizes the attorney general to bring actions and seek injunctive relief to enforce the section. In addition, violations are treated as violations of the Unlawful Trade Practices Act. This will create a private right of action for someone injured by actions in violation of the act.

Effective date: No date is provided; would be effective on August 1, 2004.