

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1814

By: Hilliard

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 301, which relates to the Cigarette Stamp Tax; defining terms; providing requirements for delivery of sales of cigarettes; requiring confirmation of certain information before mailing of shipment; providing requirements for notice required to be filed; providing mailing requirements; requiring filing with Tax Commission prior to delivery sales; requiring person to collect and remit taxes for such sales; providing for penalties for violations of provisions related to delivery sales; providing for enforcement of provisions related to delivery sales; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2001, Section 301, is amended to read as follows:

Section 301. For purposes of this article:

~~(a)~~ 1. The term "cigarette" is defined to mean and include all rolled tobacco or any substitute therefor, wrapped in paper or any substitute therefor and weighing not to exceed three (3) pounds per thousand cigarettes~~;~~;

~~(b)~~ 2. The term "person" is defined to mean and include any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), limited liability company, corporation, estate, trust, business trust receiver, or trustee appointed by any state or federal court, or otherwise, syndicate, or any political subdivision of the state or combination acting as a unit, in the plural or singular number~~;~~;

~~(e)~~ 3. The term "wholesaler" and/or "jobber" is defined to mean and include a person, firm or corporation organized and existing, or doing business, primarily to sell cigarettes to, and render service to retailers in the territory such person, firm or corporation chooses to serve; that purchases cigarettes directly from the manufacturer; that at least seventy-five percent (75%) of whose gross sales are made at wholesale; that handles goods in wholesale quantities and sells through salesmen, advertising and/or sales promotion devices; that carries at all times at his or its principal place of business a representative stock of cigarettes for sale, and that comes into the possession of cigarettes for the purpose of selling them to retailers or to persons outside or within the state who might resell or retail such cigarettes to consumers.

In addition to the foregoing, and irrespective of the percentage or type of sales, the term "wholesaler" shall also include all purchasers of cigarettes making purchases directly from the manufacturer for distribution at wholesale or retail sale and this shall not affect the requirements relating to retail licenses;i

~~(d)~~ 4. The term "retailer" is defined to be: ~~(First)~~

a. a person who comes into the possession of cigarettes for the purpose of selling, or who sells them at retail;i or, ~~(Second)~~

b. a person, not coming within the classification of wholesaler and/or jobber as herein defined, having possession of more than one thousand cigarettes;i

~~(e)~~ 5. The term "consumer" is defined to be a person who receives or who in any way comes into possession of cigarettes for the purpose of consuming them, giving them away, or disposing of them in a way other than by sale, barter or exchange;i

~~(f)~~ 6. The term "Tax Commission" is defined to mean the Oklahoma Tax Commission;i

~~(g)~~ 7. The term "sale" and/or "sales" is hereby defined to be and declared to include sales, barters, exchanges and every other manner, method and form of transferring the ownership of personal property from one person to another, and is also declared to be the use or consumption in this state in the first instance of cigarettes received from without the state or of any other cigarettes upon which the tax has not been paid. The term "first sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce or the first use or consumption of cigarettes within this state~~;~~;

~~(h)~~ 8. The term "stamp" as herein used shall mean the stamp or stamps by use of which:

~~1.~~ ~~The~~

a. the tax levied pursuant to the provisions of Section 301 et seq. of this title is paid~~;~~;

~~2.~~ ~~The~~

b. the tax levied pursuant to the provisions of Section 349 of this title is paid~~;~~; or

~~3.~~ ~~The~~

c. the payment in lieu of taxes authorized pursuant to a compact entered into by the State of Oklahoma and a federally recognized Indian tribe or nation pursuant to the provisions of subsection C of Section 346 of this title is paid~~;~~;

~~(i)~~ 9. The term "drop shipment" shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee~~;~~;

~~(j)~~ 10. The term "distributing agent" shall mean and include every person in this state who acts as an agent of any person outside the state by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon

order from said person outside the state to distributors, wholesale dealers and retail dealers, or to consumers. The term "distributing agent" shall also mean and include any person who solicits or takes orders for cigarettes to be shipped in interstate commerce to a person in this state by a person residing outside of Oklahoma, the tax not having been paid on said cigarettes-;

~~(k)~~ 11. The term "vending machine" shall mean and include any coin operating machine, contrivance, or device, by means of which cigarettes are sold or dispensed in their original container-;

~~(l)~~ 12. The term "use" means and includes the exercise of any right or power over cigarettes incident to the ownership or possession thereof, except that it shall not include the sale of cigarettes in the regular course of business;

13. a. The term "delivery sale" means any sale of cigarettes to a consumer in Oklahoma where either:

(1) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service,
or

(2) the cigarettes are delivered by use of the mails or other delivery service.

b. A sale of cigarettes which satisfies the criteria in subparagraph a of this paragraph shall be a delivery sale regardless of whether the seller is located within or outside of Oklahoma.

c. For purposes of this paragraph, any sale of cigarettes to an individual in Oklahoma shall be treated as a sale to a consumer unless such individual is licensed as a distributor or retailer of cigarettes by the Tax Commission;

14. The term "delivery service" means any person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers; and

15. The term "manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette; or imports, either directly or indirectly, a finished cigarette for sale or distribution in this state.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. No person shall make a delivery sale of cigarettes to any individual who is under the legal minimum purchase age in this state.

B. Each person taking a delivery sale order shall comply with:

1. The age verification requirements set forth in Section 3 of this act;

2. The disclosure requirements set forth in Section 4 of this act;

3. The shipping requirements set forth in Section 5 of this act;

4. The registration and reporting requirements set forth in Section 6 of this act;

5. The tax collection requirements set forth in Section 7 of this act; and

6. All other laws of Oklahoma generally applicable to sales of cigarettes that occur entirely within Oklahoma, including, but not limited to, those laws imposing:

- a. excise taxes,
- b. sales taxes,
- c. licensing and tax-stamping requirements, and
- d. escrow or other payment obligations.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.2 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. No person shall mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping such cigarettes the person accepting the delivery sale order first:

1. Obtains from the prospective customer a certification which includes:

a. reliable confirmation that the purchaser is at least the legal minimum purchase age, and

b. a statement signed by the prospective purchaser in writing and under penalty of perjury which:

(1) certifies the prospective purchaser's address and date of birth, and

(2) confirms that the prospective purchaser understands that signing another person's name to such certification is illegal, and that sales of cigarettes to individuals under the legal minimum purchase age are illegal, and that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of Oklahoma;

2. Makes a good-faith effort to verify the information contained in the certification provided by the prospective purchaser pursuant to paragraph 1 of this subsection against a commercially available database;

3. Sends to the prospective purchaser, via e-mail or other means, a notice which meets the requirements of Section 4 of this act and requests confirmation that the delivery sale order was placed by the prospective purchaser;

4. Receives from the prospective purchaser confirmation, pursuant to the request described in paragraph 3 of this subsection, that such individual placed the delivery sale order; and

5. Receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in such purchaser's name.

B. Persons taking delivery sale orders may request that prospective purchasers provide their e-mail addresses.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.3 of Title 68, unless there is created a duplication in numbering, reads as follows:

The notice required under paragraph 3 of subsection A of Section 3 of this act shall include:

1. A prominent and clearly legible statement that cigarette sales to individuals below the legal minimum purchase age are illegal;

2. A prominent and clearly legible statement that consists of one of the warnings set forth in Section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C., Section 1333(a)(1), rotated on a quarterly basis;

3. A prominent and clearly legible statement that sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 3 of this act; and

4. A prominent and clearly legible statement that cigarette sales are taxable under Section 302 of Title 68 of the Oklahoma Statutes, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.4 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each person who mails or ships cigarettes in connection with a delivery sale order:

1. Shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "CIGARETTES: OKLAHOMA LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN, AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

2. Shall use a method of mailing or shipping that obligates the delivery service to require:

- a. the purchaser placing the delivery sale order, or an adult designated by such customer, to sign to accept delivery of the shipping container, and
- b. proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that they are either the addressee or the adult designated by the addressee and such individual is at least the legal minimum purchase age, but such proof shall be required only if that individual appears to be under twenty-seven (27) years of age; and

3. Shall provide to the delivery service retained to deliver such delivery sale evidence of full compliance with Section 7 of this act.

B. A delivery service, including the United States Postal Service, shall be in violation of this act if it ships or delivers cigarettes in connection with a delivery sale without first receiving the evidence of compliance with Section 7 of this act that is described in paragraph 3 of subsection A of this section, or if it fails to comply with the requirements described in paragraph 2 of subsection A of this section or Section 6 of this act:

1. When obligated to do so under a method of shipping;

2. When delivering any container pursuant to shipping documents containing the statement described in paragraph 1 of subsection A of this section; or

3. When delivering any container that such delivery service otherwise has reason to know contains cigarettes.

C. If the person taking a delivery sale order delivers the cigarettes without using a third-party delivery service, such person shall comply with all requirements of this act applicable to a delivery service and shall be in violation of this act if it fails to comply with any such requirement.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.5 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Prior to making delivery sales or shipping cigarettes in connection with any such sales, every person shall file with the Tax Commission a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

B. Not later than the tenth day of each calendar month, each person that has made a delivery sale or shipped or delivered cigarettes in connection with any such sale during the previous calendar month shall file with the Tax Commission a memorandum or a copy of the invoice which provides for each and every such delivery sale:

1. The name and address of the individual to whom such delivery sale was made;

2. The brand or brands of the cigarettes that were sold in such delivery sale; and

3. The quantity of cigarettes that were sold in such delivery sale.

C. Any person that satisfies the requirements of Section 376 of Title 15 of the United States Code shall be deemed to satisfy the requirements of this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.6 of Title 68, unless there is created a duplication in numbering, reads as follows:

Each person making a delivery sale shall collect and remit to the Tax Commission any taxes levied by Oklahoma with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that such taxes already have been paid to Oklahoma.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.7 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as otherwise provided in this section, the first time a person violates any provision of Section 2, 3, 4, 5, 6 or 7 of this act, such person shall be fined not more than One Thousand Dollars (\$1,000.00).

2. In the case of a second or subsequent violation of Section 2, 3, 4, 5, 6 or 7 of this act, such person shall be fined not less than One Thousand Dollars (\$1,000.00) and not more than Five Thousand Dollars (\$5,000.00).

B. Any person who knowingly violates any provision of Section 2, 3, 4, 5, 6 or 7 of this act, or who knowingly and falsely submits a certification under paragraph 1 of subsection A of Section 5 of this act in another person's name, shall, for each such offense, be fined not more than Ten Thousand Dollars (\$10,000.00), or imprisoned not more than five (5) years, or both.

C. Whoever fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of five hundred percent (500%) of the tax due but unpaid.

D. 1. Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this title shall be forfeited to the state of Oklahoma and destroyed.

2. All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud the State of Oklahoma, fails to satisfy any of the requirements of Section 2, 3, 4, 5, 6 or 7 of this act shall be forfeited to the State of Oklahoma.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 317.8 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Attorney General or his or her designee, or any person who holds a permit under 26 U.S.C., Section 5712, may bring an action in the appropriate court in the State of Oklahoma to prevent or restrain violations of Section 2, 3, 4, 5, 6 or 7 of this act by any person or any person controlling such person.

SECTION 10. This act shall become effective November 1, 2003.

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