

No. 2004-150

AN ACT

SB 921

Amending the act of April 9, 1929 (P.L.343, No.176), entitled, as amended, "An act relating to the finances of the State government; providing for the settlement, assessment, collection, and lien of taxes, bonus, and all other accounts due the Commonwealth, the collection and recovery of fees and other money or property due or belonging to the Commonwealth, or any agency thereof, including escheated property and the proceeds of its sale, the custody and disbursement or other disposition of funds and securities belonging to or in the possession of the Commonwealth, and the settlement of claims against the Commonwealth, the resettlement of accounts and appeals to the courts, refunds of moneys erroneously paid to the Commonwealth, auditing the accounts of the Commonwealth and all agencies thereof, of all public officers collecting moneys payable to the Commonwealth, or any agency thereof, and all receipts of appropriations from the Commonwealth, authorizing the Commonwealth to issue tax anticipation notes to defray current expenses, implementing the provisions of section 7(a) of Article VIII of the Constitution of Pennsylvania authorizing and restricting the incurring of certain debt and imposing penalties; affecting every department, board, commission, and officer of the State government, every political subdivision of the State, and certain officers of such subdivisions, every person, association, and corporation required to pay, assess, or collect taxes, or to make returns or reports under the laws imposing taxes for State purposes, or to pay license fees or other moneys to the Commonwealth, or any agency thereof, every State depository and every debtor or creditor of the Commonwealth," providing for delivery sales of cigarettes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is amended by adding a section to read:

Section 231-A. Delivery Sales of Cigarettes.—(a) *It shall be unlawful for any person in the business of selling cigarettes to take an order for cigarettes through the mail or through any telecommunications means, including by telephone, facsimile or the Internet, if in providing for the sale or delivery of the cigarettes pursuant to the order the person mails the cigarettes or ships the cigarettes sold by him to the purchaser by carrier in or affecting interstate commerce, and the person fails to comply with each of the following procedures for the delivery sales to the purchaser:*

(1) Before mailing or shipping the cigarettes, the person receives from the purchaser the following:

(i) A copy of a valid government-issued document, whether an operator's permit or otherwise, that provides the name, address and date of birth of the purchaser.

(ii) A signed statement in writing from the purchaser providing a certification that the purchaser:

(A) is of legal minimum purchase age in this Commonwealth;

(B) wants to receive mailings from a tobacco company; and

(C) understands that providing false information constitutes a violation of law.

(2) Before mailing or shipping the cigarettes, the person:

(i) verifies the date of birth or age of the purchaser against a commercially available database; or

(ii) obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the purchaser placing the order.

(3) In the case of an order for cigarettes that occurs pursuant to an advertisement on the Internet or in any newspaper or print or other media, the person receives payment by credit card or check for the order before mailing or shipping the cigarettes. Payment must be made by credit card issued to or check issued by the person purchasing the cigarettes.

(4) The person employs a method of mailing or shipping the cigarettes requiring that the purchaser of the cigarettes:

(i) Be the addressee.

(ii) Sign for the delivery of the cigarettes.

(iii) If the purchaser appears to the carrier making the delivery to be under twenty-five years of age, take delivery of the package only after producing valid, government-issued identification that bears a photo of the purchaser and indicates that the purchaser is at least eighteen years of age.

(5) The bill of lading clearly states the requirements in paragraph (4) and specifies that State law requires compliance with the requirements.

(6) The person notifies the carrier for the mailing or shipping, in writing, of the age of the addressee as indicated by the government-issued document received under paragraph (1).

(7) This section shall not be construed as imposing liability upon any common carrier, or officers or employees thereof, when acting within the scope of business of the common carrier.

(b) Prior to making delivery sales or shipping cigarettes in connection with any sales subject to this section, every person shall file with the department 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.

(c) Any person that satisfies the requirements of 15 U.S.C. § 376 (relating to reports to State tobacco tax administrator) shall simultaneously file such report with the department.

(d) Each person making a delivery sale shall collect and remit to the department any taxes levied by the State with respect to such sale pursuant to law, 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 the Commonwealth.

(e) (1) Except as otherwise provided in this section, the first time a person violates any provision of this act, such person shall be fined not more than one thousand dollars (\$1,000).

(2) In the case of a second or subsequent violation of this act, such person shall be fined not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000).

(3) Any person who knowingly violates any provision of this section or who knowingly and falsely submits a certification under this section in another person's name shall, for each such offense, be fined not more than ten thousand dollars (\$10,000) or imprisoned for not more than five years, or both.

(4) Whoever fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of fifty per centum of the tax due but unpaid.

(5) Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this act shall be forfeited to the Commonwealth and destroyed, pursuant to law.

(f) The department or its designee, the Attorney General or his or her designee or any person who holds a permit under 26 U.S.C. § 5712 (relating to application for permit) or 19 U.S.C. § 1311 (relating to bonded manufacturing warehouses) or 1555 (relating to bonded warehouses) may bring an action in the appropriate court in this Commonwealth to prevent or restrain violations of this section by any person or any person controlling such person.

Section 2. This act shall take effect in 60 days.

APPROVED—The 23rd day of November, A.D. 2004.

EDWARD G. RENDELL