

CAMPAIGN For TOBACCO-FREE Kids[®]

MODEL STATE LEGISLATION TO RESTRICT INTERNET & MAIL ORDER TOBACCO PRODUCT SALES [To Block Sales to Youth and to Collect State Tobacco Taxes]

§ 1. Definitions.

For purposes of this Act:

"Adult" means a person who is at least the legal minimum purchase age.

"Consumer" means a person who is not licensed in the State as a tobacco product manufacturer, distributor/wholesaler or retailer pursuant to state law sections _____.

"Delivery sale" means any sale of tobacco products to a consumer in the State where either (i) the consumer does not submit the purchase order in person in a face-to-face transaction with the seller but 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 some other indirect method; or (ii) the tobacco products are not delivered directly to the consumer by the seller at the time the purchase order is made but are delivered by use of the mails, a delivery service, or some other means. A sale of tobacco products shall be a delivery sale regardless of whether the seller is located within or without the State. A sale for personal consumption to a wholesale dealer or a retail dealer that otherwise qualifies as a delivery sale shall also be a delivery sale. A sale of tobacco products to a person who is a wholesale dealer or a retail dealer not for personal consumption but for legal resale shall not be a delivery sale. Notwithstanding the foregoing, any sale of tobacco products in which the tobacco products are delivered to a home or residence shall be considered a delivery sale.

"Delivery seller" means any person making a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers, or who otherwise delivers tobacco products to delivery sale purchasers.

"Department" means the _____.

"Legal minimum purchase age" is the minimum age at which an individual may legally purchase tobacco products in the State or, if higher, the minimum age at which an individual may legally purchase tobacco products in the State's political subdivision where the individual resides or in the Indian Reservation or other Indian Lands subject to Tribal law where the individual resides.

"Mails" or "mailing" means the shipment of tobacco products through the United States Postal Office.

"Person" means the same as that term is defined in § _____ and includes corporations, partnerships, and other businesses.

"Shipping container" means a container in which tobacco products are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

"Tobacco product" means tobacco or any consumable product that contains tobacco, including but not limited to cigarettes, smokeless tobacco, cigars, and bidis.

EXHIBIT D, Committee Name **HealthyNV** Document consists of **8 Pages**

Entire document provided.

Due to size limitations, pages _____ provided. A copy of the complete document is available through the Research Library (775/684-6827) or e-mail library@lcb.state.nv.us. Meeting Date: **10-27-04**

§ 2. Registration and reporting requirements.

A. Any person making any delivery sales in this State shall first file with the Department a Statement setting forth such person's name, trade name, the address of such person's principal place of business and any other place of business, a phone number where the person can be reached at each place of business, an email address for the person, any website addresses relating to the person's delivery sales, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of such person; and stating that the person has fully complied with subsection B.

B. Any person making any delivery sales in this State must first register with the credit card and debit card companies or their agents so that it shall be readily apparent to anyone receiving or reviewing a credit or debit card invoice relating to a delivery sale in this State that the delivery sale was a sale of tobacco products.

C. Not later than the tenth day of each calendar month, any person that has made a delivery sale in this State during the previous calendar month shall file with the Department a memorandum or report that provides for each and every such delivery sale:

1. The name, address, phone number (if any), and email address (if any) of the consumer to whom such delivery sale was made;
2. The brand or brands of the tobacco products that were sold in such delivery sale;
3. The quantity of tobacco products that were sold in such delivery sale;
4. The date of the delivery sale;
5. The amount of State tobacco taxes owed to the State on the tobacco products sold or a Statement showing that the taxes have already been paid; and
6. The name, address, phone number, and email address (if any) of the person that delivered the tobacco products to the consumer.

The Department may establish forms or procedures for all such memorandums or reports and may require that the delivery sellers also provide copies of all related invoices or bills of sale.

D. The delivery seller must maintain records of the information provided in subsection C and the information and Statements it receives from prospective and actual consumers under section 6 for a period of at least five years.

E. The Department shall make public the information provided in subsection A, including but not limited to posting the information on the Department's or the State's website, in the form of a current list of those delivery sellers that have registered with the State, are otherwise in full compliance with State law, and are eligible to make delivery sales in the State.

F. The Department shall not use any of the information provided in subsection C for any purpose except to enforce State laws or aid the enforcement of laws of its political subdivisions.

§ 3. Minimum age requirements for delivery sales and tobacco product deliveries.

No person shall accept a purchase order for tobacco products from, make a delivery sale of tobacco products to, or deliver any tobacco products to any individual in this State who is under the legal minimum purchase age.

§ 4. Personal use requirement.

A. No person shall purchase a tobacco product through a delivery sale for resale to any other person, or for subsequent delivery to any person under the legal minimum purchase age.

B. No person shall knowingly make a delivery sale to any person who plans to resell the tobacco product to any other person, or to subsequently deliver the tobacco product to any person under the legal minimum purchase age.

§ 5. No Free Samples

No person in the business of manufacturing or selling tobacco products shall deliver or cause to be delivered free or below-cost samples of any tobacco products to anyone in this state. For the purpose of this subsection, "below cost" shall mean at a total cost to the recipient (after subtracting an amount equal to all taxes owed on the products delivered) of less than the wholesale price for the quantity of tobacco products delivered.

§ 6. Age verification requirements prior to delivery sales or other tobacco product deliveries.

A. No person in the business of manufacturing or selling tobacco products shall accept a delivery sale purchase order from any person or mail, ship, or otherwise cause to be delivered any tobacco products to any consumer, home, or residence in this State unless prior to the sale or delivery the person making the sale or causing the delivery:

1. Obtains from the prospective consumer:
 - a) a government-issued photo ID or a photocopy of it; or
 - b) the following consumer information from a government-issued photo ID:
 - i. Full name
 - ii. Address
 - iii. Date of Birth
 - iv. Type of government ID
 - v. Government ID number.
2. Obtains from the prospective consumer a Statement signed by the prospective consumer in writing or electronically that certifies the prospective consumer's full name, address, and birth date that shows that the consumer is at least of legal minimum purchase age. Such Statement shall also confirm that the prospective consumer is not purchasing the tobacco products for subsequent resale or for subsequent delivery to anyone under the legal minimum purchase age and that the prospective consumer understands that:
 - (a) the sale of tobacco products to individuals under the legal minimum purchase age is illegal;
 - (b) [IF APPLICABLE:] the purchase of tobacco products by individuals under the legal minimum purchase age is illegal;
 - (c) the purchase of tobacco products through a delivery sale for subsequent resale, or for delivery to persons under the legal minimum purchase age is illegal;
 - (d) the signing of another person's name to such certification is illegal; and
 - (e) performing such illegal acts can subject a person to significant monetary fines, imprisonment, and other penalties.
3. Verifies all age and identity information provided by the prospective consumer pursuant to subsection A against a commercially available database or aggregate of databases consisting of age and identity information from government-issued identification. Any such database or databases may also include age and identity information from other government or validated commercial sources if that additional information is regularly used by government and businesses for the purpose of identity verification and authentication and if the additional information is used only to supplement and not to replace the government-issued identification data in the age and identity verification process.
4. Receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's verified name.
5. Ensures that any receipt, invoice, or summary of a payment made in accordance with paragraph 4 provided by a debit card, credit card, or charge card company to a consumer clearly indicates (by

including the word 'tobacco' or 'cigarette', or by other means) that the delivery seller is a seller of a tobacco products or that the transaction is a sale of a tobacco products.

B. Delivery sellers shall not use any of the age and identity information they obtain from a prospective or actual consumer in this State, including any information that could be used to contact the consumer, for any other purposes other than to comply with this and other State laws or to complete the delivery sale unless the consumer affirmatively provides authorization for such specified other use and the delivery seller regularly provides the consumer with clear and conspicuous opportunities to revoke that authorization. This subsection shall not be construed to limit, restrict, or reduce any other State laws protecting the disclosure or unauthorized use of personal or consumer information.

§ 7. Shipping requirements.

A. Any delivery seller who mails, ships, or otherwise delivers tobacco products in connection with a delivery sale shall:

1. Not less than seven days prior to making the first delivery to any individual consumer, send by mail to the verified name and address provided by that consumer a notice of the pending tobacco product order and its particulars that also provides a toll-free telephone number and email address for the delivery seller and requests that the recipient notify the delivery seller by telephone or email if the recipient did not place the order or wishes to cancel it.
2. Ensure that the bill of lading or other shipping documents include a clear and conspicuous Statement that identifies the contents of the shipping container as tobacco products and States that State law prohibits the shipment of tobacco products to persons under the legal minimum age and requires the payment of all applicable taxes.
3. Use a method of mailing, shipping, or delivery that obligates the person making the delivery to deliver the shipping container only after the consumer placing the purchase order for the delivery sale or another adult residing at the consumer's address:
 - (a) signs to accept delivery of the shipping container;
 - (b) provides proof of identity and age, 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 he is either the addressee or another adult of legal minimum purchase age residing at the consumer's address; and
 - (c) if not the consumer, signs a Statement stating that he or she knows the consumer and verifies that the consumer is not under the legal minimum purchase age.
4. Provide to the delivery service retained for such delivery sale notice that the shipping container being delivered contains tobacco products and evidence of the delivery seller's full compliance with subsections 2.A. and B.

§ 8. Blocking tobacco product deliveries ordered by illegal sellers.

A. The Department shall provide to the U.S. postal service, delivery services operating in the state, and any other persons that deliver tobacco products into or in the state a list of persons making delivery sales that have not registered with the State or have otherwise failed to comply with this Act. Ten days prior to putting any person on this list, the Department shall send notice to that person, by letter or email, that the interstate seller is being placed on the Department's list, with that notice including the text of this Act. This list shall be kept confidential by all parties that receive it and shall be used only for the purpose of complying with this act.

B. A delivery service or other person receiving a list provided by the Department, pursuant to subsection A, shall not make any deliveries in the State on behalf of any person who is identified by that list unless:

1. The delivery service or other person making the delivery knows or affirmatively believes in good faith that the package does not contain any tobacco products; or

2. The delivery is made to a person lawfully engaging in the business of distributing or selling tobacco products.

C. No delivery service or other person making deliveries on behalf of a delivery seller shall knowingly deliver any tobacco products to any individual in the State below the legal minimum purchase age.

D. A delivery service or other person making deliveries on behalf of a delivery seller:

1. Shall have no obligation to:

- (a) inspect any package to determine whether or not they contain tobacco products;
- (b) determine whether any list provided by a state pursuant to that subsection is complete, accurate, or up to date; or
- (c) determine whether any person ordering a delivery is in compliance with this Act.

2. Shall not be subject to any penalty for:

- (a) not making any specific delivery on behalf of any person on the list provided pursuant to subsection A;
- (b) establishing and following a policy of:
 - (1) not making any deliveries in the state on behalf of any person on the list provided pursuant to subsection A;
 - (2) not making any deliveries of tobacco products in the state; or
 - (3) not making any deliveries of tobacco products in the state for any person or for any person not in the business of manufacturing, distributing, or selling tobacco products.

3. May collect a special additional fee from its customers that order deliveries of tobacco products in order to cover any costs incurred by the delivery service or other person related to complying with this Act.

(4) Shall not be subject to criminal penalties for any violation of this Act unless that violation is done knowingly and for the specific purpose of:

- (a) assisting a person engaged in the business of manufacturing, distributing, or selling tobacco products to violate this Act; or
- (b) profiting from the violation of this Act by another person.

E. No employee of a delivery service or of any other person making deliveries on behalf of a delivery seller shall be subject to criminal penalties or civil fines for violating this Act unless that violation is done knowingly and for the specific purpose of assisting a person engaged in the business of manufacturing, distributing, or selling tobacco products to violate this Act.

§ 9. Collection of taxes.

A. No tobacco products shall be sold or delivered to any consumer in the State unless all State tobacco product excise taxes on the tobacco products have already been remitted to the State and the tobacco products are marked with all required State tax stamps or other markings or indicia that establish that the State excise taxes have already been paid.

B. Subsection A. does not apply to delivery sales in which the delivery seller is owned by an Indian Tribe, as defined by 25 United States Code §450b(e), or members of an Indian Tribe, the consumer is a member of the same Indian Tribe, and each are located in Indian Country, as defined by 18 United States Code §1151, that is owned or occupied by the same Indian Tribe.

§ 10. Maximum delivery sales amounts.

No person shall make a delivery sale of tobacco products in any amounts in excess of 2,000 cigarettes, 200 cigars, 100 ounces of smokeless tobacco, 100 ounces of pipe tobacco, or such comparable amounts of other tobacco products as may be determined by the Department in order to minimize the risk of

related tax avoidance or illegal resale; and no person shall make more than one delivery sale to any specific consumer in any seven-day period.

§11. Compliance with other State and local laws.

Each person accepting a purchase order for a delivery sale from a consumer in the State shall comply with all other laws of the State or its political subdivisions generally applicable to sales of tobacco products that occur entirely within the State, the taxation of such products, or related escrow or other payment obligations.

§ 12. Penalties.

A. A first violation of any provision of this Act by a delivery seller shall be subject to a civil fine of not less than \$1000 and not more than \$2,000 or five times the retail value of the tobacco products involved, whichever is greater. A second or subsequent violation of any provision of this Act by a delivery seller shall be punishable by a civil fine of not less than \$5,000 or five times the retail value of the tobacco products involved, whichever is greater.

B. Any delivery seller failing to collect or remit to the Department any tax required in connection with a delivery sale shall also be required to pay all delinquent taxes plus interest.

C. Any delivery service who knowingly violates any provision of this Act shall, for a first violation, be subject to a civil fine of not less than \$1000 and not more than \$2,000 or five times the retail value of the tobacco products involved, whichever is greater. For a second or subsequent knowing violation of any provision in this Act, a delivery service shall be subject to a civil fine of not less than \$2,000 or five times the retail value of the tobacco products involved, whichever is greater, and prohibited from delivering tobacco products to consumers in the State for a period of up to three years.

D. Any person violating Section 4.A. shall, for the first offense, be subject to a civil fine of not less than \$500 and not more than \$1,000 or five times the retail value of the tobacco products involved, whichever is greater. For a second or subsequent offense, the person shall be subject to a civil fine of not less than \$2,000 or five times the retail value of the tobacco products involved, whichever is greater.

E. Any other person in the business of manufacturing, distributing, or selling tobacco products who violates any provision of this Act shall, for a first violation, be subject to a civil fine of not less than \$500 and not more than \$1,000 or five times the retail value of the tobacco products involved, whichever is greater. For a second or subsequent offense, the person shall be subject to a civil fine of not less than \$2,000 or five times the retail value of the tobacco products involved, whichever is greater.

F. Any delivery seller who knowingly violates any provision of this Act shall, for each such offense, be subject to a criminal fine of \$5,000 or ten times the retail value of the tobacco products involved, whichever is greater, imprisoned not more than five years, and prohibited from selling tobacco products in the State or to consumers in the State for a period of up to five years.

G. Subject to the exceptions set forth in section 8, any other person in the business of manufacturing, distributing, selling or transporting tobacco products who knowingly violates this Act shall, for each such offense, be subject to a criminal penalty of \$1,000 or ten times the retail value of the tobacco products involved, whichever is greater, and prohibited from doing any business relating to tobacco products in the State for a period of up to three years.

H. Forfeiture.

1. Any tobacco products sold or attempted to be sold in a delivery sale that do not meet the requirements of this Act shall be forfeited to the State.

2. All fixtures, equipment, and all other materials relating to the sale or delivery of tobacco products on the premises of any delivery seller who, with the intent to defraud the State, knowingly violates any of the requirements of this Act, shall be forfeited to the State.

I. Notwithstanding any other provision of law, an amount equal to fifty percent of all criminal and civil penalties recovered by the State under the previous subsections shall be provided to the State offices or agencies responsible for enforcing this Act or making related investigations, in rough proportion to their participation in the enforcement of this Act and related investigations, solely to increase and supplement, but not to replace, existing resources supporting State efforts to enforce this Act and to enforce other State laws relating to contraband tobacco products, the collection of taxes on tobacco products, and the prohibition of tobacco product sales to persons under the legal minimum purchase age.

J. In any action brought to enforce this Act, the State shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees, plus interest; and all such recovered costs and fees, plus interest, shall be directed to and retained by the State agencies and offices that incurred the costs and fees.

K. Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other, and to any other damages, remedies, penalties, or relief available under this Act or any other laws of this State.

§ 13. Enforcement.

A. The Attorney General or his or her designee may bring an action in the appropriate court in the State to enforce this Act, seek fines, penalties and related damages and equitable relief, or to prevent or restrain violations of this Act by any person, or any person controlling such person.

B. Upon providing at least 15 days prior notice to the Attorney General, enforcement officials of any State political subdivision may bring an action in the appropriate court in the State, or join an action being brought by the Attorney General or his or her designee, to seek damages and equitable relief for violation of Section 10 relating to the laws of the political subdivision, or to prevent or restrain and such violations of this Act by any person, or any person controlling such person.

C. Upon providing at least 15 days prior notice to the Attorney General, any person who holds a valid permit under 26 United States Code § 5712,¹ may bring an action in the appropriate court in the State, or join an action being brought by the Attorney General or his or her designee, to prevent or restrain violations of this Act by any person, or any person controlling such person.

D. Upon receiving notice from another person of their intent to bring an action pursuant to this Act in the appropriate court in the State, the Attorney General or his or her designee may choose to join in the other person's action or bring an action by the State in its stead and shall inform the person providing notice of how the Attorney General or the designee will proceed within 15 days of receiving the notice.

E. The Attorney General or his or her designee shall make available to the public, other States, and other jurisdictions, through the website of the Attorney General or the State and other means, information concerning all delivery sellers found to have violated any part of this Act, including each delivery seller's name, address, and other contact information, a description of the delivery seller's violations, and any other information the Attorney General determines may be helpful to other States or jurisdictions that may be taking action against the delivery seller for violations of their own laws pertaining to tobacco product sales.

§ 14. Additional Provisions

A. Nothing in this Act may be construed to preempt, limit or interfere with any other laws of the State or its political subdivisions that place additional or more stringent restrictions on delivery sales or apply additional or more stringent penalties for related violations.

¹ Certain tobacco product manufacturers, tobacco product importers, and tobacco product export warehouse proprietors hold valid permits under 26 US Code § 5712.

- B. Nothing in this Act may be construed to create any new requirements or liability of any kind for entities providing communication technologies (such as telephone companies or internet service providers), computer software or related services, or credit or debit card services, except to the extent that those entities are delivery sellers, delivery services, or persons making or attempting to make delivery sale purchases, sales, or deliveries.
- C. This Act shall go into effect 60 days after it is passed into law.

National Center for Tobacco-Free Kids, August 27, 2004 / Eric Lindblom

For more on internet tobacco sales and how to address them, see:

- <http://tobaccofreekids.org/reports/internet>
- <http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=29>.