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Fifty-eighth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT with Senate Amendments

ENGROSSED HOUSE BILL NO. 1434

Introduced by

Representatives Grande, Eckre

Senators Tallackson, Tollefson, Urlacher

A BILL for an Act to regulate the sale and delivery of tobacco products by certain methods; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Prohibited acts regarding sale of tobacco products to minors. It is unlawful for any person in the business of selling tobacco products to take an order for a tobacco product, other than from a person who is in the business of selling tobacco products, 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 product pursuant to the order, the person mails the product or ships the product by carrier, and the person fails to comply with each of the following procedures:

1. Before mailing or shipping the product, the person receives from the individual who places the order the following:
   a. A copy of a valid government-issued document that provides the name, address, and date of birth of the individual;
   b. A signed statement from the individual providing a certification that the individual:
      (1) Is a smoker of legal minimum purchase age in the state;
      (2) Has selected an option on the statement as to whether the individual wants to receive mailings from a tobacco company; and
      (3) Understands that providing false information may constitute a violation of law; and
2. Before mailing or shipping the product, the person:
   a. Verifies the date of birth or age of the individual against a commercially available data base; or

b. Obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the person placing the order.

3. Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section 4 of this Act.

4. In the case of an order for a product pursuant to an advertisement on the internet, the person receives payment by credit card, debit card, or check for the order before mailing or shipping the product.

5. a. The person employs a method of mailing or shipping the product requiring that the individual purchasing the product:

(1) Be the addressee;

(2) Have an individual of legal minimum purchase age sign for delivery of the package; and

(3) If the individual appears to the carrier making the delivery to be under twenty-seven years of age, take delivery of the package only after producing valid government-issued identification that bears a photograph of the individual, indicates that the individual is not under the legal age to purchase cigarettes, and indicates that the individual is not younger than the age indicated on the government-issued document.

b. The bill of lading clearly states the requirements in subdivision a 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.

SECTION 2. Rule of construction regarding common carriers. This Act may not be construed as imposing liability upon any common carrier, or officer or employee of the carrier when acting within the scope of business of the common carrier.

SECTION 3. E-mail addresses. Persons taking delivery sale orders may request that prospective purchasers provide their e-mail addresses.

SECTION 4. Disclosure requirements. The notice required under subsection 3 of section 1 of this Act must include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum 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. 1333(a)(1)] rotated on a quarterly basis;
3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section 1 of this Act; and
4. A prominent and clearly legible statement that cigarette sales are subject to tax under sections 57-36-06 and 57-36-32, and an explanation of how the tax has been, or is to be, paid with respect to the delivery sale.

SECTION 5. Registration and reporting requirements.

1. Before making delivery sales or shipping cigarettes in connection with those sales, every person shall file with the tax commissioner a statement setting forth the person's name, trade name, and the address of the person's principal place of business and any other place of business.
2. Not later than the tenth day of each month, each person that has made a delivery sale or shipped or delivered cigarettes in connection with any sale during the previous calendar month shall file with the tax commissioner a memorandum or a copy of the invoice, which provides for each delivery sale:
   a. The name and address of the individual to whom the delivery sale was made;
   b. The brand or brands of the cigarettes that were sold in the delivery sale; and
   c. The quantity of cigarettes that were sold in the delivery sale.

SECTION 6. Taxes. Each person receiving delivery of any tobacco product shall remit to the tax commissioner any taxes due under chapter 57-36 with respect to the delivery. This section does not apply if the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes already have been paid to this state.

SECTION 7. Penalties.

1. Except as otherwise provided in this section, a person that violates this Act is subject to a fine of not more than one thousand dollars. In the case of a second or

subsequent violation of this Act, the person is subject to a fine of not less than one thousand dollars nor more than five thousand dollars.

2. Any person who knowingly violates any provision of this Act is guilty of a class C felony.

3. Any individual who knowingly and falsely submits a certification under subdivision a of subsection 5 of section 1 of this Act in another individual's name is guilty of a noncriminal offense and is subject to the penalty provided under subsection 1.

4. Any person that fails to pay any tax required in connection with a delivery sale shall pay, in addition to any other penalty, a penalty of fifty percent 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 are forfeited to the state and must be destroyed.

SECTION 8. Enforcement. The attorney general or any person who holds a permit under 26 U.S.C. 5712 may bring an action in the appropriate court in the state to prevent or restrain violations of this Act by any person or any person controlling that person.