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**HOUSE BILL 83**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Gail C. Beam**

**FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**AN ACT**

**RELATING TO TOBACCO; ENACTING THE TOBACCO DELIVERY SALES ACT;  
PROVIDING FOR AGE VERIFICATION, TAX COMPLIANCE, REPORTING AND  
SHIPPING REQUIREMENTS; PROVIDING FOR REGISTRATION OF SELLERS;  
IMPOSING PENALTIES; MAKING AN APPROPRIATION.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. SHORT TITLE.--This act may be cited as the  
"Tobacco Delivery Sales Act".**

**Section 2. DEFINITIONS.--As used in the Tobacco Delivery  
Sales Act:**

**A. "consumer" means an individual who purchases a  
tobacco product by means of a delivery sale;**

**B. "delivery sale" means a sale of a tobacco  
product to a consumer in New Mexico when the consumer submits  
the order for the sale by written, telephonic or electronic**

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1 means or when the tobacco product is delivered by mail or other  
2 delivery service;

3 C. "delivery service" means a person or entity  
4 engaged in the delivery of letters, packages or other  
5 containers or that otherwise delivers a tobacco product to a  
6 consumer in New Mexico;

7 D. "department" means the taxation and revenue  
8 department, the secretary of taxation and revenue or an  
9 employee of the department exercising authority lawfully  
10 delegated to that employee;

11 E. "seller" means a person or an agent or employee  
12 of a person who sells or transfers a tobacco product by means  
13 of a delivery sale; and

14 F. "tobacco product" means tobacco or any  
15 consumable product that contains tobacco, including cigarettes,  
16 cigars, chewing tobacco, smokeless tobacco, bidis and kreteks.

17 Section 3. GENERAL PROVISIONS. --

18 A. A seller shall comply with all the requirements  
19 set forth in the Tobacco Delivery Sales Act, the Cigarette Tax  
20 Act, the Tobacco Products Act and all other laws applicable to  
21 sales of tobacco products that occur entirely within New  
22 Mexico, including laws imposing excise tax, gross receipts tax,  
23 licensing, stamping, escrow payments and other payment  
24 obligations.

25 B. A seller shall register with credit and debit

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1 card companies to ensure that all related receipts, invoices,  
2 summaries or statements of a delivery sale clearly indicate  
3 that the seller is a seller of tobacco products or that the  
4 transaction is a sale of a tobacco product.

5 C. A delivery sale shall be made only to a physical  
6 street address.

7 D. A delivery sale of a tobacco product to an  
8 individual in New Mexico shall be deemed a sale to a consumer  
9 unless the individual is a licensed distributor or a retailer.

10 E. A person in the business of manufacturing,  
11 distributing or selling tobacco products shall not deliver, or  
12 cause to be delivered, a tobacco product to a home or residence  
13 or to a consumer unless the consumer has specifically requested  
14 the tobacco product and paid for it.

15 Section 4. AGE VERIFICATION. --

16 A. A seller shall not accept an order for or make a  
17 delivery sale of a tobacco product to an individual who is  
18 under eighteen years of age.

19 B. Before mailing or shipping a tobacco product in  
20 connection with a delivery sale, a seller shall obtain reliable  
21 confirmation that the prospective consumer is at least eighteen  
22 years old. The seller shall:

- 23 (1) obtain identification in the form of:  
24 (a) government-issued identification, or  
25 a copy of it, bearing a photograph of the consumer; or

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1 (b) information from government-issued  
2 photo identification that includes the consumer's full name,  
3 address, date of birth and the type and number of the  
4 government-issued identification;

5 (2) obtain a statement signed by the  
6 prospective consumer in writing or electronically that:

7 (a) certifies the prospective consumer's  
8 name, address and date of birth;

9 (b) confirms that the prospective  
10 consumer understands that: 1) signing another person's name is  
11 illegal; 2) falsely certifying to be another person is illegal;  
12 3) the sale or procurement of a tobacco product to an  
13 individual under the age of eighteen is illegal; and 4) the  
14 purchase of a tobacco product by an individual under the age of  
15 eighteen is illegal; and

16 (c) confirms that the prospective  
17 consumer understands that providing false information may  
18 subject the consumer to monetary fines or imprisonment, or  
19 both;

20 (3) verify the information provided pursuant  
21 to Paragraph (1) of this subsection against a commercially  
22 available database consisting of age and identity information  
23 obtained solely from government records; and

24 (4) accept payment for the delivery sale only  
25 by a credit or debit card issued to the consumer with the same

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1 residential address.

2 C. For the initial purchase by a specific consumer,  
3 a seller shall mail a written confirmation of the tobacco  
4 product order placed to the delivery address of the consumer.

5 D. A seller shall not use any of the information  
6 obtained from a prospective or actual consumer, including any  
7 information that may be used to contact the consumer, for any  
8 purpose other than to complete the delivery sale and to comply  
9 with the Tobacco Delivery Sales Act and other applicable state  
10 and federal laws relating to the delivery sale unless the  
11 consumer affirmatively provides authorization for a specified  
12 use and the seller regularly provides the consumer with clear  
13 and conspicuous opportunities to revoke the authorization.

14 Section 5. SHIPPING REQUIREMENTS. --

15 A. A seller shall:

16 (1) include as part of the shipping documents  
17 a clear and conspicuous statement as follows: "TOBACCO  
18 PRODUCT: NEW MEXICO LAW PROHIBITS SHIPPING TO INDIVIDUALS  
19 UNDER THE AGE OF 18 AND REQUIRES PAYMENT OF ALL APPLICABLE  
20 TAXES";

21 (2) include, on the outside of the package, a  
22 clear and conspicuous label stating: "PACKAGE CONTAINS TOBACCO  
23 PRODUCT";

24 (3) use a method of shipping that obligates  
25 the delivery service to require:

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1 (a) that only the consumer who placed  
2 the delivery sale order, or an adult designated by the consumer  
3 and who resides at the shipping address, may sign for and  
4 accept delivery of the shipping container; and

5 (b) proof, in the form of government-  
6 issued identification bearing a photograph of the individual  
7 who signs for and accepts delivery, that the individual is at  
8 least eighteen years old; and

9 (4) provide to the delivery service evidence  
10 of full compliance with Section 8 of the Tobacco Delivery Sales  
11 Act and of the seller's registration with the department.

12 B. A delivery service shall deliver a tobacco  
13 product only in accordance with the provisions set forth in  
14 Subsection A of this section.

15 C. A delivery service shall not deliver a tobacco  
16 product on behalf of a seller that does not comply with the  
17 provisions set forth in Subsection A of this section.

18 D. A delivery service that chooses not to deliver a  
19 tobacco product shall not be subject to any liability or  
20 penalty for so choosing.

21 Section 6. MAXIMUM DELIVERY AMOUNTS. --

22 A. A tobacco product delivered in a delivery sale  
23 cannot exceed ten cartons of cigarettes, two hundred cigars,  
24 one hundred ounces of smokeless tobacco or pipe tobacco or such  
25 comparable amounts of other tobacco products as may be

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1 determined by the department.

2 B. A seller shall not make more than one delivery  
3 sale to a specific consumer in a seven-day period.

4 Section 7. REGISTRATION--RECORDS--REPORTS--  
5 CONFIDENTIALITY.--

6 A. A seller shall register with the department and  
7 file a statement setting forth the seller's:

8 (1) name and trade name;

9 (2) addresses and phone numbers of its  
10 principal place of business and any other place of business;

11 (3) email address;

12 (4) web site addresses that relate to delivery  
13 sales; and

14 (5) other information as the department may  
15 require.

16 B. A seller shall file with the department on a  
17 monthly basis a report providing information on delivery sales  
18 made in the previous calendar month. The report shall include  
19 for each delivery sale:

20 (1) the name and address of the consumer to  
21 whom the sale was made;

22 (2) the type, brand and quantity of each  
23 tobacco product sold;

24 (3) the date of the sale; and

25 (4) the name, address and telephone number of

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1 the delivery service used.

2 C. The department shall prescribe the manner and  
3 form of the report required pursuant to Subsection B of this  
4 section and may require invoices and additional information to  
5 be submitted.

6 D. A seller shall retain all records required  
7 pursuant to Subsections B and C of this section for a period of  
8 three years from the end of the year in which the transaction  
9 occurred unless otherwise required by law to retain them for a  
10 longer period of time.

11 E. The department shall maintain the  
12 confidentiality of the names and addresses of individuals  
13 identified pursuant to the provisions of Subsection B of this  
14 section and shall not use this information for any purpose  
15 other than the enforcement of the Tobacco Delivery Sales Act.

16 F. The department shall make public the information  
17 provided pursuant to Subsection A of this section, including  
18 posting on a public web site a current list of those registered  
19 sellers that are in compliance with state laws.

20 Section 8. COLLECTION OF TAXES. --

21 A. A seller shall remit to the department on a  
22 monthly basis all excise and other taxes applicable to its  
23 delivery sales in the manner and on the form prescribed by the  
24 department.

25 B. A seller shall not make a delivery sale of

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1 cigarettes unless the cigarette packages are stamped in  
2 accordance with the provisions of the Cigarette Tax Act. A  
3 cigarette package that is stamped pursuant to the provisions of  
4 the Cigarette Tax Act shall be sufficient evidence to a  
5 delivery service that excise taxes have been paid on that  
6 cigarette package.

7 C. The department may impose additional  
8 requirements on sellers to ensure compliance with applicable  
9 tax laws.

10 Section 9. PENALTIES. --

11 A. A first violation by a seller of a provision of  
12 the Tobacco Delivery Sales Act shall be punishable by a fine of  
13 one thousand dollars (\$1,000) or five times the retail value of  
14 the tobacco products involved, whichever is greater.

15 B. A second or subsequent violation by a seller of  
16 a provision of the Tobacco Delivery Sales Act is a misdemeanor  
17 punishable by a fine of five thousand dollars (\$5,000) or ten  
18 times the retail value of the tobacco products involved,  
19 whichever is greater, or imprisonment for a definite term in  
20 accordance with the provisions of Section 31-19-1 NMSA 1978, or  
21 both. Upon conviction, the department may prohibit the seller  
22 from selling tobacco products in New Mexico for a period up to  
23 five years.

24 C. A seller who fails to pay a tax required in  
25 connection with a delivery sale shall pay, in addition to any

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1 other penalty, a penalty of five hundred percent of the tax due  
2 but unpaid.

3 D. A delivery service that knowingly violates a  
4 provision of the Tobacco Delivery Sales Act shall, for a first  
5 violation, be fined one thousand dollars (\$1,000) or five times  
6 the retail value of the tobacco products involved, whichever is  
7 greater. A second or subsequent violation by a delivery  
8 service shall be punishable by a fine of five thousand dollars  
9 (\$5,000) or ten times the retail value of the tobacco products  
10 involved, whichever is greater. Upon a second or subsequent  
11 violation, the department may prohibit the delivery service  
12 from delivering tobacco products for a period up to five years.

13 E. A person who provides false information to  
14 obtain a tobacco product by means of a delivery sale is guilty  
15 of a petty misdemeanor and shall be sentenced in accordance  
16 with the provisions of Section 31-19-1 NMSA 1978.

17 F. A tobacco product sold or attempted to be sold  
18 in a delivery sale in violation of the Tobacco Delivery Sales  
19 Act shall be forfeited to the department pursuant to the  
20 Forfeiture Act.

21 Section 10. ENFORCEMENT. --

22 A. The department, the attorney general, a district  
23 attorney or a person holding a permit under 26 U. S. C. 5713 may  
24 bring an action to enforce the provisions of the Tobacco  
25 Delivery Sales Act or to prevent or restrain violations of that

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1 act.

2 B. The department, a district attorney or a person  
3 bringing an action under this section shall provide the  
4 attorney general at least fifteen days' notice prior to  
5 bringing the action.

6 C. The attorney general may join in any action  
7 brought pursuant to the provisions of the Tobacco Delivery  
8 Sales Act.

9 Section 11. LOCAL LAWS. --The Tobacco Delivery Sales Act  
10 does not restrict or limit the power of a local government to  
11 adopt and enforce ordinances that meet the minimum standards  
12 set forth in the act.

13 Section 12. APPROPRIATION. --One hundred thousand dollars  
14 (\$100,000) is appropriated from the general fund to the  
15 taxation and revenue department for expenditure in fiscal year  
16 2005 to implement the provisions of this act. Any unexpended  
17 or unencumbered balance remaining at the end of fiscal year  
18 2005 shall revert to the general fund.