

Interstate Shipping Regulations Per State

Arizona –

ARTICLE 5.1. DELIVERY SALES OF TOBACCO PRODUCTS

42-3222. Requirements for delivery sales

- A. A SALE OF TOBACCO PRODUCTS THAT CONSTITUTES A DELIVERY SALE PURSUANT TO SECTION 42-3221 IS A DELIVERY SALE REGARDLESS OF WHETHER THE PERSON ACCEPTING THE ORDER FOR THE DELIVERY SALE IS LOCATED IN OR OUTSIDE THIS STATE.
- B. A SALE OF TOBACCO PRODUCTS IS NOT A SALE TO A CONSUMER FOR THE PURPOSES OF THIS ARTICLE IF THE PERSON IS LICENSED AS A DISTRIBUTOR BY THE DEPARTMENT OR IF THE SALE IS TO A TRIBE, AN ENTERPRISE OWNED BY A TRIBE, A TRIBAL MEMBER OR AN ENTITY OWNED BY A TRIBAL MEMBER THAT PURCHASES THE TOBACCO PRODUCTS FOR RESALE ON THE TRIBE'S OR TRIBAL MEMBER'S RESERVATION TO THE ULTIMATE USER OF THE TOBACCO PRODUCTS. IF A PERSON IS A DISTRIBUTOR, AS DEFINED IN SECTION 42-3001, THE PERSON SHALL OBTAIN A DISTRIBUTOR'S LICENSE FROM THE DEPARTMENT BEFORE SUBMITTING AN ORDER FOR A DELIVERY SALE.
- C. A PERSON SHALL NOT MAKE A DELIVERY SALE OF TOBACCO PRODUCTS TO ANY INDIVIDUAL WHO IS NOT AN ADULT.
- D. EACH PERSON ACCEPTING AN ORDER FOR A DELIVERY SALE SHALL COMPLY WITH EACH OF THE FOLLOWING:
1. THE AGE VERIFICATION REQUIREMENTS SET FORTH IN SECTION 42-3223.
 2. THE DISCLOSURE REQUIREMENTS SET FORTH IN SECTION 42-3224.
 3. THE SHIPPING REQUIREMENTS SET FORTH IN SECTION 42-3225.
 4. THE REGISTRATION AND REPORTING REQUIREMENTS SET FORTH IN SECTION 42-3226.
 5. THE TAX COLLECTION REQUIREMENTS SET FORTH IN SECTION 42-3227.
 6. THE LICENSING AND TAX STAMP REQUIREMENTS SET FORTH IN TITLE 42, CHAPTER 3, ARTICLE 5 THAT APPLY TO SALES OF TOBACCO PRODUCTS THAT OCCUR ENTIRELY IN THIS STATE.
 7. ALL LAWS OF THIS STATE GENERALLY APPLICABLE TO SALES OF TOBACCO PRODUCTS THAT OCCUR ENTIRELY IN THIS STATE IMPOSING EXCISE TAXES AND TRANSACTION PRIVILEGE TAXES.

42-3223. Age verification requirements

- A. A PERSON SHALL NOT MAIL, SHIP OR OTHERWISE DELIVER TOBACCO PRODUCTS IN CONNECTION WITH AN ORDER FOR A DELIVERY SALE UNLESS, BEFORE THE FIRST DELIVERY TO THE CONSUMER, THE PERSON ACCEPTING THE ORDER FOR THE DELIVERY SALE:
1. OBTAINS FROM THE INDIVIDUAL SUBMITTING THE ORDER A CERTIFICATION THAT INCLUDES BOTH:

- (a) RELIABLE CONFIRMATION THAT THE INDIVIDUAL IS AN ADULT.
 - (b) A STATEMENT SIGNED BY THE INDIVIDUAL IN WRITING AND UNDER PENALTY OF PERJURY THAT BOTH:
 - (i) CERTIFIES THE ADDRESS AND DATE OF BIRTH OF THE INDIVIDUAL.
 - (ii) CONFIRMS THAT THE INDIVIDUAL WANTS TO RECEIVE DELIVERY SALES FROM A TOBACCO COMPANY AND UNDERSTANDS THAT, UNDER THE LAWS OF THIS STATE, SIGNING ANOTHER INDIVIDUAL'S NAME TO THE CERTIFICATION IS ILLEGAL, THAT THE SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER THE LEGAL MINIMUM PURCHASE AGE IS ILLEGAL AND THAT THE PURCHASE OF TOBACCO PRODUCTS BY INDIVIDUALS UNDER THE LEGAL MINIMUM PURCHASE AGE IS ILLEGAL.
2. MAKES A GOOD FAITH EFFORT TO VERIFY THE INFORMATION CONTAINED IN THE CERTIFICATION PROVIDED BY THE INDIVIDUAL PURSUANT TO PARAGRAPH 1 AGAINST A COMMERCIALY AVAILABLE DATABASE THAT MAY BE REASONABLY RELIED ON FOR ACCURATE AGE INFORMATION OR OBTAINS A PHOTOCOPY OR OTHER IMAGE OF A VALID GOVERNMENT ISSUED IDENTIFICATION THAT STATES THE DATE OF BIRTH OR AGE OF THE INDIVIDUAL.
3. PROVIDES TO THE INDIVIDUAL, VIA ELECTRONIC MAIL OR OTHER MEANS, A NOTICE THAT MEETS THE REQUIREMENTS OF SECTION 42-3224.
4. IF AN ORDER FOR TOBACCO PRODUCTS IS MADE PURSUANT TO AN ADVERTISEMENT ON THE INTERNET, RECEIVES PAYMENT FOR THE DELIVERY SALE FROM THE CONSUMER BY A CREDIT OR DEBIT CARD THAT HAS BEEN ISSUED IN THE NAME OF THE CONSUMER OR BY PERSONAL OR COMPANY CHECK OF THE CONSUMER.

B. A PERSON ACCEPTING AN ORDER FOR A DELIVERY SALE MAY REQUEST THAT A CONSUMER PROVIDE AN ELECTRONIC MAIL ADDRESS. 42-3224. Disclosure requirements

THE NOTICE REQUIRED UNDER SECTION 42-3223, SUBSECTION A, PARAGRAPH 3 SHALL INCLUDE PROMINENT AND CLEARLY LEGIBLE STATEMENTS THAT TOBACCO PRODUCT SALES ARE ALL OF THE FOLLOWING:

- 1. ILLEGAL IF MADE TO INDIVIDUALS WHO ARE NOT ADULTS.
- 2. RESTRICTED TO THOSE INDIVIDUALS WHO PROVIDE VERIFIABLE PROOF OF AGE IN ACCORDANCE WITH SECTION 42-3223.
- 3. TAXABLE UNDER THIS CHAPTER AND SHALL INCLUDE AN EXPLANATION OF HOW SUCH TAX HAS BEEN, OR IS TO BE, PAID WITH RESPECT TO THE DELIVERY SALE.

42-3225. Shipping requirements

A. EACH PERSON WHO MAELS, SHIPS OR OTHERWISE DELIVERS TOBACCO PRODUCTS IN CONNECTION WITH AN ORDER FOR A DELIVERY SALE SHALL:

- 1. INCLUDE AS PART OF THE SHIPPING DOCUMENTS, IN A CLEAR AND CONSPICUOUS MANNER, THE FOLLOWING STATEMENT: "TOBACCO PRODUCTS: ARIZONA LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER

THE AGE OF EIGHTEEN AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES".

2. USE A METHOD OF MAILING, SHIPPING OR DELIVERY THAT OBLIGATES THE DELIVERY SERVICE TO REQUIRE:

(a) THE INDIVIDUAL SUBMITTING THE ORDER FOR THE DELIVERY SALE OR ANOTHER ADULT WHO RESIDES AT THE INDIVIDUAL'S ADDRESS TO SIGN TO ACCEPT DELIVERY OF THE SHIPPING CONTAINER. PROOF OF THE LEGAL MINIMUM PURCHASE AGE OF THE INDIVIDUAL ACCEPTING DELIVERY SHALL BE REQUIRED ONLY IF THE INDIVIDUAL APPEARS TO BE UNDER TWENTY-SEVEN YEARS OF AGE.

(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, THAT THE INDIVIDUAL IS EITHER THE ADDRESSEE OR THE ADULT DESIGNATED BY THE ADDRESSEE.

3. PROVIDE TO THE DELIVERY SERVICE RETAINED TO DELIVER THE DELIVERY SALE EVIDENCE OF FULL COMPLIANCE WITH SECTION 42-3227.

B. IF THE PERSON ACCEPTING A PURCHASE ORDER FOR A DELIVERY SALE DELIVERS THE TOBACCO PRODUCTS WITHOUT USING A DELIVERY SERVICE, THE PERSON SHALL COMPLY WITH ALL OF THE REQUIREMENTS OF THIS ARTICLE THAT APPLY TO A DELIVERY SERVICE AND ANY FAILURE TO COMPLY WITH A REQUIREMENT OF THIS ARTICLE IS A VIOLATION.

42-3226. Registration and reporting requirements

A. BEFORE MAKING SALES OR SHIPPING TOBACCO PRODUCTS IN CONNECTION WITH SALES, A PERSON SHALL FILE WITH THE DEPARTMENT A STATEMENT STATING THE PERSON'S NAME, TRADE NAME AND THE ADDRESS OF THE PERSON'S PRINCIPAL PLACE OF BUSINESS AND ANY OTHER PLACE OF BUSINESS.

B. NOT LATER THAN THE TENTH DAY OF EACH MONTH, EACH PERSON THAT HAS MADE A SALE OR MAILED, SHIPPED OR OTHERWISE DELIVERED TOBACCO PRODUCTS IN CONNECTION WITH ANY SALE DURING THE PREVIOUS CALENDAR MONTH SHALL FILE WITH THE DEPARTMENT A MEMORANDUM OR A COPY OF THE INVOICE THAT PROVIDES FOR EACH SALE:

1. THE NAME AND ADDRESS OF THE INDIVIDUAL WHO SUBMITTED THE ORDER FOR THE SALE.

2. THE NAME AND ADDRESS OF THE INDIVIDUAL WHO ACCEPTED DELIVERY OF THE TOBACCO PRODUCTS.

3. THE NAME AND ADDRESS OF THE PERSON ACCEPTING THE ORDER FOR THE SALE OF TOBACCO PRODUCTS.

4. THE NAME AND ADDRESS OF THE DELIVERY SERVICE AND THE NAME OF THE INDIVIDUAL MAKING THE DELIVERY.

5. THE BRAND OR BRANDS OF THE TOBACCO PRODUCTS THAT WERE SOLD IN THE SALE.

6. THE QUANTITY OF EACH BRAND OF TOBACCO PRODUCTS THAT WAS SOLD IN THE SALE.

C. A PERSON MAY COMPLY WITH THE REQUIREMENTS OF SUBSECTIONS A AND B OF THIS SECTION BY COMPLYING WITH THE REQUIREMENTS OF 15 UNITED STATES CODE SECTION 376.

D. THIS SECTION DOES NOT APPLY TO SALES OF TOBACCO PRODUCTS BY A LICENSED DISTRIBUTOR OR TO SALES OF TOBACCO PRODUCTS BY A RETAILER THAT WERE PURCHASED FROM A LICENSED DISTRIBUTOR.

42-3227. Collection of taxes

EACH PERSON ACCEPTING A PURCHASE ORDER FOR A DELIVERY SALE SHALL COLLECT AND REMIT TO THE DEPARTMENT ALL TAXES IMPOSED ON TOBACCO PRODUCTS BY THIS STATE WITH RESPECT TO THE DELIVERY SALE. WITH RESPECT TO CIGARETTES, THE COLLECTION AND REMISSION SHALL NOT BE REQUIRED IF THE PERSON HAS OBTAINED PROOF IN THE FORM OF THE PRESENCE OF APPLICABLE TAX STAMPS OR TAX EXEMPT STAMPS OR OTHER PROOF THAT THE TAXES HAVE ALREADY BEEN PAID TO THIS STATE.

42-3228. Penalties; violations; classification

A. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A VIOLATION OF THIS ARTICLE BY A PERSON OTHER THAN AN INDIVIDUAL WHO IS NOT AN ADULT IS A CLASS 5 FELONY, AND:

1. FOR THE FIRST VIOLATION OF THIS ARTICLE, THE PERSON SHALL BE FINED ONE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE TOBACCO PRODUCTS INVOLVED IN THE VIOLATION, WHICHEVER IS GREATER.

2. FOR THE SECOND OR SUBSEQUENT VIOLATION OF THIS ARTICLE, THE PERSON SHALL BE FINED FIVE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE TOBACCO PRODUCTS INVOLVED IN THE VIOLATION, WHICHEVER IS GREATER.

B. A PERSON WHO IS AN ADULT AND WHO KNOWINGLY SUBMITS A FALSE CERTIFICATION UNDER SECTION 42-3223, SUBSECTION A, PARAGRAPH 1 COMMITS A CLASS 5 FELONY, AND FOR EACH OFFENSE THE PERSON SHALL BE FINED TEN THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE TOBACCO PRODUCTS INVOLVED IN THE VIOLATION, WHICHEVER IS GREATER. A PERSON WHO IS UNDER THE LEGAL MINIMUM PURCHASE AGE AND WHO KNOWINGLY SUBMITS A FALSE CERTIFICATION UNDER SECTION 42-3223, SUBSECTION A, PARAGRAPH 1 COMMITS A PETTY OFFENSE.

C. A PERSON WHO FAILS TO PAY ANY TAX REQUIRED IN CONNECTION WITH A DELIVERY SALE SHALL PAY, IN ADDITION TO ANY OTHER PENALTY, A PENALTY OF FIVE TIMES THE RETAIL VALUE OF THE TOBACCO PRODUCTS INVOLVED.

D. ANY TOBACCO PRODUCTS SOLD OR ATTEMPTED TO BE SOLD IN A DELIVERY SALE THAT DOES NOT MEET THE REQUIREMENTS OF THIS ARTICLE SHALL BE FORFEITED TO THE STATE PURSUANT TO SECTION 42-1124.

E. A PERSON WHO, IN CONNECTION WITH A DELIVERY SALE, DELIVERS TOBACCO PRODUCTS ON BEHALF OF A DELIVERY SERVICE TO AN INDIVIDUAL WHO IS NOT AN ADULT IS GUILTY OF A VIOLATION OF SECTION 13-3622.

F. ALL FIXTURES, EQUIPMENT AND ALL OTHER MATERIALS AND PERSONAL PROPERTY ON THE PREMISES OF ANY PERSON WHO, WITH THE INTENT TO DEFRAUD THIS STATE, MALES OR SHIPS TOBACCO PRODUCTS INTO THIS STATE AND FAILS TO SATISFY ANY OF THE REQUIREMENTS OF THIS ARTICLE SHALL BE FORFEITED TO THIS STATE.

G. AN INDIVIDUAL WHO IS NOT AN ADULT AND WHO KNOWINGLY VIOLATES ANY PROVISION OF THIS ARTICLE IS GUILTY OF A PETTY OFFENSE.

42-3229. Enforcement

THE ATTORNEY GENERAL, THE ATTORNEY GENERAL'S DESIGNEE OR ANY PERSON WHO HOLDS A PERMIT UNDER 26 UNITED STATES CODE SECTION 5713 MAY BRING AN ACTION IN THE APPROPRIATE COURT IN THIS STATE TO PREVENT OR RESTRAIN VIOLATIONS OF THIS ARTICLE BY ANY PERSON.

42-3230. Applicability: Indian reservations

THIS ARTICLE DOES NOT ALTER, MODIFY OR AMEND EXISTING STATE LAW PROVIDING FOR THE TAX TREATMENT OF SALES OF TOBACCO PRODUCTS ON INDIAN RESERVATIONS.

APPROVED BY THE GOVERNOR JUNE 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 1, 2004.

Delaware –

**Subchapter VI. Delivery Sales of Any Tobacco Product
§ 5362. Requirements for delivery sales.**

(a) No person shall make a delivery sale of any tobacco product to any individual who is under the legal minimum purchase age in this State.

(b) Each person accepting a purchase order for a delivery sale shall comply with:

- (1) The age verification requirements set forth in § 5363 of this title;
- (2) The disclosure requirements set forth in § 5364 of this title;
- (3) The shipping requirements set forth in § 5365 of this title;
- (4) The registration and reporting requirements set forth in § 5366 of this title;
- (5) The tax collection requirements set forth in § 5367 of this title; and
- (6) All other laws of this State generally applicable to sales of any tobacco product that occur entirely within this State, including, but not limited to, those laws imposing:
 - a. Excise taxes;
 - b. Sales taxes;
 - c. License and revenue-stamping requirements; and

d. Escrow payment obligations as set forth in § 6082 of Title 29. (74 Del. Laws, c. 95, § 1.)

§ 5363. Age verification requirements.

(a) No person shall mail, ship or otherwise deliver any tobacco product in connection with a delivery sale unless prior to the 1st delivery sale to such consumer:

(1) Receives both a copy of a valid form of government identification showing date of birth to verify the purchaser is age 18 years or over and an attestation from the purchaser certifying that the information on the government identification truly and correctly identifies the purchaser and the purchaser's current address. Such attestation shall also confirm:

a. That the prospective consumer understands that signing another person's name to such certification is illegal;

b. That the sale of tobacco products, including cigarettes, to individuals under the legal minimum purchase age is illegal; and

c. That the purchase of tobacco products, including cigarettes, by individuals under the legal minimum purchase age is illegal under the laws of this State;

(2) Delivers the tobacco product to the address of the purchaser given on the valid form of government identification and by a postal or package delivery service method that either limits delivery to that purchaser and requires the purchaser to sign personally to receive the delivery or requires a signature of an adult at the purchaser's address to deliver the package;

(3) Provides to the prospective consumer, via e-mail or other means, a notice that meets the requirements of § 5364 of this title; and

(4) In the case of an order for any tobacco product pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name.

(b) Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses. (74 Del. Laws, c. 95, § 1.)

§ 5364. Disclosure requirements.

The notice required under § 5363(a)(3) of this title shall include:

(1) A prominent and clearly legible statement that any tobacco product sales to consumers below the legal minimum purchase age are illegal;

(2) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with § 5363 of this title; and

(3) A prominent and clearly legible statement that any tobacco product sales are subject to tax under § 5305 of this title, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale. (74 Del. Laws, c. 95, § 1.)

§ 5365. Shipping requirements.

(a) Each person who mails, ships or otherwise delivers any tobacco product in connection with a delivery sale shall become affixing agents as defined by § 5301 of this title and shall be eligible to receive commissions pursuant to § 5318 of this title and further shall:

(1) Include as part of the bill of lading or other shipping documents a clear and conspicuous statement providing as follows: "Any Tobacco Product: Delaware Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

(2) Use a method of mailing, shipping or delivery that obligates the delivery service to require:

a. The consumer placing the purchase order for the delivery sale or another adult of legal minimum purchase age residing at the consumer's address, 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 the individual is either the addressee or another adult of legal minimum purchase age residing at the consumer's address. However, proof of the legal minimum purchase age shall be required only if such individual appears to be under 27 years of age; and

(3) Provide to the delivery service retained for such delivery sale evidence of full compliance with § 5367 of this title.

(b) If the person accepting a purchase order for a delivery sale delivers the any tobacco product without using a delivery service, such person shall comply with all requirements of this subchapter applicable to a delivery service and shall be in violation of the provisions of this subchapter if he or she fails to comply with any such requirement. (74 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5366. Registration and reporting requirements.

(a) Prior to making delivery sales or mailing, shipping or otherwise delivering any tobacco product in connection with any such sales, 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.

(b) Not later than the 10th day of each calendar month, each person that has made a delivery sale or mailed, shipped or otherwise delivered any tobacco product in connection with any such sale during the previous calendar month shall file with the Department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

(1) The name and address of the consumer to whom such delivery sale was made;

(2) The brand or brands of the any tobacco product 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 15 U.S.C. § 376 shall be deemed to satisfy the requirements of this section. (74 Del. Laws, c. 95, § 1.)

§ 5367. Collection of taxes.

Each person accepting a purchase order for a delivery sale shall collect and remit to the Department all any tobacco product taxes imposed by this State 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 the State. (74 Del. Laws, c. 95, § 1.)

§ 5368. Penalties.

(a) Except as otherwise provided in this section, a first violation of any provision of this subchapter shall be punishable by a fine of \$1,000 or 5 times the retail value of the any tobacco product involved, whichever is greater. A second or subsequent violation of any provision of this subchapter shall be punishable by a fine of \$5,000 or 5 times the retail value of the cigarettes involved, whichever is greater.

(b) Any person who knowingly violates any provision of this subchapter, or who knowingly and falsely submits a certification under § 5363(a)(1) of this title in another person's name, shall, for each such offense, be fined \$10,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than 5 years, or both.

(c) Any person failing to collect or remit to the Department any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of 5 times the retail value of the any tobacco product involved.

(d)(1) Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the requirements of this subchapter shall be forfeited to the State 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, violates any of the requirements of this subchapter, shall be forfeited to the State. (74 Del. Laws, c. 95, § 1.)

§ 5369. Enforcement.

The Attorney General or his or her designee, or any person who holds a valid permit under 26 U.S.C. § 5712, may bring an action in the appropriate court in this State to prevent or restrain violations of this subchapter by any person or any person controlling such person. (74 Del. Laws, c. 95, § 1.)

NOTICE: The Delaware Code appearing on this site was prepared by the Division of Research of Legislative Council of the General Assembly with the assistance of the Government Information Center, under the supervision of the Delaware Code Revisors and the editorial staff of LexisNexis, includes all acts up to and including 75 Del. Laws, c. 222, effective December 8, 2005.

Idaho –

39-5714. REQUIREMENTS FOR DELIVERY SALES. (1) No permittee shall make a delivery sale of tobacco products to any individual who is under age eighteen (18) years in this state.

(2) Each permittee taking a delivery sale order shall comply with: the age verification requirements set forth in section 39-5715, Idaho Code; the disclosure and notice requirements set forth in section 39-5716, Idaho Code; the shipping requirements set forth in section 39-5717, Idaho Code; the regis-

tration and reporting requirements set forth in section 39-5718, Idaho Code; all tax collection requirements provided by title 63, Idaho Code; and all other laws of the state of Idaho generally applicable to sales of tobacco products that occur entirely within Idaho including, but not limited to, those laws imposing excise taxes, sales and use taxes, licensing and tax stamping requirements and escrow or other payment obligations.

39-5715. AGE VERIFICATION REQUIREMENTS. No permittee shall mail or ship tobacco products in connection with a delivery sale order unless, before mailing or shipping such tobacco products, the permittee accepting the delivery sale order first obtains from the prospective customer a certification which includes proof of age that the purchaser is at least eighteen (18) years old, the credit or debit card used for payment has been issued in the purchaser's name, and the address to which the cigarettes are being shipped match the credit card company's address for the cardholder.

39-5716. DISCLOSURE AND NOTICE REQUIREMENTS. For all delivery sales a permittee shall post on any advertisement or website:

- (1) The cautionary language for signs under section 39-5704(6), Idaho Code;
- (2) A prominent and clearly legible statement that consists of one (1) 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 taxable under chapter 25, title 63, Idaho Code, and an explanation of how such tax has been, or is to be paid, with respect to such delivery sale.

39-5717. SHIPPING REQUIREMENTS. Each permittee who mails or ships tobacco products in connection with a delivery sale order shall include as part of the shipping documents a clear and conspicuous statement providing as follows: "TOBACCO PRODUCTS: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN YEARS, AND REQUIRES THE PAYMENT OF TAXES PURSUANT TO CHAPTER 25, TITLE 63, IDAHO CODE. PERSONS VIOLATING THIS MAY BE CIVILLY AND CRIMINALLY LIABLE." Anyone delivering any such container distributes tobacco products as defined in section 39-5702(5), Idaho Code, and is subject to the terms and requirements of this chapter. If a permittee taking a delivery sale order also delivers the tobacco products without using a third party delivery service, the permittee shall comply with all the requirements of vendor assisted sales as defined in section 39-5702(14), Idaho Code.

39-5718. REGISTRATION AND REPORTING REQUIREMENTS. (1) Prior to making delivery sales or shipping tobacco products in connection with any such sales, every business shall obtain a permit from the department and file with the state tax commission a statement setting forth the seller's name, trade name and the address of the business's principal place of business and any other

place of business.

(2) Not later than the tenth day of each calendar month, each permittee that has made a delivery sale or shipped or delivered tobacco products in connection with any such sale during the previous calendar month shall file with the department and the state tax commission a memorandum or a copy of the invoice which provides for each and every such delivery sale:

- (a) The name and address of the individual to whom the delivery sale was made;
- (b) The brand or brands of the tobacco products that were sold in such delivery sale; and
- (c) The quantity of tobacco products that were sold in such delivery sale.

(3) Any tobacco products sold or attempted to be sold in a delivery sale that does not meet the requirements of this chapter shall be forfeited to the state of Idaho.

Indiana –

TITLE 24. TRADE REGULATIONS; CONSUMER SALES AND CREDIT

Chapter 5. Delivery Sales of Tobacco Products

"Delivery sale"

Sec. 1. As used in this chapter, "delivery sale" means a transaction for the purchase of tobacco products in which an offer to purchase tobacco products is made:

- (1) electronically using a computer network (as defined in IC 35-43-2-3);
- (2) by mail; or
- (3) by telephone;

and acceptance of the offer results in delivery of the tobacco products to a named individual at a designated address.

Requirements

Sec. 4. A merchant may not mail or ship tobacco products as part of a delivery sale unless, before mailing or shipping the tobacco products, the merchant:

(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

- (A) providing the prospective customer's address and date of birth;
- (B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and (ii) purchasing tobacco products by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

- (C) confirming that the tobacco product order was placed by the prospective customer;
 - (D) providing a warning under 15 U.S.C. 1333(a)(1); and
 - (E) stating the sale of tobacco products by delivery sale is a taxable event for purposes of IC 6-7-1 and IC 6-7-2;
- (2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and
- (3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

IC 24-3-5-5

Mailing or shipping tobacco products requirements; penalties

Sec. 5. (a) A merchant who mails or ships tobacco products as part of a delivery sale shall:

- (1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:
- (A) sign to accept delivery of the tobacco products; and
 - (B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;
- (2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and (3) include the following statement in bold type or capital letters on an invoice or shipping document:
- INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF TOBACCO PRODUCTS TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.**

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

- (1) delivers tobacco products as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or
- (2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships tobacco products as part of a delivery sale without using a third party service as required by subsection (a)(1):

- (1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:
- (A) sign to accept delivery of the tobacco products; and
 - (B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the

customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

(A) delivers the tobacco products without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision

IC 24-3-5-6

Filing with the department of state revenue; compliance

Sec. 6. (a) A merchant shall, before mailing or shipping tobacco products as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships tobacco products as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month, in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the tobacco products were delivered.

(2) The brand name of the tobacco products that were delivered to the customer.

(3) The quantity of tobacco products that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

IC 24-3-5-7

Pay taxes or provide notice; penalties

Sec. 7. (a) A merchant who delivers tobacco products to a customer as part of a delivery sale shall:

(1) collect and pay all applicable taxes under IC 6-7-1 and IC 6-7-2; or

(2) place a legible and conspicuous notice on the outside of the container in which the tobacco products are shipped.

The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these tobacco products have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these tobacco products, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these tobacco products."

(b) For a violation of this section the alcohol and tobacco commission may impose, in addition to any other remedies, civil penalties as follows:

(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

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Civil penalties

Sec. 8. The alcohol and tobacco commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells tobacco products by delivery sale to a person less than eighteen (18) years of age.

The alcohol and tobacco commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC

Maine –

§1555-C. Delivery sales of tobacco products

The following requirements apply to delivery sales of tobacco products within the State. [2003, c. 444, §2 (new).]

1. License required. It is unlawful for any person to accept an order for a delivery sale of tobacco products to a consumer in the State unless that person is licensed under this chapter as a tobacco retailer. The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation. [2003, c. 444, §2 (new).]

- B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 2, 3 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged. [2003, c. 444, §2 (new).]

2. Requirements for accepting order for delivery sale. The following provisions apply to acceptance of an order for a delivery sale of tobacco products.

A. When accepting the first order for a delivery sale from a consumer, the tobacco retailer shall obtain the following information from the person placing the order:

(1) A copy of a valid government-issued document that provides the person's name, current address, photograph and date of birth; and

(2) An original written statement signed by the person documenting that the person:

(a) Is of legal age to purchase tobacco products in the State;

(b) Has made a choice whether to receive mailings from a tobacco retailer;

(c) Understands that providing false information may constitute a violation of law; and

(d) Understands that it is a violation of law to purchase tobacco products for subsequent resale or for delivery to persons who are under the legal age to purchase tobacco products.

C. If an order is made as a result of advertisement over the Internet, the tobacco retailer shall request the e-mail address of the purchaser and shall receive payment by credit card or check prior to shipping

D. Prior to shipping the tobacco products, the tobacco retailer shall verify the information provided under paragraph A against a commercially available database derived solely from government records consisting of age and identity information, including date of birth.

D. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

E. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1, 3 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

2. Requirements for shipping a delivery sale. The following provisions apply to a tobacco retailer shipping tobacco products pursuant to a delivery sale.

- A. Prior to shipping, the tobacco retailer shall provide to the delivery service the age of the purchaser as provided under subsection 2, paragraph A and verified under subsection 2, paragraph C.
- B. The tobacco retailer shall clearly mark the outside of the package of tobacco products to be shipped to indicate that the contents are tobacco products and to show the name and State of Maine tobacco license number of the tobacco retailer.
- C. The tobacco retailer shall utilize a delivery service that imposes the following requirements:
 - 1. (1) The purchaser must be the addressee;
 - 2. (2) The addressee must be of legal age to purchase tobacco products and must sign for the package; and
 - 3. (3) If the addressee is under 27 years of age, the addressee must show valid government-issued identification that contains a photograph of the addressee and indicates that the addressee is of legal age to purchase tobacco products.
- D. The delivery instructions must clearly indicate the requirements of this subsection and must declare that state law requires compliance with the requirements.
- E. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.
- F. F. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1, 2 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

3. Reporting requirements. No later than the 10th day of each calendar month, a tobacco retailer that has made a delivery sale of tobacco products or shipped or delivered tobacco products into the State in a delivery sale in the previous calendar month shall file with the Department of Administrative and Financial Services, Bureau of Revenue Services a memorandum or a copy of each invoice that provides for each delivery sale the name and address of the purchaser and the brand or brands and quantity of tobacco products sold. A tobacco retailer that meets the requirements of 15 United States Code, Section 375 et seq. (1955) satisfies the requirements of this subsection. The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1, 2 or 3 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

5. Unlawful ordering. It is unlawful to submit ordering information for tobacco products by delivery sale under subsection 2, paragraph A in the name of another person. A person who violates this subsection commits a civil violation for which a fine of not more than \$10,000 may be adjudged.

6. Rulemaking. The department and the Department of Administrative and Financial Services shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

7. Forfeiture. Any tobacco product sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A. [2003, c. 444, §2 (new).]

8. Enforcement. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

Montana –

Section 5. Tobacco product sales reporting requirements. (1) Prior to delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a statement with the department. The statement must set forth:

(a) the name, trade name, and address of the principal place of business of the seller, any other place of business of the seller, and the seller's domicile state; and

(b) all owners or controlling persons and every partner, officer, director, or person occupying a similar status or performing similar functions and their home addresses.

(2) By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products into this state or contracted with another party for delivery service in connection with a sale of tobacco products into this state made during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department. The memorandum or sales invoice must provide, for each delivery sale made during the previous calendar month:

- (a) the name and address of the consumer to whom the sale was made;
- (b) the brand or brands of the tobacco products that were sold; and
- (c) the quantity of tobacco products that were sold.

(3) A person that satisfies the requirements of 15 U.S.C. 376 is considered to meet the requirements of this section.

(4) The department may seek an injunction to restrain the actual or threatened violation of this section and to compel the seller to comply with this section.

Section 7. Section 16-10-306, MCA, is amended to read:

"16-10-306. Cigarette and tobacco product labels -- federal requirements -- penalty. (1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

- (a) tax, trademark, or copyright law; or
- (b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

- (a) the package is marked as manufactured for use outside of the United States;
- (b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or
- (c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the department, any agent of the department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action under the civil enforcement provisions of Title 16, chapter 10, part 4.

(b) A violation of this section is criminally punishable by a fine in an amount not to exceed \$10,000.

(5) For the purposes of this section, the term "cigarette" has the meaning defined in 16-11-102 and "tobacco product" has the meaning defined in 16-11-

201 means all products containing tobacco for human consumption or use except cigarettes."

Section 10. Section 16-11-104, MCA, is amended to read:

"16-11-104. Carriers to report cigarette shipments -- penalties. (1) Every Except as provided in subsection (3), every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state or country any cigarettes tobacco products shall, if requested by the department, report in writing such the shipments or deliveries to the department on forms furnished by the department, The reports must include giving the date, the person to whom the same was tobacco products were consigned and delivered, the quantity as shown by the bill of lading, and such other information as that the department may require. A carrier shall retain for 30 36 months all pertinent and relevant records necessary for the preparation of this report and any other information that the department may require.

(2) A common carrier who violates the provisions of subsection (1) is subject to civil penalties as determined by the department. For a first offense, a natural person shall be fined an amount not to exceed \$50,000, and any other entity shall be fined an amount not to exceed \$75,000. For a second or subsequent offense, a natural person shall be fined an amount not to exceed \$100,000, and any other entity shall be fined an amount not to exceed \$150,000.

(3) A common carrier hauling, transporting, or shipping tobacco products to a licensed wholesaler or retailer in Montana shall submit the reports described in subsection (1) to the department upon request of the department."

Section 13. Section 16-11-118, MCA, is amended to read:

"16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, and retailers. (1) All wholesalers and subjobbers shall keep for 5 3 years all:

(a) invoices of cigarettes tobacco products purchased, and imported, or sold;

(b) all receipts issued and insignia purchased,; and

(c) an accurate record of all sales of cigarettes tobacco products, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination.

(2) All retailers and tobacco product vendors shall keep for 3 years all invoices of tobacco products purchased and received, showing the date of each purchase, the brand purchased, the quantity of each brand purchased, and an accurate record of the total sales of tobacco products.

(3) A wholesaler, retailer, subjobber, or tobacco product vendor shall permit the department and the department of justice and their assistants, authorized agents, or representatives to examine all cigarettes tobacco products, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine compliance with this chapter.

(4) A person that violates the provisions of subsections (1) through (3) is subject to civil penalties as determined by the department of not less than \$1,000 or more than \$10,000."

Section 17. Section 16-11-131, MCA, is amended to read:

"16-11-131. Transporting cigarettes tobacco products without insignia compliance a misdemeanor -- invoices and delivery tickets required -- stop and inspection authorized. (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes tobacco products that do not bear the insignia (stamps) required by this part comply with the requirements of this chapter.

(2) (a) When transporting unstamped cigarettes or roll-your-own tobacco, a person shall possess invoices or delivery tickets for the cigarettes or roll-your-own tobacco that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes or roll-your-own tobacco being transported.

(b) The cigarettes or roll-your-own tobacco transported are contraband and are subject to seizure, forfeiture, destruction, and sale as provided in 16-11-141, 16-11-147, 16-11-158, [section 6], 16-11-509, and this section if:

- (i) there are no invoices or delivery tickets;
- (ii) the name or address of the consignee or purchaser is falsified; or
- (iii) the consignee or purchaser is not authorized to possess unstamped cigarettes or roll-your-own tobacco; or
- (iv) the cigarettes or roll-your-own tobacco are intended for sale in this state and are not on the directory.

(3) Transportation of cigarettes or roll-your-own tobacco from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes or cigarettes or roll-your-own tobacco that are not on the directory possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes tobacco products in violation of this section chapter, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) When a person engaged in the business of selling tobacco products ships or causes to be shipped any tobacco products to any person in this state that are not in the tobacco product manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the words "tobacco products".

(5)(6) A person violating the provisions of this section is guilty of a misdemeanor and is subject to the penalties in 16-11-148."

Section 32. Section 16-11-507, MCA, is amended to read:

"16-11-507. Reporting of information. (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney

general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 or 16-11-203 and that the wholesaler sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part. The department and attorney general shall share the information received under this part with each other and may share the information with other federal, state, or local agencies only for the purposes of enforcement of 16-11-403, this part, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

- (a) the amount of money in the fund, exclusive of interest;
- (b) the amount and dates of each deposit to the fund; and
- (c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with this part. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)"

Oregon –

TOBACCO DELIVERY SALES: REQUIREMENTS AND RESTRICTIONS

SECTION 72. Sections 73 to 82 of this 2003 Act are added to and made a part of ORS chapter 323.

SECTION 73. As used in sections 73 to 82 of this 2003 Act:

(1) 'Consumer' means an individual who is not a licensed distributor of tobacco or a licensed tobacco retailer.

(2) 'Delivery sale':

(a) Means a sale of tobacco to a consumer in this state in which:

(A) The purchaser submits the order for the sale by means of a telephone or other method of voice transmission, a delivery service or the Internet or other on-line service; or

(B) The tobacco is delivered by use of a delivery service.

(b) Includes any sale of tobacco described in paragraph (a) of this subsection, regardless of whether the seller is located within Indian country or is otherwise within or outside of this state.

(c) Does not include any sale to a licensed distributor or licensed tobacco retailer in this state.

(3) 'Delivery service' means any person that is engaged in the commercial delivery of letters, packages or other containers.

(4) 'Indian country' has the meaning given that term in 18 U.S.C. 1151.

(5) 'Legal minimum purchase age' means the minimum age at which an individual may purchase tobacco in this state.

(6) 'Mail' means the use of the United States Postal Service for delivery of letters, packages or other containers.

(7) 'Person accepting a purchase order for a delivery sale means a person who fills a tobacco purchase order given by a consumer and processes the order for mail, shipping or other delivery, or who contracts with another party to provide delivery service.

(8) 'Purchase order' means a written or electronic document authorizing a seller to provide goods.

(9) 'Sale of tobacco to a consumer' means any sale of tobacco to an individual in this state, unless the individual is licensed as a distributor or retailer of tobacco by the Department of Revenue.

(10) 'Shipping container' means a container in which tobacco is packaged in connection with a delivery sale.

(11) '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.

(12) 'Tobacco' means cigarettes, as defined in ORS 323.010, or tobacco products, as defined in ORS 323.500.

SECTION 74. A person may not make a delivery sale of tobacco to a person who is under the legal minimum purchase age.

SECTION 75. A person accepting a purchase order for a delivery sale, prior to the first mailing, shipment or other delivery of tobacco to a consumer, shall comply with:

(1) The age verification requirements set forth in section 76 of this 2003 Act;

(2) The distributor license requirements set forth in section 76a of this 2003 Act;

(3) The disclosure requirements set forth in section 77 of this 2003 Act;

(4) The mailing or shipping requirements set forth in section 78 of this 2003 Act;

(5) The reporting requirements set forth in section 79 of this 2003 Act; and

(6) All other laws of this state applicable to sales of tobacco that occur entirely within Oregon, including but not limited to ORS 293.535, 323.005 to 323.482 and 323.500 to 323.640.

SECTION 76. A person may not mail or ship tobacco in connection with a delivery sale order unless the person, before mailing or shipping the tobacco, does all of the following:

(1) Obtains a certification from the prospective consumer that includes a written statement signed by the prospective consumer that:

(a) Certifies the prospective consumer's address and that the prospective consumer is at least the legal minimum purchase age; and

(b) Confirms that the prospective consumer understands that signing another person's name to the certification is illegal, that the sale of tobacco to individuals under the legal minimum purchase age is illegal and that the purchase of tobacco by individuals under the legal minimum purchase age is illegal under ORS 167.401;

(2) Verifies the information contained in the certification against a commercially available database of government-collected information showing the age or date of birth of the individual placing the order and obtains a photocopy or other image of a valid, government-issued identification stating the age or date of birth of the individual placing the order;

(3) Provides a notice to the prospective consumer, via electronic mail or other means, that meets the requirements of section 77 of this 2003 Act; and

(4) In the case of an order for tobacco placed through an Internet website, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the name of the prospective purchaser or by a personal check issued by the prospective purchaser.

SECTION 76a. (1) Each person seeking to engage in delivery sales of tobacco to purchasers in this state shall apply for and obtain:

(a) A cigarette distributor's license under ORS 323.105, if the person intends to engage in cigarette delivery sales; and

(b) A tobacco products distributor's license under ORS 323.520, if the person intends to engage in tobacco products delivery sales.

(2) A person may not engage in delivery sales in this state without first obtaining each applicable distributor's license under subsection (1) of this section.

SECTION 76b. Notwithstanding section 76a of this 2003 Act, a person that engaged in delivery sales within three months preceding the effective date of this 2003 Act may continue to engage in delivery sales for 60 days following the effective date of this 2003 Act without meeting the licensing requirements described under section 76a of this 2003 Act.

SECTION 77. The notice required under section 76 (3) of this 2003 Act shall include:

(1) A prominent and clearly legible statement that tobacco sales to persons under the legal minimum purchase age are illegal;

(2) A prominent and clearly legible statement that sales of tobacco are restricted to those individuals who provide verifiable proof of age in accordance with section 76 of this 2003 Act; and

(3) A prominent and clearly legible statement that sales of cigarettes are subject to tax under ORS 323.005 to 323.482 and that sales of other tobacco products

are subject to tax under ORS 323.500 to 323.640, and an explanation of how the applicable tax has been paid or is to be paid.

SECTION 78. (1) Each person accepting a purchase order for a delivery sale, in connection with the delivery sale order, shall:

(a) Include as part of the shipping documents a clear and conspicuous statement providing as follows: 'TOBACCO: OREGON LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES'; and

(b) Use a method of mail, shipping or other delivery of tobacco described in this paragraph as follows:

(A) Unless subparagraph (B) of this paragraph applies, use a method of shipping or other delivery that obligates the delivery service to require:

(i) The consumer placing the delivery sale order, or another individual of at least the legal minimum purchase age who resides at the residence of the consumer, to sign to accept delivery of the shipping container; and (ii) 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 the individual who signs to accept delivery:

(I) Is either the consumer or another individual residing at the residence of the consumer; and

(II) Is at least the legal minimum purchase age, except that proof of age is required only if the individual appears to be under 27 years of age.

(B) If the person is fulfilling a purchase order for a delivery sale by mailing tobacco, to the extent permitted by the United States Postal Service, use a method of mailing that requires the postal service to require:

(i) The consumer placing the delivery sale order, or another individual of at least the legal minimum purchase age residing at the residence of the consumer, to sign to accept delivery of the shipping container; and

(ii) 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 the individual who signs to accept delivery:

(I) Is either the consumer or another individual residing at the residence of the consumer; and

(II) Is at least the legal minimum purchase age, except that proof of age is required only if the individual appears to be under 27 years of age.

(2) If the person accepting a purchase order for a delivery sale delivers the tobacco without using a delivery service or the United States Postal Service, the person shall comply with all requirements of sections 73 to 82 of this 2003 Act that apply to a delivery service and shall be in violation of this section if the person fails to comply with all requirements applicable to a delivery service.

SECTION 79. (1) Prior to delivering, mailing or shipping tobacco in connection with a delivery sale, a person who accepts purchase orders for delivery sales

shall file a statement with the Department of Revenue. The statement shall set forth the name, trade name and address of the principal place of business of the seller and any other place of business of the seller.

(2) Not later than the 10th day of each calendar month, each person that has made a delivery sale or delivered, mailed or shipped tobacco or contracted with another party for delivery service in connection with a delivery sale made during the previous calendar month shall file a memorandum of sale or a copy of the delivery sales invoice with the Department of Revenue. The memorandum or delivery sales invoice shall provide, for each delivery sale made during the previous calendar month:

(a) The name and address of the consumer to whom the delivery sale was made;

(b) The brand or brands of the tobacco that were sold in the delivery sale; and

(c) The quantity of tobacco that was sold in the delivery sale.

(3) A person that satisfies the requirements of 15 U.S.C. 376 is deemed to meet the requirements of this section.

SECTION 80. (1) A person that accepts a purchase order for a delivery sale of cigarettes may not make a delivery sale of cigarettes to a person in this state if the packages in which the cigarettes are contained do not bear the proper tax stamps required to be affixed to the packages of cigarettes under ORS 323.005 to 323.482.

(2) A person that accepts a purchase order for a delivery sale of tobacco products may not make a delivery sale of tobacco products in this state if the sales invoice for the delivery sale does not comply with section 39 of this 2003 Act.

SECTION 81. (1) Except as otherwise provided in this section:

(a) The first time a person violates a provision of sections 73 to 82 of this 2003 Act, the person shall be subject to a penalty of \$1,000 or five times the retail value of the tobacco involved in the violation, whichever is greater; and

(b) In the case of a second or subsequent violation of sections 73 to 82 of this 2003 Act, the person shall be subject to a penalty of \$5,000 or five times the retail value of the tobacco involved in the violation, whichever is greater.

(2) A person who knowingly violates a provision of sections 73 to 82 of this 2003 Act or who knowingly submits a false certification under section 76 of this 2003 Act under the name of another person:

(a) Shall be subject to a penalty of \$10,000 or five times the retail value of the tobacco involved, whichever is greater; or

(b) May be imprisoned for a period of not more than five years.

(3) A person who accepts a purchase order for a delivery sale and, in connection with the sale, fails to pay a tax due under ORS 323.005 to 323.482 or 323.500 to 323.640 shall pay a penalty of five times the amount of tax due and not timely paid under ORS 323.005 to 323.482 or 323.500 to 323.640.

(4) The penalties prescribed under this section are in addition to and not in lieu of any other penalty applicable under the laws of this state.

(5) Any tobacco sold or attempted to be sold in a delivery sale that does not meet the requirements of sections 73 to 82 of this 2003 Act may be immediately seized and subject to forfeiture. Tobacco seized and forfeited under this subsection shall be destroyed.

(6) Any fixtures, equipment, materials or other personal property on the premises of a person who violates sections 73 to 82 of this 2003 Act may be immediately seized and subject to forfeiture. Property seized and forfeited under this subsection may be sold or destroyed.

Washington –

AN ACT Relating to unlawful shipment of tobacco products to state consumers; adding a new chapter to Title 70 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Person" means an individual, partnership, franchise holder, association, corporation, state, city, county, or a subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(2) "Tobacco products" means one or more cigarettes or cigars, bidis, chewing tobacco, powdered tobacco, or any other tobacco products.

(3) "Tobacco business" means a sole proprietorship, corporation, limited liability company, partnership, or other enterprise in which the primary activity is the sale, manufacture, or promotion of tobacco, tobacco products, and accessories, either at wholesale or retail, and in which the sale, manufacture, or promotion of other products is merely incidental.

Sec. 2. It is unlawful for a person in the business of manufacturing, distributing, or selling tobacco products, including those selling tobacco products over the internet or through mail-order sales, to deliver or cause to be delivered any tobacco products to a person in this state except in a face-to-face transaction at the time of purchase, unless the tobacco products being delivered are in a container or in wrapping plainly and visibly marked on the exterior with the word "tobacco products" and the delivery is made to one of the following persons for purposes other than personal consumption by the recipient:

(1) A person who holds a license under RCW 82.24.520 or 82.24.530;

(2) An export warehouse proprietor under chapter 52 of the internal revenue code or an operator of a customs bonded warehouse; or

(3) A person who is an officer, employee, or agent of the United States government, this state, or a department, agency, instrumentality, or political subdivision of the United States or this state, when the person is acting in accordance with his or her official duties.

Sec. 3. It is unlawful for a person in the business of manufacturing, distributing, or selling tobacco products, including those selling tobacco products over the

internet or through mail-order sales, to deliver or cause to be delivered, any tobacco products to a person in this state under eighteen years of age or to any home or residence in this state.

Sec. 4. It is unlawful for a person within the jurisdiction of this state's laws, including all common carriers or commercial delivery services, to knowingly transport tobacco products on behalf of another person for commercial or business purposes to:

- (1) A person in this state under eighteen years of age;
- (2) A home or residence in this state; or
- (3) A person in this state other than a person described in section 2 of this act. It is unlawful for a common or contract carrier to knowingly transport cigarettes to a person in this state reasonably believed by the carrier to be other than a person described in section 2 of this act.

Sec. 5. (1) The department of licensing shall make public, by posting on the internet and by other means, a list of all persons currently licensed or registered by the state as agents, dealers, or distributors, as described in section 2 of this act.

(2) The department of licensing shall provide to the United States postal service, common carriers, commercial delivery services operating in the state, and any other persons that deliver tobacco products into or in the state a copy of this chapter and a list of persons making or offering tobacco product sales or deliveries in or into the state in violation of this chapter. Ten days before putting a person on this list, the department shall send notice to that person, by letter or e-mail, that the interstate seller is being placed on the department's list with that notice including the text of this chapter. This list shall be kept confidential by all parties that receive it and shall be used only to comply with this chapter.

(3) It is unlawful for a person within the jurisdiction of this state's laws that receives a list provided by the department of licensing, under this section, to make any deliveries in the state on behalf of a person who is identified by that list unless:

(a) The delivery service or other person making the delivery knows or affirmatively believes in good faith that the package does not contain tobacco products; or

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

(4) A delivery service or other person receiving a list from the department of licensing under this section:

(a) Has no obligation to inspect any package to determine whether or not it contains tobacco products, determine whether the list provided by a state is complete, accurate, or up to date, or determine whether a person ordering a delivery is in compliance with this chapter.

(b) Is not subject to a penalty for:

(i) Not making any specific delivery on behalf of a person on the list provided under this section;

(ii) Establishing and following a policy of not making deliveries in the state on behalf of a person on the list provided under this section, not making deliveries of

tobacco products in the state, or not making deliveries of tobacco products in the state for a person, or for a person not in the business of manufacturing, distributing, or selling tobacco products.

(5) A delivery service or other person receiving a list from the department of licensing under this section may collect an 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 chapter.

(6) A delivery service or other person receiving a list from the department of licensing under this section is not subject to criminal penalties for a violation of this chapter 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 chapter; or

(b) Profiting from the violation of this chapter by another person.

(7) No employee of a delivery service or of another person making deliveries on behalf of a delivery seller is subject to criminal penalties or civil fines for violating this chapter 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 chapter.

Sec. 6. This chapter does not apply to tobacco product sales by an Indian tribe, as defined by 25 U.S.C. Sec. 450b(e), or by members of the Indian tribe, to a consumer in this state if the consumer is a verified adult member of the Indian tribe, and the buyer and seller are located in Indian country, as defined by 18 U.S.C. Sec. 37 1151, that is owned or occupied by the Indian tribe.

Sec. 7. (1) A person who violates this chapter is subject to a civil fine of not less than five hundred dollars and not more than five thousand dollars or five times the value of the tobacco products at issue, whichever is highest, for each violation.

(2) A person engaged in the business of manufacturing or selling tobacco products who violates section 2 or 3 of this act must reimburse the state and its political subdivisions for all unpaid taxes of the state or its political subdivisions relating to the tobacco products at issue, plus interest, and for any other damages.

(3) A person who violates this chapter must pay, in addition to any other damages or penalties, an amount equal to any profits, gain, gross receipts, or other benefits from the violation.

(4) Except as provided in section 5 of this act, a person who knowingly violates section 2, 3, or 4 of this act shall be fined up to five thousand dollars or ten times the value of the tobacco products at issue, whichever is highest, or imprisoned for up to one year, or both for a first violation, and fined not less than ten thousand dollars or imprisoned for up to five years, or both for a second or subsequent violation.

Sec. 8. An amount equal to fifty percent of all criminal and civil penalties recovered by the state under section 7 of this act shall be distributed to the state offices or agencies responsible for enforcing this chapter or making related

investigations, in rough proportion to their participation in the enforcement of this chapter and related investigations, solely to increase and supplement, but not to replace, existing resources supporting state efforts to enforce this chapter 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.

Sec. 9. In an action brought to enforce this 23 chapter, the state may recover the costs of the investigation, costs of 24 the action, and reasonable attorneys' fees, plus interest. All 25 recovered costs and fees, plus interest, shall be directed to and 26 retained by the state agencies and offices that incurred the costs and fees.

Sec. 10. Tobacco products sold or delivered or attempted to be sold or delivered in this state in a manner that does not meet the requirements of this chapter shall be forfeited to the state.

Sec. 11. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other, and to any other damages, remedies, penalties, or relief available under this chapter or other laws of this state.

Sec. 12. (1) The attorney general or his or her designee may bring an action in the appropriate court in the state to enforce this chapter, seek fines, penalties, and related damages and equitable relief, or to prevent or restrain violations of this chapter by a person, or any person controlling such person.

(2) Upon providing at least fifteen days' 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 or to prevent or restrain violations of this chapter by any person, or any person controlling such person.

(3) Upon providing at least fifteen days' notice to the attorney general, a person who holds a valid permit under 26 U.S.C. Sec. 5712, 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 chapter by a person, or any person controlling such person.

(4) Upon receiving notice from a person of his or her intent to bring an action under this chapter 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 fifteen days of receiving the notice.

(5) The attorney general shall make public, by posting on the internet and other means, a list of all actions taken to enforce this chapter and a list of all persons found to have violated this chapter, including those persons' names, addresses, and any other information the attorney general believes may be useful to other jurisdictions enforcing laws prohibiting or restricting tobacco product sales for personal consumption in which the seller and buyer do not initiate and complete the entire transaction when in each other's physical presence.

Sec. 13. Sections 1 through 12 of this act constitute a new chapter in Title 70 RCW.