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Bills Included				
SB 43				

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State of South Dakota

EIGHTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2007

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HOUSE COMMERCE COMMITTEE ENGROSSED NO. SB 43 - 02/28/2007

Introduced by: The Committee on Commerce at the request of the Department of Revenue and Regulation

FOR AN ACT ENTITLED, An Act to provide for the registration of tobacco retailers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 10-50-9 be amended to read as follows:

10-50-9. Each person, except a retailer, engaging in the business of selling cigarettes or tobacco products in this state, including any distributor or wholesaler, shall secure a license therefore from the secretary of revenue and regulation. A separate application and license is required for each wholesale outlet ~~when~~ <u>if</u> a person owns or controls more than one place of business dealing in cigarettes or tobacco products. <u>Each person selling cigarettes or tobacco products at retail shall register with the Department of Revenue and Regulation. A separate registration is required for each retail outlet operated within the state. No fee may be charged for this registration.</u>

Any person, except a retailer, who sells, offers for sale, or possesses with intent to sell, any cigarettes or tobacco products, without a license <u>or registration</u> commits a petty offense.

Section 2. That § 10-50-13 be amended to read as follows:

10-50-13. Any license granted under this chapter may be transferred to a new location or to

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Deletions from existing statutes are indicated by ~~overstrikes~~.

another person. ~~Where~~ If the transfer is to another person, the licensee ~~must~~ shall show in writing, under oath, that ~~he~~ the licensee has made a bulk sale of the business operated under ~~such~~ the license~~, and the~~. The transferee ~~must~~ shall make an application exactly as if an original applicant, setting forth therein that ~~he~~ the transferee is the bulk sale purchaser of the business operated under ~~such~~ the license and requesting that ~~such~~ the license be transferred to him or her. If the transfer is to a new location, the licensee ~~must~~ shall make application showing all the relevant facts as to ~~such~~ the new location~~, which~~. The application shall take the same course and be acted upon as if an original application.~~ In case of any transfer of any license affected by this chapter, a fee of two dollars and fifty cents shall be required to continue the unexpired portion of such license.~~

Section 3. That § 10-50-15 be amended to read as follows:

10-50-15. The secretary of revenue and regulation may revoke the license of any distributor or wholesaler or the registration of a dealer for failure to comply with any of the provisions of this chapter. Any person aggrieved by ~~such~~ the revocation may apply to the secretary for a hearing as provided in § 10-50-46 and may further appeal to the court as provided in § 10-50-49.

Section 4. That § 10-50-32 be amended to read as follows:

10-50-32. No person, other than a ~~person licensed pursuant to § 10-50-9~~ licensed distributor, may sell, offer for sale, display for sale, or possess with intent to sell, advertise for sale, ship or cause to be shipped, or possess with intent to deliver to another person, any cigarettes which do not bear stamps or an imprint impressed by a suitable metering machine approved by the secretary as provided by this chapter, evidencing the payment of the tax imposed by this chapter.

A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class 6 felony.

Section 5. That § 10-50-41 be amended to read as follows:

10-50-41. The secretary of revenue and regulation may examine the books, papers, and records of any distributor, wholesaler, or dealer in this state, for the purpose of determining whether the tax imposed by this chapter has been fully paid, and may investigate and examine the stock of cigarettes or tobacco products in or upon any premises where ~~such~~ the cigarettes or tobacco products are possessed, stored, or sold, for the purpose of determining whether the provisions of this chapter are being obeyed. The secretary may make ~~such~~ the inspections and examinations at any time during ordinary business hours, and may inspect at ~~such~~ the times the premises and all desks, safes, vaults, and other fixtures and furniture contained in or upon ~~such~~ the premises for the purpose of ascertaining whether cigarettes or tobacco products are held or possessed in violation of this chapter. Each dealer shall keep documents establishing that the cigarettes and tobacco products in the dealer's inventory were purchased from a distributor or wholesaler licensed by the State of South Dakota. The documents shall be kept for at least three months. If the documents are not stored at the dealer's registered location, the documents shall be made available in physical or electronic form to the secretary within five business days of the receipt of the request from the secretary.

Section 6. That § 10-50-62 be amended to read as follows:

10-50-62. Tobacco products may be sold by licensed distributors and licensed wholesalers only to dealers. ~~Dealers who buy or receive tobacco products from persons other than licensed distributors or licensed wholesalers must pay the tax imposed in § 10-50-61. However, the dealer may elect to report and remit the tax on the cost price of the tobacco products to the dealer rather than on the wholesale purchase price.~~ Tobacco dealers may purchase tobacco products only from wholesalers and distributors licensed by the State of South Dakota. A violation of this section is a Class 2 misdemeanor.

Section 7. That § 10-50-93 be amended to read as follows:

10-50-93. No person may make a delivery sale of cigarettes to any ~~individual~~ person who is under the legal minimum purchase age in the state.

Any person accepting a purchase order for a delivery sale shall comply with:

(1) The age verification requirements provided in § 10-50-94;

(2) The disclosure requirements provided in § 10-50-95;

(3) The shipping requirements provided in § 10-50-96;

(4) The registration and reporting requirements provided in § 10-50-97; ~~and~~

(5) All other statutes of the state generally applicable to sales of cigarettes that occur entirely within the state, and any law imposing an excise tax, sales tax, license, revenue-stamping requirement, and escrow payment obligation as provided in chapter 10-50B; and

(6) The registration requirements in § 10-50-9.

Section 8. That § 10-50-16 be amended to read as follows:

10-50-16. Any person who sells any cigarettes or tobacco products after such person's license or registration has been revoked commits a petty offense, and all cigarettes or tobacco products in such person's possession shall be seized and forfeited to the state pursuant to chapter 23A-37.