AN ACT

ENTITLED, An Act to regulate the sale and shipment of cigarettes.

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

Section 1. That § 10-50-1 be amended by adding thereto NEW SUBDIVISIONS to read as follows:

"Adult," any person who is at least the legal minimum purchase age;

"Consumer," any individual who is not a retailer or a licensed distributor or wholesaler pursuant to § 10-50-9;

"Delivery sale," any sale of cigarettes to a consumer in the state where:

(a) The purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service; or

(b) The cigarettes are delivered by use of the mail or delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state;

"Delivery service," any person engaged in the commercial delivery of letters, packages, or other containers;

"Legal minimum purchase age," the minimum age at which an individual may legally purchase cigarettes in this state pursuant to § 34-46-2;

"Mail," or "mailing," the shipment of cigarettes through the United States Postal Office;

"Shipping container," any container in which cigarettes are shipped in connection with a delivery sale;

"Shipping document," any bill of lading, airbill, or any other document used to provide evidence of the undertaking by a delivery service to deliver a letter, package, or other container.

Section 2. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

No person may make a delivery sale of cigarettes to any individual 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 section 3 of this Act;

(2) The disclosure requirements provided in section 4 of this Act;

(3) The shipping requirements provided in section 5 of this Act;

(4) The registration and reporting requirements provided in section 6 of this Act; 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.

Section 3. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

No person may mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to the consumer:

(1) The person obtains from the consumer a statement signed by the consumer in writing that certifies the consumer's address and that the consumer is at least eighteen years of age. The statement shall also confirm that the consumer understands that signing another person's name to the certification is illegal, the sale of cigarettes to any individual under the legal minimum purchase age is illegal, the purchase of cigarettes by any individual under the legal minimum purchase age is illegal, and that the consumer wants to receive a mailing from a tobacco company;

(2) The person makes a good faith effort to verify the information contained in the

certification provided by the consumer pursuant to subdivision (1) against a commercially available database, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

(3) The person provides to the consumer, via e-mail or other means, a notice that meets the requirements of section 4 of this Act; and

(4) If an order for cigarettes is made pursuant to an advertisement on the internet or other advertising medium, the person receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in the consumer's name, or by check.

Any person accepting a purchase order for a delivery sale may request that the prospective consumer provide an e-mail address.

Section 4. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

The notice required under section 3 of this Act shall include a prominent and clearly legible statement that:

(1) Cigarette sales to consumers below the legal minimum purchase age are illegal;

(2) Consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) as of January 1, 2005, rotated on a quarterly basis;

(3) Sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section 3 of this Act; and

(4) Cigarette sales are subject to tax under § 10-50-3, and an explanation of how the tax has been or will be paid with respect to the delivery sale.

Section 5. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as

follows:

Any person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall:

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

(2) Use a method of mailing, shipping, or delivery that obligates the delivery service to require 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 provide 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. The person accepting delivery shall be the addressee or another adult of legal minimum purchase age residing at the consumer's address.

If the person accepting a purchase order for a delivery sale delivers the cigarettes without using a delivery service, the person shall comply with each requirement of sections 2 to 7, inclusive, of this Act applicable to a delivery service. The person is in violation of the provisions of sections 2 to 7, inclusive, of this Act if the person fails to comply with any such requirement.

Section 6. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

Prior to making a delivery sale or mailing, shipping, or otherwise delivering cigarettes in connection with any delivery sale, each person shall file with the department a statement providing the person's name, trade name, and the address of the person's principal place of business and any other place of business.

Not later than the tenth day of each calendar month, each person that has made a delivery sale

or mailed, shipped, or otherwise delivered cigarettes in connection with any delivery sale during the previous calendar month shall file with the department a memorandum or a copy of the invoice that provides for each delivery sale:

(1) The name and address of the consumer;

(2) The brand or brands of the cigarettes that were sold; and

(3) The quantity of cigarettes that were sold.

Section 7. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

In addition to any other provision of law, the secretary may assess, for a first violation of any provision of sections 2 to 7, inclusive, of this Act, a civil penalty of one thousand dollars or five times the retail value of the cigarettes involved, whichever is greater. A subsequent violation is punishable by a civil penalty of five thousand dollars or five times the retail value of the cigarettes involved, whichever is greater.

Any person who knowingly violates any provision pursuant to sections 2 to 7, inclusive, of this Act, or who knowingly and falsely submits a certification in another person's name, shall for each offense be fined ten thousand dollars or five times the retail value of the cigarettes involved, whichever is greater.

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 five times the retail value of the cigarettes involved.

Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the requirements of sections 2 to 7, inclusive, of this Act shall be forfeited to the state and destroyed. 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 sections 2 to 7, inclusive, of this

Act, shall be forfeited to the state.

An Act to regulate the sale and shipment of cigarettes.

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I certify that the attached Act originated in the

SENATE as Bill No. 107

_____
Secretary of the Senate

_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 107
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State