2021 South Dakota Legislature

House Bill 1098

ENROLLED

AN ACT

ENTITLED An Act to authorize the shipment of cigars to persons in this state under certain conditions and to provide a penalty.

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

Section 1. That a NEW SECTION be added:

10-50C-1. Definitions.

Terms used in this chapter mean:

(1) "Cigar", any individual roll of tobacco that has a wrapper or cover consisting only of tobacco;

(2) "Cigar shipper," any person who has obtained a cigar shipper license pursuant to this chapter;

(3) "Common carrier," a carrier that holds itself out to the general public as engaged in the business of transporting goods for a fee;

(4) "Department," the Department of Revenue;

(5) "Manufacturer's cost," the total of all costs incurred in the process of producing a cigar; and

(6) "Wholesale purchase price," the consideration paid by a cigar shipper to acquire cigars.

Section 2. That a NEW SECTION be added:

10-50C-2. Cigar shipper license requirements.

Any person located within or outside of this state may obtain a cigar shipper license. An applicant for an initial or renewal cigar shipper license shall:

(1) File an application with the department on a form prescribed by the department;

(2) Pay a license fee of one hundred dollars;

(3) Hold a South Dakota sales and use tax license issued by the department; and

(4) Be current on the remittance of all applicable state and local taxes.

The department shall issue a cigar shipper license to any applicant who meets the requirements of this chapter.

Section 3. That a NEW SECTION be added:

10-50C-3. Period of validity of license--Proration or refund of license fee prohibited.

A cigar shipper license is valid from July first to June thirtieth, inclusive. However, the license is valid for an additional three days if a proper application for a new license is in the possession of the department before midnight on the thirtieth day of June when the license expires.

The license fee required to be paid pursuant to § 10-50C-2 may not be prorated or refunded for a license that is not held for the entire period.

Section 4. That a NEW SECTION be added:

10-50C-4. Sale and shipment requirements.

Notwithstanding § 10-50-99, a cigar shipper may sell and ship cigars to any person in this state who is twenty-one years of age or older. Before shipping the cigars, the cigar shipper shall verify the age of the person placing the order by obtaining a copy of the person's valid age-bearing photo identification document issued by this state, another state, the federal government, or a federally recognized Indian tribe, or by using an age verification service. The cigar shipper shall record the name, address, date of birth, and telephone number of the person placing the order on the order form or other verifiable record. The cigar shipper shall notify the person placing the order that the recipient of the shipment is required to show a valid age-bearing photo identification document issued by this state, another state, the federal government, or a federally recognized Indian tribe, upon delivery.

Section 5. That a NEW SECTION be added:

10-50C-5. Package labeling requirements.

A cigar shipper shall conspicuously label each package to be shipped with words indicating that the package contains cigars and that the signature of a person twenty-one years of age or older is required for delivery.

Section 6. That a NEW SECTION be added:

10-50C-6. Delivery of shipment by common carrier--Requirements.

Each shipment of cigars made pursuant to this chapter shall be delivered by a common carrier with a label that complies with the provisions of § 10-50C-5. The common carrier shall obtain the signature of a person twenty-one years of age or older prior to delivery of the shipment, and shall request that the person signing for the shipment display a valid age-bearing photo identification document issued by this state, another state, the federal government, or a federally recognized Indian tribe verifying that the person is twenty-one years of age or older.

Section 7. That a NEW SECTION be added:

10-50C-7. Civil penalty.

A cigar shipper who violates § 10-50C-4 or 10-50C-5 is subject to a civil penalty of one thousand dollars for a first offense and two thousand dollars for a second or subsequent offense. Penalties may be levied by the department.

A common carrier who violates § 10-50C-6 is subject to a civil penalty of one thousand dollars for a first offense and two thousand dollars for a second or subsequent offense. Penalties may be levied by the department.

Any money collected pursuant to this section shall be deposited in the general fund.

Section 8. That a NEW SECTION be added:

10-50C-8. State jurisdiction--Audit of records.

A cigar shipper consents to the jurisdiction of the department and the courts of this state with respect to the enforcement of the provisions of this chapter.

The cigar shipper shall allow the department to perform an audit of the cigar shipper's records, including any documents used to verify the age of any person ordering cigars from the cigar shipper, and provide copies of any such records upon request.

Section 9. That a NEW SECTION be added:

10-50C-9. Cigar shipper quarterly returns.

A cigar shipper shall file a quarterly return with the department on or before the fifteenth day of the month following each quarterly period even if no business was transacted during the reporting period.

The return must include:

(1) The business name, address, and cigar shipper license number of the cigar shipper;

(2) The total wholesale purchase price, as defined in this chapter, or manufacturer's cost, as defined in this chapter, of cigars shipped to recipients in this state during the quarterly period;

(3) The name and address of shipment recipients in this state during the quarterly period;

(4) The name of any common carrier used to deliver each shipment; and

(5) The date, cigar brand, quantity, and wholesale purchase price, as defined in this chapter, or manufacturer's cost, as defined in this chapter, of each shipment, along with any taxes remitted by the purchaser during the quarterly period.

Section 10. That a NEW SECTION be added:

10-50C-10. Taxes.

A cigar shipper shall remit the tax prescribed pursuant to § 10-50-61 based upon the wholesale purchase price, as defined in this chapter, for any cigars sold and shipped to a consumer in this state. If there is no wholesale purchase price, the cigar shipper shall remit the tax prescribed pursuant to § 10-50-61 based upon the manufacturer's cost, as defined in this chapter, for any cigars sold and shipped to a consumer in this state. The cigar shipper shall remit the taxes quarterly on or before the fifteenth day of the month following each quarterly period.

Section 11. That a NEW SECTION be added:

10-50C-11. Entities exempt from § 10-50C-10.

The following entities are exempt from the provisions of § 10-50C-10:

(1) A cigar shipper who is also a licensed distributor or licensed wholesaler pursuant to chapter 10-50 and who has already remitted the tax pursuant to § 10-50-61 on cigars brought into this state that were subsequently sold and shipped to a consumer in this state; or

(2) A cigar shipper who is also a registered tobacco retailer pursuant to chapter 10-50 and who has purchased cigars from a licensed distributor or licensed wholesaler pursuant to chapter 10-50 that were subsequently sold and shipped to a consumer in this state.

Section 12. That a NEW SECTION be added:

10-50C-12. Electronic submission of returns--Electronic remittance of tax.

The cigar shipper shall file a return required to be filed pursuant to § 10-50C-9 by electronic means with the department. The cigar shipper shall remit any taxes required to be remitted pursuant to § 10-50C-10 by electronic means to the department.

Section 13. That a NEW SECTION be added:

10-50C-13. Sale and shipment without license prohibited--Action by department for violation--Civil penalty.

A sale and shipment of cigars to a person in this state from a person who does not hold a current cigar shipper license is prohibited. Any person who violates this section is also in violation of § 10-50-99 and is subject to the provisions of §§ 10-50-100 to 10-50-104, inclusive. Any money collected pursuant to this section shall be deposited in the general fund.

Section 14. That a NEW SECTION be added:

10-50C-14. Resale of cigars prohibited--Violation as misdemeanor.

Cigars shipped to any person in this state pursuant to this chapter may only be used for personal use and may not be resold. It is a Class 1 misdemeanor for any person to resell or attempt to resell any cigar obtained pursuant to the provisions of this chapter.

Section 15. That a NEW SECTION be added:

10-50C-15. Promulgation of rules.

The department may promulgate rules, pursuant to chapter 1-26, concerning:

(1) Forms necessary for the implementation of this chapter;

(2) Reporting and tracking requirements for cigar shipper licensees; and

(3) The procedure for filing tax returns and the remittance of all applicable taxes.

Section 16. That § 10-59-1 be AMENDED.

10-59-1. Application.

The provisions of this chapter may only apply to proceedings commenced under this chapter concerning the taxes, the fees, the surcharges, or the persons subject to the taxes, fees, or surcharges imposed by, or any civil or criminal investigation authorized by, chapters 10-33A, 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B,

10-46E, 10-47B, 10-50C, 10-52, 10-52A, 10-62, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, 34-45, and 34A-13 and §§ 22-25-48, 49-31-51, and 50-4-13 to 50-4-17, inclusive.

Section 17. This Act is effective on January 1, 2022.

An Act to authorize the shipment of cigars to persons in this state under certain conditions and to provide a penalty.

I certify that the attached Act originated in the:

House as Bill No. 1098

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1098
File No. _____
Chapter No. _____

Received at this Executive Office
this _____ day of _____,

2021 at _____M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 2021

_____
Governor

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

Filed _____, 2021
at _____ o'clock __M.

_____
Secretary of State

By _____
Asst. Secretary of State