

House Bill 894

By: Representative Morris of the 120th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,
2 relating to sale or distribution to, or possession by, minors of cigarettes and tobacco related
3 objects, so as to provide for definitions; to provide for age verification, notice, shipping,
4 registration, and reporting requirements; to provide for collection of taxes; to provide for
5 penalties; to provide for enforcement; to provide for related matters; to provide an effective
6 date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 7 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to sale
10 or distribution to, or possession by, minors of cigarettes and tobacco related objects, is
11 amended by striking Code Section 16-12-170, relating to definitions, in its entirety and
12 inserting in its place a new Code Section 16-12-170 to read as follows:

13 "16-12-170.

14 As used in this article, the term:

15 (1) 'Adult' means a person who is at least 18 years of age.

16 ~~(1)~~(2) 'Cigarettes' means any type of tobacco or tobacco product.

17 ~~(2)~~(3) 'Community service' means a public service which a minor might appropriately
18 be required to perform, as determined by the court, as punishment for certain offenses
19 provided for in this article.

20 (4) 'Delivery sale' means any sale of cigarettes to a consumer in this state where either:

21 (A) The purchaser submits the order for such sale by means of a telephonic or other
22 method of voice transmission, the United States Postal Service or any other delivery
23 service, or the Internet or other online service; or

24 (B) The cigarettes are delivered by use of the United States Postal Service or of a
25 delivery service.

1 A sale of cigarettes shall be a delivery sale regardless of whether the seller is located
 2 within or outside the state. A sale of cigarettes not for personal consumption to a person
 3 who is a wholesale dealer or a retail dealer shall not be a delivery sale.

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

6 (6) 'Department' means the Department of Revenue.

7 ~~(3)~~(7) 'Minor' means any person who is under the age of 18 years.

8 ~~(4)~~(8) 'Person' means any natural person or any firm, partnership, company, corporation,
 9 or other entity.

10 ~~(5)~~(9) 'Proper identification' means any document issued by a governmental agency
 11 containing a description of the person, such person's photograph, or both, and giving such
 12 person's date of birth and includes, without being limited to, a passport, military
 13 identification card, driver's license, or an identification card authorized under Code
 14 Sections 40-5-100 through 40-5-104. 'Proper identification' shall not include a birth
 15 certificate.

16 (10) 'Shipping container' means a container in which cigarettes are shipped in connection
 17 with a delivery sale.

18 (11) 'Shipping documents' means bills of lading, airbills, or any other documents used
 19 to evidence the undertaking by a delivery service to deliver letters, packages, or other
 20 containers.

21 ~~(6)~~(12) 'Tobacco related objects' means any papers, wrappers, or other products, devices,
 22 or substances which are used for the purpose of making cigarettes or tobacco in any form
 23 whatsoever."

24 SECTION 2.

25 Said article is further amended by adding a new Code section between Code Sections
 26 16-12-173 and 16-12-174, to be known as 16-12-173.1, to read as follows:

27 "16-12-173.1.

28 (a) No person shall make a delivery sale of cigarettes to any minor. No person shall mail,
 29 ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the
 30 first delivery sale to such consumer such person:

31 (1) Obtains from the prospective consumer a certification that includes:

32 (A) A reliable confirmation that the consumer is at least 18 years of age; and

33 (B) A statement signed by the prospective consumer in writing that certifies the
 34 prospective consumer's address and that the consumer is at least 18 years of age. Such
 35 statement shall also confirm:

- 1 (i) That the prospective consumer understands that signing another person's name to
2 such certification is illegal;
- 3 (ii) That the sale of cigarettes to minors is illegal;
- 4 (iii) That the purchase of cigarettes by minors is illegal under the laws of this state;
5 and
- 6 (iv) That the prospective consumer wants to receive mailings from a tobacco
7 company;
- 8 (2) Makes a good faith effort to verify the information contained in the certification
9 provided by the prospective consumer pursuant to paragraph (1) of this subsection against
10 a commercially available data base, or obtains a photocopy or other image of the proper
11 identification of the individual placing the order; and
- 12 (3) Provides to the prospective consumer, via e-mail or other means, a notice that
13 includes the following:
- 14 (A) A prominent and clearly legible statement that cigarette sales to minors are illegal;
- 15 (B) A prominent and clearly legible statement that consists of one of the warnings set
16 forth in Section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15
17 U.S.C. Section 1333(a)(1), rotated on a quarterly basis;
- 18 (C) A prominent and clearly legible statement that sales of cigarettes are restricted to
19 those consumers who provide verifiable proof of age in accordance with paragraph (1)
20 of this subsection; and
- 21 (D) A prominent and clearly legible statement that cigarette sales are subject to tax
22 under Chapter 11 of Title 48 and an explanation of how such tax has been or is to be
23 paid with respect to such delivery sale.
- 24 (b) Each person who mails, ships, or otherwise delivers cigarettes in connection with a
25 delivery sale:
- 26 (1) Shall include as part of the bill of lading or other shipping documents a clear and
27 conspicuous statement providing as follows: 'Cigarettes: Georgia Law Prohibits
28 Shipping to Individuals Under the Age of 18 and Requires the Payment of all Applicable
29 Taxes';
- 30 (2) Shall use a method of mailing, shipping, or delivery that obligates the delivery
31 service to require:
- 32 (A) The consumer placing the purchase order for the delivery sale or another adult
33 residing at the consumer's address to sign to accept delivery of the shipping container;
34 and
- 35 (B) Proper identification of the individual who signs to accept delivery of the shipping
36 container, demonstrating that he or she is either the addressee or another adult residing

1 at the consumer's address. However, proof of the legal minimum purchase age shall
2 be required only if such individual appears to be under 27 years of age; and

3 (3) Shall provide to the delivery service retained for such delivery sale evidence of full
4 compliance with subsection (g) of this Code section.

5 (c) If the person accepting a purchase order for a delivery sale delivers the cigarettes
6 without using a delivery service, such person shall comply with all requirements of
7 subsection (b) of this Code section applicable to a delivery service and shall be in violation
8 of the provisions of such subsection if he or she fails to comply with any such requirement.

9 (d) Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes
10 in connection with any such sales, every person shall file with the department a statement
11 setting forth such person's name, trade name, and the address of such person's principal
12 place of business and any other place of business.

13 (e) Not later than the tenth day of each calendar month, each person that has made a
14 delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any
15 such sale during the previous calendar month shall file with the department a memorandum
16 or a copy of the invoice that provides for each and every such delivery sale:

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

18 (2) The brand or brands of the cigarettes that were sold in such delivery sale; and

19 (3) The quantity of cigarettes that were sold in such delivery sale.

20 (f) Any person that satisfies the requirements of 15 U.S.C. Section 376 shall be deemed
21 to satisfy the requirements of subsections (d) and (e) of this Code section.

22 (g) Each person accepting a purchase order for a delivery sale shall collect and remit to the
23 department all cigarette taxes imposed by the state with respect to such delivery sale,
24 except that such collection and remission shall not be required to the extent such person has
25 obtained proof in the form of the presence of applicable tax stamps or otherwise that such
26 taxes already have been paid to the state.

27 (h) Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the
28 requirements of this Code section shall be forfeited to the state and destroyed. All fixtures,
29 equipment, and all other materials and personal property on the premises of any person
30 who, with the intent to defraud the state, violates any of the requirements of this Code
31 section shall be forfeited to the state. The penalties for violations of this Code section shall
32 be as follows:

33 (1) Except as otherwise provided in this Code section, a first violation of any provision
34 of this Code section shall be punishable by a fine of \$1,000.00 or five times the retail
35 value of the cigarettes involved, whichever is greater. A second or subsequent violation
36 of any provision of this Code section shall be punishable by a fine of \$5,000.00 or five
37 times the retail value of the cigarettes involved, whichever is greater;

1 (2) Any person who knowingly violates any provision of this Code section or who
2 knowingly and falsely submits a certification under paragraph (1) of subsection (a) of this
3 Code section in another person's name shall for each such offense be fined \$10,000.00
4 or five times the retail value of the cigarettes involved, whichever is greater, or
5 imprisoned not more than five years, or both; and

6 (3) Any person failing to collect or remit to the department any tax required in
7 connection with a delivery sale shall be assessed, in addition to any other penalty, a
8 penalty of five times the retail value of the cigarettes involved.

9 (i) In addition to other enforcement provisions in this Code section, the Attorney General
10 or his or her designee, or any person who holds a valid permit under 26 U.S.C. Section
11 5712, may bring an action in the appropriate court in the state to prevent or restrain
12 violations of this Code section by any person or any person controlling such person.

13 (j) The state revenue commissioner may make and publish reasonable rules and regulations
14 not inconsistent with this Code section or other laws or the Constitution of this state or of
15 the United States for the enforcement of this Code section and the collection of revenue
16 under this Code section."

17 **SECTION 3.**

18 This Act shall become effective upon its approval by the Governor or upon its becoming law
19 without such approval.

20 **SECTION 4.**

21 All laws and parts of laws in conflict with this Act are repealed.