

## CHAPTER 85

**AN ACT** facilitating the collection of taxes on retail sales of cigarettes shipped from outside this State, supplementing P.L.1948, c.65 (C.54:40A-1).

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.54:40A-46 Short title.

1. This act shall be known and may be cited as the "Cigarette Sales Act."

C.54:40A-47 Findings, declarations relative to out-of-State cigarette sales.

2. The Legislature hereby finds and declares that:
  - a. Currently, the federal Jenkins Act, 15 U.S.C. s.375 et seq., requires any person that sells or transfers in interstate commerce cigarettes into a state that taxes the sale or use of cigarettes to file certain information with the tobacco tax administrator of that state; and
  - b. According to the U.S. General Accounting Office, the Jenkins Act is rarely enforced by the federal government and is currently unenforceable by the states; and
  - c. As the sales of cigarettes to residents of this State by out-of-State sellers increase and the difficulties associated with the collection of sales and use taxes continue, there will be a steady erosion of the sales and use tax revenues that this State is able to collect;
  - d. It is, therefore, the purpose of this act to facilitate the collection of all applicable sales and use taxes on cigarettes sold to residents of this State and to enforce the Jenkins Act.

C.54:40A-48 "Face-to-face sale" defined.

3. As used in this act, "face-to-face sale" means a sale in which the purchaser is in the physical presence of the seller or the seller's employee or agent at the time of the sale. A "face-to-face sale" does not include any transaction conducted by mail order, the Internet, telephone, or any other anonymous transaction method in which the buyer is not in the seller's physical presence or the physical presence of the seller's employee or agent at the time of the sale.

C.54:40A-49 Conditions for non-face-to-face sale of cigarettes.

4. A person shall not engage in a retail sale of cigarettes in this State unless the sale is a face-to-face sale, except that a person may engage in a non-face-to-face sale of cigarettes to a person in this State if the following conditions are met:
    - a. The seller has fully complied with all of the requirements of the Jenkins Act, 15 U.S.C. s.375 et seq., for shipments to this State;
    - b. The seller has verified payment of, paid, or collected all applicable State taxes, including the cigarette taxes imposed by the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and the sales or use taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), due on the cigarettes; and
    - c. The seller has, before mailing or shipping the cigarettes:
      - (1) obtained from the purchaser reliable confirmation that the purchaser is at least 18 years old and a statement by the purchaser under penalty of perjury certifying the purchaser's date of birth and address;
      - (2) made good faith effort to verify the information contained in the certification provided by the purchaser against a commercially available database or has obtained a photocopy or other image of a government-issued identification bearing the purchaser's image and stating the date of birth or age of the purchaser;
      - (3) received payment for the sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check; and
      - (4) verified that a 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 matches the credit or debit card company's address for the cardholder.
- Sellers taking an order for a non-face-to-face sale may request that prospective purchasers provide their e-mail addresses.

C.54:40A-50 Additional penalties, schedule.

5. In addition to any other remedies provided by law, the Director of the Division of

Taxation in the Department of the Treasury shall assess penalties for violations of this act in accordance with the following schedule:

- a. a penalty of not less than \$1,000 and not more than \$2,000 for the first violation;
- b. a penalty of not less than \$2,500 and not more than \$3,500 for the second violation within a five-year period;
- c. a penalty of not less than \$4,000 and not more than \$5,000 for the third violation within a five-year period;
- d. a penalty of not less than \$5,500 and not more than \$6,500 for a fourth violation within a five-year period; and
- e. a penalty of \$10,000 for a fifth or subsequent violation within a five-year period.

C.54:40A-51 Annual report.

6. The Director of the Division of Taxation in the Department of the Treasury shall provide the Speaker of the General Assembly, the Senate President, and the chairpersons of the Assembly Appropriations Committee and the Senate Budget Committee, or the successor committees, an annual report regarding all actions taken to comply with and enforce this act.

C.54:40A-52 Vending machine sales unaffected.

7. This act shall not prohibit any lawful sale of a tobacco product that occurs by means of a vending machine.

C.54:40A-53 Other laws applicable.

8. Nothing in this act shall relieve the seller of cigarettes from any other applicable requirement of law relating to the sale of cigarettes.

9. This act shall take effect on the first day of the sixth month following enactment and apply to shipments made on and after that date.

Approved May 4, 2005.