

CAMPAIGN For TOBACCO-FREE Kids[®]

CHECKLIST FOR LEGISLATION ON INTERNET TOBACCO PRODUCT SALES To Ensure that Tax Avoidance and Youth Sales Are Adequately Constrained

[All Answers Should Be Yes]

- 1. Does the legislation prohibit any internet or mail-order sales of tobacco products to end-user customers in the state on which state tobacco taxes have not already been collected and on which state tobacco tax stamps have been affixed?**

Permitting delivery sellers to sell packs into the state on which no state tobacco taxes have been collected or remitted so long as they report the sales they make into the state and the names and addresses of the state customers is not adequate to ensure tobacco tax collections by the state. Having to go after each individual tobacco product buyer to collect the state taxes owed on the tobacco product sales is inevitably costly, complicated, and time consuming – and unlikely to recover the full amounts owed. Instead, delivery sellers – just like in-state retail sellers of tobacco products -- should be required to sell only tobacco products for which all state excise taxes have already been paid, and that already have all required state tobacco tax stamps or other state-required tax-payment indicia affixed. Regular in-state retailers do this either by purchasing tobacco products from licensed distributors with the state excise taxes already paid and all required state tax stamps already affixed or by qualifying as a state distributor and tax-stamper themselves – and internet and mail order sellers should be required to do the same. Such a system not only makes it much easier for each state to obtain all owed state taxes on internet and mail-order tobacco product sales but also stops the sale of unstamped tobacco products into the state. Allowing internet vendors to sell and deliver unstamped tobacco products to a state's consumers opens the door to tax evasion by making it much harder to distinguish legal from illegal tobacco products -- thereby making it much more difficult for a state to enforce its new laws restricting internet tobacco product sales or to enforce other state laws that try to prevent and reduce tobacco tax evasion, tobacco product smuggling, counterfeit brands, and cigarette sales by MSA non-participating manufacturers that are not in good standing.

- 2. Does the legislation require delivery sellers (those selling tobacco products for personal consumption through transactions that are not face to face) to register with the state and prohibit delivery services from delivering tobacco products for any delivery sellers that are not registered with the state and in good standing?**

This provision is absolutely crucial because it enables states to enforce the legislation in an effective and efficient manner against all internet vendors, without having to bring each of them into court. Having this kind of enforcement mechanism is especially important because so many internet and mail-order vendors are based outside of the United States, in distant states, or in protected jurisdictions (such as Indian Reservations), or are fly by night operations that are hard to reach through enforcement lawsuits. This provision enables the state simply to maintain a public list of delivery sellers that are properly registered and otherwise in good standing (e.g., on the state's website), with delivery services prohibited from delivering tobacco products for any delivery sellers not on that list. For this system to work there must also be significant penalties for delivery services that knowingly make tobacco product deliveries for delivery sellers not on the state list. For more information on this point, see the Campaign factsheet *The Critical Importance of a Delivery-List Enforcement Provision*, <http://tobaccofreekids.org/research/factsheets/pdf/0259.pdf>.

- 3. Does the legislation apply to all tobacco products, not just cigarettes?**

There is no reason to exclude smokeless tobacco, cigars, or other tobacco products. All of these tobacco products other than cigarettes are also used by kids and sold over the internet; and all of them can lead kids into nicotine addiction and even regular, daily smoking of cigarettes. The states currently receive roughly half a billion dollars of revenue per year from their excise taxes on other tobacco products – and users can purchase these other tobacco products over the internet to avoid paying these state taxes. There are often efforts to take or keep cigars out of the legislation because of the frequent mail-order sales of large, premium cigars. But kids do buy cigars over the Internet and there is Internet-based evasion of cigar taxes. So if cigars must, for political reasons, be excluded from the legislation the exclusion should cover only big,

expensive cigars – and not cover any “cigars or other roll of tobacco wrapped in any substance containing tobacco that, because of its size, appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette or cigarette equivalent.”

4. Does the legislation apply to all non-face-to-face sales and deliveries of tobacco products for personal consumption?

All tobacco product sales to end-user consumers that are not done face-to-face should be covered to make sure that not only internet sales but mail order and telephone sales are also covered, and that there are no loopholes that allow for creative new ways to sell and deliver tobacco products to distant consumers without being subject to the legislation.

5. Does the legislation provide for checking and verifying age both at the time of sale and the time and place of delivery?

To protect against sales to youths, it is critically important to check and verify age and identity both at the time the order is placed and the sale is made and at the time and place of delivery.

- a) **Does the age and identity check at point of sale include verifying the identity and birth date of every potential customer (however provided) against a commercially available database of information from government records?** It is important that all age and identity information provided by the potential customer be verified (even if presented in the form of a photocopied ID, which might be fake), and that it be verified against a database of information from government records (such as driver's licenses, voter registration lists, passports, military ID's). Simply requiring verification against “commercially available” databases risks having the information checked against databases that say they identify adults but actually include kids (e.g., credit card databases, lists of subscribers of adult magazines, lists of people who have submitted forms saying they are over 18 or over 21, or lists of people who have previously submitted photocopies of IDs, which may have been faked). *The best language would require verification against a database of information from government-issued IDs and allow for that database to be supplemented with additional age and identity verification information from other government or validated commercial sources if that supplementary information is regularly used by government and business for identity verification and authentication.*
- b) **Does the age and identity check at delivery require the person receiving the tobacco product to: a) show a valid government-issued ID (both to establish age and identity); and b) if persons other than the purchaser are allowed to receive the products are they required to also sign a statement that they know the actual purchaser and know that he or she is of legal age?** Checking ID of all recipients is important to ensure that no one uses a false name when signing for tobacco products or signing the statement re the actual purchaser being of legal age. Signing the statement about the purchaser being of real age is a necessary check to try to ensure that no tobacco products are delivered to kids. [Proposals to let any adult sign for the tobacco products, with no ID check for those appearing over 27, leaves too many loopholes that both allow for deliveries that ultimately go to kids and make subsequent enforcement efforts more difficult (since they don't block the use of false names and require no signed statements by recipients).]
- c) **Does the legislation require age and identity checks at each point of sale purchase and each delivery?** Requiring these age and identity checks only at the first purchase or only at the first delivery provide too many loopholes. For example, if a person qualifies as a buyer and is then given a code that allows him to make future purchases without going through the verification process again that person could give the code to others, including kids, to use. Or if a kid beats the system the first time, they would then be home free for all time. In addition, these age and identity checks and verifications are not expensive once the system is put into place – so there is no reason to limit them to only the first purchase or only the first delivery.

Campaign for Tobacco-Free Kids, March 10, 2005 / Eric Lindblom

For model legislation, see:

<http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=29>.