



# Senate

General Assembly

**File No. 726**

*January Session, 2003*

Substitute Senate Bill No. 1140

*Senate, May 19, 2003*

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE UNLAWFUL DELIVERY OF CIGARETTES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2003*) (a) No person engaged in the  
2 business of selling cigarettes shall ship or transport or cause to be  
3 shipped or transported any cigarettes to any person in this state except  
4 to: (1) A cigarette distributor or dealer; (2) an export warehouse  
5 proprietor pursuant to Chapter 52 of the Internal Revenue Code of  
6 1986, or any subsequent corresponding internal revenue code of the  
7 United States, as from time to time amended, or an operator of a  
8 customs bonded warehouse pursuant to 19 USC 1311 or 1555; or (3) a  
9 person who is an officer, employee or agent of the United States  
10 Government, this state or a department, agency, instrumentality or  
11 political subdivision of the United States or of this state, when such  
12 person is acting in accordance with such person's official duties.  
13 Notwithstanding the provisions of section 12-15 of the general statutes,

14 the Commissioner of Revenue Services shall publish on the Internet  
15 website of the Department of Revenue Services a list of every cigarette  
16 distributor or dealer. As used in this subsection, "cigarette distributor  
17 or dealer" means a person licensed as a cigarette distributor under  
18 section 12-288 of the general statutes or licensed as a dealer under  
19 section 12-287 of the general statutes or a person whose name appears  
20 on a list of licensed distributors and dealers published by the  
21 Commissioner of Revenue Services.

22 (b) No common or contract carrier shall knowingly transport  
23 cigarettes to a residential dwelling or to any person in this state who  
24 the common or contract carrier reasonably believes is not a person  
25 described in subdivisions (1) to (3), inclusive, of subsection (a) of this  
26 section. No person other than a common or contract carrier shall  
27 knowingly transport cigarettes to any person in this state who is not a  
28 person described in subdivisions (1) to (3), inclusive, of subsection (a)  
29 of this section.

30 (c) When a person engaged in the business of selling cigarettes ships  
31 or transports or causes to be shipped or transported any cigarettes to  
32 any person in this state, other than in the cigarette manufacturer's  
33 original container or wrapping, the container or wrapping shall be  
34 plainly and visibly marked with the word "cigarettes". Any person  
35 engaged in the business of selling cigarettes who ships or causes to be  
36 shipped any cigarettes to any person in this state (1) shall require, as a  
37 condition of delivery, that the customer who is receiving the cigarettes  
38 shall sign an acknowledgment of receipt and provide proper proof of  
39 age, and (2) may not sell such cigarettes to such customer unless such  
40 proof of age is provided.

41 (d) Whenever any cigarettes have been or are being shipped or  
42 transported in violation of this section, such cigarettes are declared to  
43 be contraband goods and the confiscation, search and forfeiture  
44 provisions of section 12-305 of the general statutes shall apply.

45 (e) Any person who violates the provisions of this section shall be  
46 guilty of a class A misdemeanor and, for a second or subsequent

47 violation, shall be guilty of a class D felony.

48 (f) The Commissioner of Revenue Services may impose a civil  
49 penalty of not more than five thousand dollars for each violation of  
50 this section. For purposes of this subsection, each shipment or  
51 transport of cigarettes shall constitute a separate violation. The  
52 Attorney General, upon request of the commissioner, may bring an  
53 action in the superior court for the judicial district of Hartford to  
54 collect such fine and for any injunctive or equitable relief.

55 Sec. 2. (NEW) (*Effective July 1, 2003*) No person engaged in the  
56 business of selling cigarettes shall ship or transport or cause to be  
57 shipped or transported any cigarettes to any person in this state unless  
58 such person engaged in such business is registered with the  
59 Commissioner of Revenue Services and has paid a fee of five thousand  
60 dollars. Such registration shall be renewed annually according to  
61 procedures established by the commissioner.

This act shall take effect as follows:	
Section 1	<i>July 1, 2003</i>
Sec. 2	<i>July 1, 2003</i>

**FIN**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Type</b>	<b>FY 04 \$</b>	<b>FY 05 \$</b>
Revenue Serv., Dept.	GF - Revenue Gain	See Below	See Below
Attorney General	GF - Revenue Gain	Potential	Potential
Criminal Justice, Div.	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

To the degree that the bill prevents remote sellers (orders placed through the internet, phone, and by mail) from selling cigarettes to Connecticut residents, which in turn results in more cigarettes purchased through in-state dealers, there would be an increase in revenue from taxes imposed on the sale of cigarettes (the cigarette excise tax and the sales tax). For every 10% increase in purchases made through in-state dealers rather than through remote sellers would result in an estimated \$600,000/yr in tax revenue. The bill is also expected to result in a minimal (less than \$100,000 per year) revenue gain from the registration fee imposed on companies that sell cigarettes and ship them or cause them to be shipped to Connecticut.

The bill is not anticipated to result in any additional costs to the Department of Revenue Services (DRS) since it is intended to enhance the current laws administered by the agency regarding the distribution, sale, and taxation of cigarettes.

The Commissioner of DRS may refer anyone who violates the bill to the Attorney General, who may then bring an action in superior court to collect civil penalties imposed by the DRS. It is anticipated that few such referrals would be made and, consequently, the Attorney General

would be able to handle cases under the bill without needing additional resources. Likewise, State Prosecutors (Division of Criminal Justice) could handle criminal cases under the bill without the need for additional resources. It is anticipated that no one would be incarcerated under the bill. A minimal amount of revenue (less than \$50,000/yr) could be generated from criminal fines.

**OLR Bill Analysis**

sSB 1140

**AN ACT CONCERNING THE UNLAWFUL DELIVERY OF CIGARETTES****SUMMARY:**

This bill prohibits companies that sell cigarettes from shipping, transporting, or causing them to be shipped or transported directly to Connecticut consumers. Instead, cigarette shipments must go only to (1) a state-licensed cigarette distributor or dealer or people named on a published Department of Revenue Services (DRS) list of licensed distributors and dealers; (2) an export warehouse proprietor or customs bonded warehouse operator; or (3) a local, state, or federal government employee or agent acting in accordance with his official duties.

The bill prohibits common or contract carriers from knowingly transporting cigarettes to a residence or to anyone in Connecticut who the carrier reasonably believes is not one of the entities described above. It also prohibits people other than common or contract carriers from knowingly transporting cigarettes to any person who does not fit within one of those categories. It requires sellers to plainly and visibly mark packages with the word "cigarettes" when they do not ship or transport them in the cigarette manufacturer's original container or wrapping.

The bill requires companies that sell cigarettes and ship, transport, or cause them to be shipped or transported to Connecticut to (1) register with DRS and pay a \$5,000 fee and (2) make cigarette deliveries conditional on the customer's signing an acknowledgement of their receipt and presenting proper proof of age. Such companies may not sell the cigarettes to a customer who does not provide proof of age. The bill requires the registrations to be renewed annually according to procedures the DRS commissioner establishes.

The bill requires DRS to publish on its website a list of every cigarette distributor or dealer. It also sets civil and criminal penalties for violations.

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EFFECTIVE DATE: July 1, 2003

## **CRIMINAL PENALTIES**

Under the bill, first offenses are class A misdemeanors, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both. Subsequent offenses are class D felonies, punishable by imprisonment for one to five years, a fine of up to \$5,000, or both.

## **CIVIL PENALTIES**

The DRS commissioner may also impose a civil penalty of up to \$5,000 for each shipment or delivery. The bill authorizes the attorney general, at the commissioner's request, to file a lawsuit to collect the fine. He can also ask the court to order injunctive or equitable relief.

## **FORFEITURE**

The bill makes any cigarettes that have been or are being shipped or transported in violation of the bill's provisions contraband. It makes existing confiscation, search, and forfeiture law procedures for unstamped cigarette sale and transport violations apply in these circumstances.

## **BACKGROUND**

### ***Cigarette Distributors and Dealers***

Cigarette manufacturers, wholesalers, and large-scale cigarette retailers (those that operate five or more retail outlets or 25 or more cigarette vending machines) are licensed by DRS as distributors. All other sellers are licensed as dealers.

### ***Common and Contract Carriers***

In this context, a "common carrier" is a motor vehicle its owner uses primarily to transport the goods of the general public from place to place for a fee. A "contract carrier" is a motor vehicle its owner uses to transport the goods of specific people under contractual arrangements with those people.

### ***Related Federal Case***

On February 13, 2003, the U.S. Court of Appeals for the Second Circuit ruled that a similar law prohibiting cigarette sellers and common and contract carriers from shipping cigarettes directly to New York consumers did not unconstitutionally discriminate against interstate commerce (*Brown & Williamson v. Pataki*, 320 F.3d 2000). Second Circuit rulings are generally binding on Connecticut courts, unless overruled by the U.S. Supreme Court.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 44      Nay 0