

SENATE BILL NO. 2448

Introduced by

Senators Stenehjem, Christmann, Fischer

Representatives Carlson, Nelson

1 A BILL for an Act to create and enact two new subsections to section 57-36-01 and sections
2 57-36-08.1, 57-36-10.1, 57-36-11.2, 57-36-12.1, and 57-36-13.1 of the North Dakota Century
3 Code, relating to tobacco tax stamps; to amend and reenact sections 57-36-02, 57-36-07,
4 57-36-09, 57-36-18, and 57-36-33 of the North Dakota Century Code, relating to tobacco tax
5 stamps; to repeal section 57-36-25.1 of the North Dakota Century Code, relating to deductions
6 for licensed distributors for tobacco products tax administrative expenses; to provide a penalty;
7 and to provide an effective date.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1.** Two new subsections to section 57-36-01 of the North Dakota Century
10 Code are created and enacted as follows:

11 "Insignia" means the impression or mark made on the cigarettes or package
12 containing the cigarettes approved by the tax commissioner under section
13 57-36-11.2.

14 "Stamp" means a stamp prepared by the tax commissioner as provided in section
15 57-36-08.1.

16 **SECTION 2. AMENDMENT.** Section 57-36-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **57-36-02. Distributors and dealers to be licensed.** Each person engaged in the
19 business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including
20 any distributor or dealer, must secure a license from the attorney general before engaging or
21 continuing to engage in business. A separate application and license is required for each
22 distributor at each outlet or place of business within the state, and a separate dealer's license is
23 required for each retail outlet when a person owns or controls more than one place of business

1 dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a
2 distributor's license except a retailer who, in the usual course of business, performed a
3 distributor's or wholesaler's function for at least one year prior to filing the license application.
4 The application prescribed by the attorney general must include the name and address of the
5 applicant, the address and place of business, the type of business, and other information as
6 required for the proper administration of this chapter. Each application for a wholesale or
7 distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety
8 bond approved by the attorney general. Each application for a dealer's outlet license must be
9 accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in
10 addition to the annual license fee for each license renewal applied for after June thirtieth. The
11 total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal
12 year. Stamps or insignia under this chapter may be sold to and affixed only in North Dakota by
13 licensed distributors. Licensed dealers may sell, buy, or have in their possession only
14 cigarettes upon which stamps or insignia were previously affixed. A distributor's license does
15 not authorize the holder to make retail sales. Each license issued must be prominently
16 displayed on the premises covered by the license.

17 **SECTION 3. AMENDMENT.** Section 57-36-07 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-36-07. Packaging - Presumption from possession - Stamps to be affixed.**

20 Cigarettes must be packaged and stamped as follows:

- 21 1. All cigarettes sold or distributed in this state must be in packages containing twenty
22 or more cigarettes each.
- 23 2. Within seventy-two hours of receipt by the licensee, each package of cigarettes,
24 except as otherwise provided in this chapter, must have a securely affixed stamp
25 denoting the tax and each stamp must be properly canceled prior to sale or
26 removal for consumption, under rules adopted by the tax commissioner.
- 27 3. Each package of cigarettes displayed, exhibited, stored, or possessed in original
28 cartons or containers upon the premises where consumer sales are made is
29 conclusively presumed to be for sale to consumers.
- 30 ~~3.~~ 4. All packages of roll-your-own tobacco sold or distributed in this state must be in
31 packages containing at least 0.60 ounces [17 grams] of tobacco.

1 5. Each package of cigarettes displayed, exhibited, stored, or possessed in original
2 cartons or containers upon the premises where consumer sales are made is
3 conclusively presumed to be for sale to consumers. Each package of cigarettes,
4 except as otherwise provided, must have a securely affixed stamp denoting the
5 tax. Stamps must be canceled as provided in this chapter and possession of any
6 unstamped package of cigarettes is prima facie evidence of a violation of this
7 chapter.

8 **SECTION 4.** Section 57-36-08.1 of the North Dakota Century Code is created and
9 enacted as follows:

10 **57-36-08.1. Stamps prepared by commissioner.** The tax commissioner shall
11 prepare stamps for use on each kind of package under this chapter and keep an accurate
12 record of all stamps received and delivered. The tax commissioner may sell the stamps only to
13 a person holding a distributor's license. Wholesale distributors of cigarettes located outside of
14 this state may apply for a distributor's license as provided in section 57-36-02 and may
15 purchase stamps from the tax commissioner. The stamps must be affixed on cigarettes to be
16 sold in this state and canceled pursuant to the tax commissioner's rules.

17 **SECTION 5. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **57-36-09. Records to be kept by distributors and reports made - Penalty.**
20 Distributors shall keep records and make reports relating to purchases and sales of cigarettes,
21 cigarette papers, snuff, cigars, or other tobacco products made by them, and must be punished
22 for failure so to do, as follows:

- 23 1. Each distributor who shall dispose of cigarettes, cigarette papers, snuff, cigars, or
24 other tobacco products shall keep and preserve for one year all invoices of
25 cigarettes, cigarette papers, snuff, cigars, or other tobacco products and all
26 receipts issued by the tax commissioner for stamps purchased by the distributor
27 and shall permit the state tax commissioner, and assistants, authorized agents, or
28 representatives of the state tax commissioner, to inspect and examine all taxable
29 merchandise, invoices, receipts, books, papers, and memoranda as may be
30 deemed necessary by the state tax commissioner, and assistants, authorized
31 agents, or representatives of the state tax commissioner in determining whether

1 stamps required by this chapter have been purchased and used and the amount of
2 the tax as may be yet due. Each person selling or otherwise disposing of
3 cigarettes, cigarette papers, snuff, cigars, or other tobacco products as a distributor
4 shall keep a record of all sales made within the state showing the name and
5 address of the purchaser and the date of sale.

6 2. On or before the fifteenth day of each month, each licensed distributor, on such
7 form as the state tax commissioner shall prescribe, shall report to the tax
8 commissioner all purchases and sales of cigarettes, cigarette papers, snuff, cigars,
9 or other tobacco products made from or to any persons either within or without this
10 state during the preceding month. The tax levied by this chapter is payable
11 monthly and must be remitted to the tax commissioner by each licensed distributor
12 on or before the fifteenth day of the month following the monthly period.

13 3. Any person failing to file any prescribed form or return or to pay any tax within the
14 time required or permitted by this section is subject to a penalty of five percent of
15 the amount of tax due or five dollars, whichever is greater, plus interest of one
16 percent of the tax per month or fraction of a month of delay except the first month
17 after the return or the tax became due. The tax commissioner, if satisfied that the
18 delay was excusable, may waive all or any part of the penalty. The penalty must
19 be paid to the tax commissioner and disposed of in the same manner as are other
20 receipts under this chapter.

21 **SECTION 6.** Section 57-36-10.1 of the North Dakota Century Code is created and
22 enacted as follows:

23 **57-36-10.1. Stamps may be purchased at discount.** Any licensed distributor may
24 purchase stamps for taxed cigarettes at a discount. The tax commissioner may allow the
25 discount in the settlement of the account of the wholesale distributor upon the payment to the
26 tax commissioner of any moneys due by reason of the sale, delivery, or consignment to the
27 distributor of the stamps. The discount is computed as a percentage of the face value of the
28 stamp at the following rates:

29 1. Five percent of the face value for the first one hundred thousand dollars purchased
30 each fiscal year.

2. Four percent of the face value for the next one hundred and twenty-five thousand dollars purchased each fiscal year.
3. Three percent of the face value for the next one hundred and seventy-five thousand dollars purchased each fiscal year.
4. Two percent of the face value for purchases over four hundred thousand dollars for each fiscal year.
5. The total discount under this section for any distributor may not exceed twenty-five thousand dollars for each fiscal year.

A licensed distributor may purchase stamps for untaxed cigarettes at a cost not to exceed the cost of producing the stamps. A discount is not allowed for the purchase of untaxed cigarette stamps.

SECTION 7. Section 57-36-11.2 of the North Dakota Century Code is created and enacted as follows:

57-36-11.2. Tax meter machines.

1. In lieu of selling stamps, the tax commissioner may authorize any manufacturer or distributor to stamp cigarettes with an insignia with a tax meter machine. The tax commissioner may adopt rules for leasing a tax meter machine to any manufacturer or distributor and for supervising the operation of the meter. Meters may not be used to stamp untaxed cigarettes. The tax commissioner shall collect and receive the tax prescribed by this chapter on all cigarettes sold in or delivered to dealers in this state for sale, barter, gifts, or any other purpose. Any cigarette stamped with a tax meter machine need not have stamps affixed and may be possessed and sold by any wholesale or retail dealer in this state. Any manufacturer or distributor stamping cigarettes with a tax meter machine under this section is entitled to the discount provided in section 57-36-10.1.
2. The tax commissioner may designate a county auditor of this state as the representative for setting tax meter machines for any particular distributor and for collection of the cigarette tax due upon each setting. Any designated county auditor must transmit the tax collected and report each meter machine setting to the tax commissioner on or before the next business day and perform the duties in accordance with the procedure prescribed by the tax commissioner. The duties of

the county auditor under this section are within the coverage of the official bond.

Any designated county auditor may collect a fee of five dollars from the distributor for each meter setting. The auditor may retain the fee for the services and need not credit the fee to any public fund.

3. If it is inappropriate for the tax commissioner to designate a county auditor as the representative for setting tax meter machines, the tax commissioner may delegate the responsibility to an individual or a corporate setting agent within this state. Any designated individual or corporation must transmit the tax collected and report each meter machine's setting to the tax commissioner on or before the next business day and perform the duties in accordance with the procedure prescribed by the tax commissioner. The setting agent must submit a bond in an amount determined by the tax commissioner prior to beginning the agent's duties. Any setting agent must receive a meter setting fee from the distributor for services to cover the cost of that portion of a bond which is attributable to that particular distributor plus a reasonable fee for the setting of the tax meter as determined by agreement among the setting agent, the distributor, and the tax commissioner.

SECTION 8. Section 57-36-12.1 of the North Dakota Century Code is created and enacted as follows:

57-36-12.1. Distributors may not sell stamps. A distributor or wholesale dealer may not resell to any other distributor or dealer any stamp purchased from the tax commissioner. Any distributor who has on hand any unused and canceled stamps at the time of discontinuing the business of selling cigarettes may return such stamps to the tax commissioner and receive ninety-seven percent of the face value of the stamps.

SECTION 9. Section 57-36-13.1 of the North Dakota Century Code is created and enacted as follows:

57-36-13.1. Unlawful to transport unstamped cigarettes. A person may not transport into, receive, carry, or move from place to place in this state any unstamped cigarettes by any means of transportation, except in the course of interstate commerce. Any automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation in which any cigarettes are transported or carried in violation of this chapter, and any cigarettes and other equipment or personal property used as an incident to such transportation and found in such

1 means of transportation, is subject to seizure by the tax commissioner or by any sheriff or other
2 police officer, with or without process, and is subject to forfeiture as provided in section
3 57-36-14.

4 **SECTION 10. AMENDMENT.** Section 57-36-18 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-36-18. Tax commissioner to administer chapter.** In administering this chapter,
7 the tax commissioner and agents of the tax commissioner shall exercise the following powers:

- 8 1. The tax commissioner and authorized agents of the tax commissioner shall enforce
9 the provisions of this chapter and have the powers of peace officers. They may
10 arrest violators of the provisions of this chapter and enter complaint before any
11 court of competent jurisdiction, and may seize without formal warrant, and use as
12 evidence, any forged, counterfeit, spurious, or altered license or stamp found in the
13 possession of any person in violation of this chapter.
- 14 2. The tax commissioner may prescribe rules and regulations not inconsistent with
15 the provisions of the chapter for its detailed and efficient administration.

16 **SECTION 11. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **57-36-33. Penalties for violation of chapter.** Except as otherwise provided in this
19 chapter, ~~any~~:

- 20 1. Any person who violates any provision of this chapter is guilty of a class A
21 misdemeanor. All cigarettes, cigarette papers, snuff, cigars, or other tobacco
22 products in the possession of the person or in the place of business of the person
23 must be confiscated and forfeited to the state.
- 24 2. Any consumer who purchases any package of cigarettes that does not bear the
25 stamp or insignia placed on it under this chapter and any person who uses or
26 consumes within this state any cigarette, unless it was taken from a package or
27 container having attached the stamp or insignia required by this chapter, is guilty of
28 a class B misdemeanor.

29 **SECTION 12. REPEAL.** Section 57-36-25.1 of the North Dakota Century Code is
30 repealed.

1 **SECTION 13. EFFECTIVE DATE.** This Act is effective for taxable events occurring
2 after July 31, 2001.