

HOUSE BILL NO. 1431

Introduced by

Representative Belter

Senator Wardner

1 A BILL for an Act to create and enact a new subsection to section 57-36-01 and sections
2 57-36-08.1, 57-36-10.1, 57-36-11.2, 57-36-12.1, 57-36-13.1, and 57-36-25.2 of the North
3 Dakota Century Code, relating to tobacco tax indicia; to amend and reenact sections 57-36-02,
4 57-36-07, 57-36-09, 57-36-18, 57-36-25.1, and 57-36-33 of the North Dakota Century Code,
5 relating to tobacco tax indicia; to repeal section 57-36-25.1 of the North Dakota Century Code,
6 relating to deductions for licensed distributors for tobacco products tax administrative expenses;
7 to provide a penalty; and to provide an effective date.

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

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

11 "Indicia" means the impression or mark made on the cigarettes or package
12 containing the cigarettes approved by the tax commissioner under sections
13 57-36-08.1 and 57-36-11.2.

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

16 **57-36-02. Distributors and dealers to be licensed.** Each person engaged in the
17 business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including
18 any distributor or dealer, must secure a license from the attorney general before engaging or
19 continuing to engage in business. A separate application and license is required for each
20 distributor at each outlet or place of business within the state, and a separate dealer's license is
21 required for each retail outlet when a person owns or controls more than one place of business
22 dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a
23 distributor's license except a retailer who, in the usual course of business, performed a
24 distributor's or wholesaler's function for at least one year prior to filing the license application.

1 The application prescribed by the attorney general must include the name and address of the
2 applicant, the address and place of business, the type of business, and other information as
3 required for the proper administration of this chapter. Each application for a wholesale or
4 distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety
5 bond approved by the attorney general. Each application for a dealer's outlet license must be
6 accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in
7 addition to the annual license fee for each license renewal applied for after June thirtieth. The
8 total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal
9 year. Indicia under this chapter may be sold to and affixed only in North Dakota by licensed
10 distributors. Licensed dealers may sell, buy, or have in their possession only cigarettes upon
11 which indicia were previously affixed. A distributor's license does not authorize the holder to
12 make retail sales. Each license issued must be prominently displayed on the premises covered
13 by the license.

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

16 **57-36-07. Packaging - Presumption from possession - Stamps to be affixed.**

17 Cigarettes must be packaged and marked with indicia as follows:

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

1 except as otherwise provided, must have a securely affixed indicia denoting the
2 tax. Indicia must be canceled as provided in this chapter and possession of any
3 unmarked package of cigarettes is prima facie evidence of a violation of this
4 chapter.

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

7 **57-36-08.1. Indicia prepared by commissioner.** The tax commissioner shall prepare
8 indicia for use on each kind of package under this chapter and keep an accurate record of all
9 indicia received and delivered. The tax commissioner may sell the indicia only to a person
10 holding a distributor's license. Wholesale distributors of cigarettes located outside of this state
11 may apply for a distributor's license as provided in section 57-36-02 and may purchase indicia
12 from the tax commissioner. The indicia must be affixed on cigarettes to be sold in this state and
13 canceled pursuant to the tax commissioner's rules.

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

16 **57-36-09. Records to be kept by distributors and reports made - Penalty.**

17 Distributors shall keep records and make reports relating to purchases and sales of cigarettes,
18 cigarette papers, cigars, pipe tobacco, or other tobacco products made by them, and must be
19 punished for failure so to do, as follows:

20 1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe
21 tobacco, or other tobacco products shall keep and preserve for one year all
22 invoices of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco
23 products and all receipts issued by the tax commissioner for indicia purchased by
24 the distributor and shall permit the state tax commissioner, and assistants,
25 authorized agents, or representatives of the state tax commissioner, to inspect and
26 examine all taxable merchandise, invoices, receipts, books, papers, and
27 memoranda as may be deemed necessary by the state tax commissioner, and
28 assistants, authorized agents, or representatives of the state tax commissioner in
29 determining whether the indicia required by this chapter have been purchased and
30 used and the amount of the tax as may be yet due. Each person selling or
31 otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, or other

1 tobacco products as a distributor shall keep a record of all sales made within the
2 state showing the name and address of the purchaser and the date of sale. For
3 sales of other tobacco products, the records must also include the net weight in
4 ounces, as listed by the manufacturer.

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

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

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

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

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

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

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

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

14 **57-36-11.2. Tax meter machines.** In lieu of selling indicia, the tax commissioner may
15 authorize any manufacturer or distributor to mark cigarettes with an indicia with a tax meter
16 machine. The tax commissioner may adopt rules for leasing a tax meter machine to any
17 manufacturer or distributor and for supervising the operation of the meter. Meters may not be
18 used to mark untaxed cigarettes. The tax commissioner shall collect and receive the tax
19 prescribed by this chapter on all cigarettes sold in or delivered to dealers in this state for sale,
20 barter, gifts, or any other purpose. Any cigarette marked with a tax meter machine need not
21 have the indicia sold by the tax commissioner affixed and may be possessed and sold by any
22 wholesale or retail dealer in this state. Any manufacturer or distributor marking cigarettes with a
23 tax meter machine under this section is entitled to the discount provided in section 57-36-10.1.

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

26 **57-36-12.1. Distributors may not sell indicia.** A distributor or wholesale dealer may
27 not resell to any other distributor or dealer any indicia purchased from the tax commissioner.
28 Any distributor who has on hand any unused and canceled indicia at the time of discontinuing
29 the business of selling cigarettes may return such indicia to the tax commissioner and receive
30 ninety-seven percent of the face value of the indicia.

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

3 **57-36-13.1. Unlawful to transport cigarettes without indicia.** A person may not
4 transport into, receive, carry, or move from place to place in this state any cigarettes without
5 indicia by any means of transportation, except in the course of interstate commerce. Any
6 automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation in
7 which any cigarettes are transported or carried in violation of this chapter, and any cigarettes
8 and other equipment or personal property used as an incident to such transportation and found
9 in such means of transportation, is subject to seizure by the tax commissioner or by any sheriff
10 or other police officer, with or without process, and is subject to forfeiture as provided in section
11 57-36-14.

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

14 **57-36-18. Tax commissioner to administer chapter.** In administering this chapter,
15 the tax commissioner and agents of the tax commissioner shall exercise the following powers:

- 16 1. The tax commissioner and authorized agents of the tax commissioner shall enforce
17 the provisions of this chapter and have the powers of peace officers. They may
18 arrest violators of the provisions of this chapter and enter complaint before any
19 court of competent jurisdiction, and may seize without formal warrant, and use as
20 evidence, any forged, counterfeit, spurious, or altered license or indicia found in
21 the possession of any person in violation of this chapter.
- 22 2. The tax commissioner may prescribe rules and regulations not inconsistent with
23 the provisions of the chapter for its detailed and efficient administration.

24 **SECTION 11. AMENDMENT.** Section 57-36-25.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **57-36-25.1. Deduction to reimburse licensed distributor for administrative**
27 **expenses.**

- 28 4- A licensed distributor who pays the tax due under this chapter within the time
29 limitations prescribed may deduct and retain ~~one and one-half~~ three percent of the
30 tax due to reimburse the distributor for expenses incurred in affixing tax indicia to

1 packages of cigarettes, keeping records, preparing and filing returns, collecting
2 and remitting the tax, and supplying information requested by the commissioner.

3 ~~2. The total deduction allowed by this section may not exceed one hundred dollars~~
4 ~~per month for each licensed distributor.~~

5 **SECTION 12.** Section 57-36-25.2 of the North Dakota Century Code is created and
6 enacted as follows:

7 **57-36-25.2. Bad debt deduction - Allowable.**

8 1. A licensed distributor may deduct the amount of bad debts from the tax levied
9 under sections 57-36-06 and 57-36-25. The amount deducted must be written off
10 as uncollectible on the books of the licensed distributor. If a person pays all or part
11 of a bad debt with respect to which a licensed distributor claimed a deduction
12 under this section, the licensed distributor is liable for the amount of taxes
13 deducted in connection with that portion of the debt for which payment is received
14 and shall remit these taxes in the distributor's next payment to the state tax
15 commissioner. Any claim for a bad debt deduction under this section must be
16 supported by the following:

17 a. A copy of the original invoice;
18 b. Evidence that the cigarettes and tobacco products described in the invoice
19 were delivered to the person who ordered the products; and
20 c. Evidence that the person who ordered and received the cigarettes and
21 tobacco products did not pay the licensee for the cigarettes and tobacco
22 products and that the licensee used reasonable collection practices in
23 attempting to collect the debt.

24 2. As used in this section, "bad debt" means the taxes attributable to any portion of a
25 debt that is related to a sale of cigarettes and tobacco products subject to tax
26 under sections 57-36-06 and 57-36-25 which is not otherwise deductible or
27 excludable, which has become worthless or uncollectible in the time period
28 between the date when taxes accrue to the state for the licensee's preceding tax
29 return and the date when taxes accrue to the state for the present return, and
30 which is eligible to be claimed, or could be eligible to be claimed if the licensee
31 kept accounts on an accrual basis, as a deduction pursuant to section 166 of the

1 Internal Revenue Code. A bad debt does not include any interest on the wholesale
2 price of a cigarette and tobacco product, uncollectible amounts on property that
3 remain in the possession of the licensee until the full purchase price is paid,
4 expenses incurred in attempting to collect any account receivable or any portion of
5 the debt recovered, any accounts receivable that have been sold to a third party for
6 collection, and repossessed property.

7 **SECTION 13. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-36-33. Penalties for violation of chapter.** Except as otherwise provided in this
10 chapter, ~~any~~:

11 1. Any person who violates any provision of this chapter is guilty of a class A
12 misdemeanor. All cigarettes, cigarette papers, cigars, pipe tobacco, or other
13 tobacco products in the possession of the person or in the place of business of the
14 person must be confiscated and forfeited to the state.

15 2. Any consumer who purchases any package of cigarettes that does not bear the
16 indicia placed on it under this chapter and any person who uses or consumes
17 within this state any cigarette, unless it was taken from a package or container
18 having attached the indicia required by this chapter, is guilty of a class B
19 misdemeanor.

20 **SECTION 14. REPEAL.** Section 57-36-25.1 of the North Dakota Century Code is
21 repealed.

22 **SECTION 15. EFFECTIVE DATE.** This Act is effective for taxable events occurring
23 after July 31, 2003.