

HOUSE BILL NO. 1522

Introduced by

Representatives Carlson, Price

Senator Wardner

1 A BILL for an Act to create and enact chapter 51-30, two new subsections to section 57-36-01,
2 and sections 57-36-08.1, 57-36-10.1, 57-36-11.2, 57-36-12.1, and 57-36-13.1 of the North
3 Dakota Century Code, relating to regulation of sale and delivery of tobacco products and
4 tobacco tax indicia; to amend and reenact sections 57-36-02, 57-36-07, 57-36-09, 57-36-18,
5 and 57-36-33 of the North Dakota Century Code, relating to tobacco tax indicia; to repeal
6 section 57-36-25.1 of the North Dakota Century Code, relating to tobacco tax deductions for
7 distributors; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 **SECTION 1.** Chapter 51-30 of the North Dakota Century Code is created and enacted
10 as follows:

11 **51-30-01. Prohibited acts regarding sale of tobacco products to minors.** It is
12 unlawful for any person in the business of selling tobacco products to take an order for a
13 tobacco product, other than from a person who is in the business of selling tobacco products,
14 through the mail or through any telecommunications means, including by telephone, facsimile,
15 or the internet, if in providing for the sale or delivery of the product pursuant to the order, the
16 person mails the product or ships the product by carrier, and the person fails to comply with
17 each of the following procedures:

18 1. Before mailing or shipping the product, the person receives from the individual who
19 places the order the following:

20 a. A copy of a valid government-issued document that provides the name,
21 address, and date of birth of the individual;

22 b. A signed statement from the individual providing a certification that the
23 individual:

24 (1) Is a smoker of legal minimum purchase age in the state;

- 1 (2) Has selected an option on the statement as to whether the individual
2 wants to receive mailings from a tobacco company; and
- 3 (3) Understands that providing false information may constitute a violation
4 of law.
- 5 2. Before mailing or shipping the product, the person:
6 a. Verifies the date of birth or age of the individual against a commercially
7 available data base; or
8 b. Obtains a photocopy or other image of the valid, government-issued
9 identification stating the date of birth or age of the person placing the order.
- 10 3. Before mailing or shipping the product, the person provides to the prospective
11 purchaser, by electronic mail or other means, a notice that meets the requirements
12 of section 51-30-04.
- 13 4. In the case of an order for a product pursuant to an advertisement on the internet,
14 the person receives payment by credit card, debit card, or check for the order
15 before mailing or shipping the product.
- 16 5. a. The person employs a method of mailing or shipping the product requiring
17 that the individual purchasing the product:
18 (1) Be the addressee;
19 (2) Have an individual of legal minimum purchase age sign for delivery of
20 the package; and
21 (3) If the individual appears to the carrier making the delivery to be under
22 twenty-seven years of age, take delivery of the package only after
23 producing valid government-issued identification that bears a
24 photograph of the individual, indicates that the individual is not under
25 the legal age to purchase cigarettes, and indicates that the individual is
26 not younger than the age indicated on the government-issued
27 document.
- 28 b. The bill of lading clearly states the requirements in subdivision a and specifies
29 that state law requires compliance with the requirements.
- 30 6. The person notifies the carrier for the mailing or shipping, in writing, of the age of
31 the addressee as indicated by the government-issued document.

1 **51-30-02. Rule of construction regarding common carriers.** This chapter may not
2 be construed as imposing liability upon any common carrier, or officer or employee of the
3 carrier when acting within the scope of business of the common carrier.

4 **51-30-03. E-mail addresses.** Persons taking delivery sale orders may request that
5 prospective purchasers provide their e-mail addresses.

6 **51-30-04. Disclosure requirements.** The notice required under subsection 3 of
7 section 51-30-01 must include:

- 8 1. A prominent and clearly legible statement that cigarette sales to consumers below
9 the legal minimum age are illegal;
- 10 2. A prominent and clearly legible statement that consists of one of the warnings set
11 forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act
12 [15 U.S.C. 1333(a)(1)] rotated on a quarterly basis;
- 13 3. A prominent and clearly legible statement that sales of cigarettes are restricted to
14 those consumers who provide verifiable proof of age in accordance with section
15 51-30-01; and
- 16 4. A prominent and clearly legible statement that cigarette sales are subject to tax
17 under sections 57-36-06 and 57-36-32, and an explanation of how the tax has
18 been, or is to be, paid with respect to the delivery sale.

19 **51-30-05. Registration and reporting requirements.**

- 20 1. Before making delivery sales or shipping cigarettes in connection with those sales,
21 every person shall file with the tax commissioner a statement setting forth the
22 person's name, trade name, and the address of the person's principal place of
23 business and any other place of business.
- 24 2. Not later than the tenth day of each month, each person that has made a delivery
25 sale or shipped or delivered cigarettes in connection with any sale during the
26 previous calendar month shall file with the tax commissioner a memorandum or a
27 copy of the invoice, which provides for each delivery sale:
 - 28 a. The name and address of the individual to whom the delivery sale was made;
 - 29 b. The brand or brands of the cigarettes that were sold in the delivery sale; and
 - 30 c. The quantity of cigarettes that were sold in the delivery sale.

1 **51-30-06. Taxes.** Each person accepting a purchase order for a delivery sale of any
2 tobacco product shall remit to the tax commissioner any taxes due under chapter 57-36 with
3 respect to the delivery sale. This section does not apply if the person has obtained proof, in the
4 form of the presence of applicable tax stamps or otherwise, that the taxes already have been
5 paid to this state.

6 **51-30-07. Penalties.**

- 7 1. Except as otherwise provided in this section, a person that violates this chapter is
8 subject to a fine of not more than one thousand dollars. In the case of a second or
9 subsequent violation of this chapter, the person is subject to a fine of not less than
10 one thousand dollars nor more than five thousand dollars.
- 11 2. Any person who knowingly violates any provision of this chapter is guilty of a
12 class C felony.
- 13 3. Any individual who knowingly and falsely submits a certification under subdivision a
14 of subsection 5 of section 51-30-01 in another individual's name is guilty of a
15 noncriminal offense and is subject to the penalty provided under subsection 1.
- 16 4. Any person that fails to pay any tax required in connection with a delivery sale shall
17 pay, in addition to any other penalty, a penalty of fifty percent of the tax due but
18 unpaid.
- 19 5. Any cigarettes sold or attempted to be sold in a delivery sale that does not meet
20 the requirements of this chapter are forfeited to the state and must be destroyed.

21 **51-30-08. Enforcement.** The attorney general or any person who holds a permit under
22 26 U.S.C. 5712 may bring an action in the appropriate court in the state to prevent or restrain
23 violations of this chapter by any person or any person controlling that person.

24 **SECTION 2.** Two new subsections to section 57-36-01 of the North Dakota Century
25 Code are created and enacted as follows:

26 "Delivery sale" means any sale of cigarettes to a consumer in the state if either the
27 purchaser submits the order for such sale by means of a telephonic or other
28 method of voice transmission, the mail or any other delivery service, or the internet
29 or other online service or the cigarettes are delivered by use of the mail or other
30 delivery service. A sale of cigarettes is a delivery sale regardless of whether the
31 seller is located within or without the state.

1 "Indicia" means the impression or mark made on the cigarettes or package
2 containing the cigarettes approved by the tax commissioner under sections
3 57-36-08.1 and 57-36-11.2.

4 **SECTION 3. AMENDMENT.** Section 57-36-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-36-02. Distributors and dealers to be licensed.** Each person engaged in the
7 business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including
8 any distributor or dealer, must secure a license from the attorney general before engaging or
9 continuing to engage in business. A separate application and license is required for each
10 distributor at each outlet or place of business within the state, and a separate dealer's license is
11 required for each retail outlet when a person owns or controls more than one place of business
12 dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a
13 distributor's license except a retailer who, in the usual course of business, performed a
14 distributor's or wholesaler's function for at least one year prior to filing the license application.
15 The application prescribed by the attorney general must include the name and address of the
16 applicant, the address and place of business, the type of business, and other information as
17 required for the proper administration of this chapter. Each application for a wholesale or
18 distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety
19 bond approved by the attorney general. Each application for a dealer's outlet license must be
20 accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in
21 addition to the annual license fee for each license renewal applied for after June thirtieth. The
22 total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal
23 year. Indicia under this chapter may be sold to and affixed only in North Dakota by licensed
24 distributors. Licensed dealers may sell, buy, or have in their possession only cigarettes upon
25 which indicia were previously affixed. A distributor's license does not authorize the holder to
26 make retail sales. Each license issued must be prominently displayed on the premises covered
27 by the license.

28 **SECTION 4. AMENDMENT.** Section 57-36-07 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **57-36-07. Packaging - Presumption from possession - Stamps to be affixed.**
31 Cigarettes must be packaged and marked with indicia as follows:

1 1. All cigarettes sold or distributed in this state must be in packages containing twenty
2 or more cigarettes each.

3 2. Within seventy-two hours of receipt by the licensee, each package of cigarettes,
4 except as otherwise provided in this chapter, must have a securely affixed indicia
5 denoting the tax, and each indicia must be property canceled prior to sale or
6 removal for consumption, under rules adopted by the tax commissioner.

7 3. Each package of cigarettes displayed, exhibited, stored, or possessed in original
8 cartons or containers upon the premises where consumer sales are made is
9 conclusively presumed to be for sale to consumers.

10 ~~3.~~ 4. All packages of roll-your-own tobacco sold or distributed in this state must be in
11 packages containing at least 0.60 ounces [17 grams] of tobacco and are not
12 subject to the indicia requirements of this chapter.

13 5. Each package of cigarettes displayed, exhibited, stored, or possessed in original
14 cartons or containers upon the premises where consumer sales are made is
15 conclusively presumed to be for sale to consumers. Each package of cigarettes,
16 except as otherwise provided, must have a securely affixed indicia denoting the
17 tax. Indicia must be canceled as provided in this chapter and possession of any
18 unmarked package of cigarettes is prima facie evidence of a violation of this
19 chapter.

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

22 **57-36-08.1. Indicia prepared by commissioner.** The tax commissioner shall prepare
23 indicia for use on each kind of package under this chapter and keep an accurate record of all
24 indicia received and delivered. The tax commissioner may sell the indicia only to a person
25 holding a distributor's license. Wholesale distributors of cigarettes located outside of this state
26 may apply for a distributor's license as provided in section 57-36-02 and may purchase indicia
27 from the tax commissioner. The indicia must be affixed on cigarettes to be sold in this state and
28 canceled pursuant to the tax commissioner's rules.

29 **SECTION 6. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is
30 amended and reenacted as follows:

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

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

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products and all receipts issued by the tax commissioner for indicia purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining whether the indicia required by this chapter have been purchased and used and the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of

the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 7. Section 57-36-10.1 of the North Dakota Century Code is created and enacted as follows:

57-36-10.1. Indicia may be purchased at cost. A licensed distributor may purchase indicia for cigarettes at a cost not to exceed the cost of producing and distributing the indicia.

SECTION 8. Section 57-36-11.2 of the North Dakota Century Code is created and enacted as follows:

57-36-11.2. Tax meter machines. In lieu of selling indicia, the tax commissioner may authorize any manufacturer or distributor to mark cigarettes with an indicia by 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 mark 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 marked with the tax meter machine need not have the indicia sold by the tax commissioner affixed and may be possessed and sold by any wholesale or retail dealer in this state. Any manufacturer or distributor marking cigarettes with a tax meter machine under this section is entitled to the discount provided in section 57-36-10.1.

SECTION 9. 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 indicia. A distributor or wholesale dealer may not resell to any other distributor or dealer any indicia purchased from the tax commissioner. Any distributor who has on hand any unused and canceled indicia at the time of discontinuing the business of selling cigarettes may return such indicia to the tax commissioner and receive ninety-seven percent of the face value of the indicia.

SECTION 10. Section 57-36-13.1 of the North Dakota Century Code is created and enacted as follows:

1 **57-36-13.1. Unlawful to transport cigarettes without indicia.** A person may not
2 transport into, receive, carry, or move from place to place in this state any cigarettes without
3 indicia by any means of transportation, except in the course of interstate commerce. Any
4 automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation in
5 which any cigarettes are transported or carried in violation of this chapter, and any cigarettes
6 and other equipment or personal property used as an incident to such transportation and found
7 in such means of transportation, is subject to seizure by the tax commissioner or by any sheriff
8 or other police officer, with or without process, and is subject to forfeiture as provided in section
9 57-36-14.

10 **SECTION 11. AMENDMENT.** Section 57-36-18 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-36-18. Tax commissioner to administer chapter.** In administering this chapter,
13 the tax commissioner and agents of the tax commissioner shall exercise the following powers:

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

22 **SECTION 12. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-36-33. Penalties for violation of chapter.** Except as otherwise provided in this
25 chapter, ~~any~~:

- 26 1. Any person who violates any provision of this chapter is guilty of a class A
27 misdemeanor. All cigarettes, cigarette papers, cigars, pipe tobacco, or other
28 tobacco products in the possession of the person or in the place of business of the
29 person must be confiscated and forfeited to the state.
- 30 2. Any consumer who purchases any package of cigarettes that does not bear the
31 indicia placed on it under this chapter and any person who uses or consumes

1 within this state any cigarette, unless it was taken from a package or container
2 having attached the indicia required by this chapter, is guilty of an infraction.

3 **SECTION 13. REPEAL.** Section 57-36-25.1 of the North Dakota Century Code is
4 repealed.

5 **SECTION 14. EFFECTIVE DATE.** Sections 2 through 12 of this Act are effective for
6 taxable events occurring after July 31, 2005.