

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1358

Introduced by

Representatives Carlson, Delmore, Weiler

Senators Nething, O'Connell, Tollefson

1 A BILL for an Act to create and enact sections 12.1-31-03.1, 57-36-02.1, 57-36-03.1,  
2 57-36-03.2, 57-36-03.3, 57-36-05.3, 57-36-08.1, 57-36-08.2, and 57-36-13.1 of the North  
3 Dakota Century Code, relating to limitation of sales of cigarettes or other tobacco products  
4 through vending machines and tax stamping of cigarette packs; to amend and reenact sections  
5 12.1-31-03 and 57-36-01 of the North Dakota Century Code, relating to sales to and use by  
6 minors of tobacco products and tobacco products tax definitions; to provide a penalty; and to  
7 provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Section 12.1-31-03 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **12.1-31-03. Sale of tobacco to minors and use by minors prohibited.**

- 12 1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor,  
13 cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it  
14 may be utilized for smoking or chewing. As used in this subsection, "sell" includes  
15 dispensing from a vending machine under the control of the actor.
- 16 2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use  
17 cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it  
18 may be utilized for smoking or chewing. However, an individual under eighteen  
19 years of age may purchase and possess tobacco as part of a compliance survey  
20 program when acting with the permission of the individual's parent or guardian and  
21 while acting under the supervision of any law enforcement authority. A state  
22 agency, city, county, board of health, tobacco retailer, or association of tobacco  
23 retailers may also conduct compliance surveys, after coordination with the  
24 appropriate local law enforcement authority.

1           3.   It is a noncriminal offense for a minor to present or offer to another individual a  
2               purported proof of age which is false, fraudulent, or not actually the minor's own  
3               proof of age, for the purpose of attempting to purchase or possess cigarettes,  
4               cigars, cigarette papers, snuff, or tobacco in any other form in which it may be  
5               utilized for smoking or chewing.

6           4.   A city or county may adopt an ordinance or resolution regarding the sale of  
7               tobacco to minors and use of tobacco by minors which includes prohibitions in  
8               addition to those in subsection 1, 2, or 2 3. Any ordinance or resolution adopted  
9               must include provisions deeming a violation of subsection 2 or 3 a noncriminal  
10              violation and must provide for a fee of not less than twenty-five dollars for a minor  
11              fourteen years of age or older who has been charged with an offense under  
12              subsection 2 or 3. The failure to post a required bond or pay an assessed fee by  
13              an individual found to have violated the ordinance or resolution is punishable as a  
14              contempt of court, except a minor may not be imprisoned for the contempt.

15       4- 5.   A minor fourteen years of age or older found to have violated subsection 2 or 3  
16              must pay a fee of twenty-five dollars.

17           a.   Any individual who has been cited for a violation of subsection 2 or 3 may  
18               appear before a court of competent jurisdiction and pay the fee by the time  
19               scheduled for a hearing, or if bond has been posted, may forfeit the bond by  
20               not appearing at the scheduled time. An individual appearing at the time  
21               scheduled in the citation may make a statement in explanation of that  
22               individual's action and the judge may waive, reduce, or suspend the fee or  
23               bond, or both. If the individual cited follows the procedures of this  
24               subdivision, that individual has admitted the violation and has waived the right  
25               to a hearing on the issue of commission of the violation. The bond required to  
26               secure appearance before the court must be identical to the fee. This  
27               subdivision does not allow a citing officer to receive the fee or bond.

28           b.   If an individual cited for a violation of subsection 2 or 3 does not choose to  
29               follow the procedures provided under subdivision a, that individual may  
30               request a hearing on the issue of the commission of the violation cited. The  
31               hearing must be held at the time scheduled in the citation or at some future

time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

~~5-~~ 6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a preponderance of the evidence.

~~6-~~ 7. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.

~~7-~~ 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

**SECTION 2.** Section 12.1-31-03.1 of the North Dakota Century Code is created and enacted as follows:

**12.1-31-03.1. Vending machines prohibited - Penalty.**

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through a vending machine, except as provided in subsection 2.

2. Subsection 1 does not apply to:

a. A vending machine that is located in an area in which minors are not permitted access; or

b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through the operation of a device that requires a salesperson to control the dispensation of such product.

3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or

1           chewing through any vending machine, if those products are placed together with  
2           any nontobacco product, other than matches, in the vending machine.

3           **SECTION 3. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **57-36-01. Definitions.** As used in this chapter, unless the context or subject matter  
6 otherwise requires:

7           1.   "Brand style" means a variety of cigarettes distinguished by the tobacco used, tar  
8               and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette,  
9               or packaging.

10          2.   "Chewing tobacco" means any leaf tobacco that is intended to be placed in the  
11               mouth.

12          ~~2.~~ 3.   "Cigar" means any roll of tobacco wrapped in tobacco.

13          ~~3.~~ 4.   "Cigarette" means any roll for smoking made wholly or in part of tobacco and  
14               encased in any material except tobacco.

15          ~~4.~~ 5.   "Consumer" means any person who has title to or possession of cigarettes, cigars,  
16               pipe tobacco, or other tobacco products in storage, for use or other consumption in  
17               this state.

18          6.   "Contraband cigarette" means:

19           a.   Cigarettes that do not bear a tax stamp required under this chapter;

20           b.   Cigarettes for which any required federal taxes have not been paid;

21           c.   Cigarettes that bear a counterfeit tax stamp or a false manufacturing label;

22           d.   Cigarettes that are manufactured, fabricated, assembled, processed,  
23               packaged, or labeled by any person other than the owner of the trademark  
24               rights in the cigarette brand or a person who is directly or indirectly authorized  
25               by such owner; or

26           e.   Cigarettes imported into the United States, or otherwise distributed, in  
27               violation of the Federal Imported Cigarette Compliance Act of 2000 [title IV of  
28               Pub. L. 106-476; 114 Stat. 2176; 26 U.S.C. 5754].

29          ~~5.~~ 7.   "Dealer" includes any person other than a distributor who is engaged in the  
30               business of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other  
31               tobacco products.

- 1       ~~6-~~ 8. "Distributor" includes any person engaged in the business of producing or  
2                   manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco  
3                   products, or importing into this state cigarettes, cigarette papers, cigars, pipe  
4                   tobacco, or other tobacco products, for the purpose of distribution and sale thereof  
5                   to dealers and retailers.
- 6       ~~7-~~ 9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 7       ~~8-~~ 10. "Licensed distributor" means a distributor licensed under the provisions of this  
8                   chapter.
- 9       ~~9-~~ 11. "Other tobacco products" means snuff and chewing tobacco.
- 10      ~~10-~~ 12. "Person" means any individual, firm, fiduciary, partnership, corporation, limited  
11                  liability company, trust, or association however formed.
- 12      ~~11-~~ 13. "Pipe tobacco" means any tobacco that, because of its appearance, type,  
13                  packaging, or labeling, is suitable for use and likely to be offered to, or purchased  
14                  by, consumers as tobacco to be smoked in a pipe.
- 15      14. "Related party" means any person who is associated with any other person  
16                  because such person:
- 17              a. Is an officer or director of a business;
- 18              b. Is legally recognized as a partner in business; or
- 19              c. Is directly or indirectly controlled by another.
- 20      ~~12-~~ 15. "Sale" or "sell" applies to gifts, exchanges, and barter.
- 21      ~~13-~~ 16. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be  
22                  placed in the mouth.
- 23      17. "Stamp" means the indicia required to be placed on a pack of cigarettes which  
24                  evidence payment of the tax on cigarettes under this chapter or the indicia used to  
25                  indicate that the cigarettes are intended for a sale or distribution within this state  
26                  which is exempt from state tax under any applicable provision of law.
- 27      ~~14-~~ 18. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or  
28                  other tobacco products for use or consumption in this state.
- 29      ~~15-~~ 19. "Use" means the exercise of any right or power incidental to the ownership or  
30                  possession of cigarettes, cigars, pipe tobacco, or other tobacco products.

20. "Within this state" means within the exterior limits of the state of North Dakota and includes all territory within these limits owned by or ceded to the United States of America.

**SECTION 4.** Section 57-36-02.1 of the North Dakota Century Code is created and enacted as follows:

**57-36-02.1. Transactions only with licensed distributors and licensed dealers.** A distributor may sell or distribute cigarettes to a person located or doing business within this state, only if the person receiving the cigarettes is a licensed distributor or licensed dealer. A dealer may only sell cigarettes obtained from a licensed distributor.

**SECTION 5.** Section 57-36-03.1 of the North Dakota Century Code is created and enacted as follows:

**57-36-03.1. License availability.** The attorney general may not grant or renew a license issued under this chapter or allow such a license to be maintained if the attorney general determines the applicant or any person who owns more than fifteen percent of the ownership interests in the applicant or a related party:

1. Owes five hundred dollars or more in delinquent cigarette taxes at the time of application;
2. Had a license issued under this chapter revoked within the past two years by the attorney general for willful misconduct relating to stolen or contraband cigarettes or has been convicted of a state or federal crime, punishable by imprisonment of one year or more, relating to stolen or contraband cigarettes;
3. Is a distributor who manufactures cigarettes and who is neither a participating manufacturer as defined in subsection II(jj) of the master settlement agreement as referenced in section 51-25-02 nor in full compliance with chapter 51-25;
4. Has been found to have willfully imported or caused to be imported into the United States for sale or distribution any cigarette in violation of 19 U.S.C. 1681a [Pub. L. 106-476; 114 Stat. 2101];
5. Has been found to have willfully imported or caused to be imported into the United States for sale or distribution or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act [Pub. L. 89-92; 79 Stat. 282; 15 U.S.C. 1331 et seq.]; or

6. Has willfully made a material false statement in the application or has willfully failed to produce records required to be maintained by this chapter.

**SECTION 6.** Section 57-36-03.2 of the North Dakota Century Code is created and enacted as follows:

**57-36-03.2. Notification of change.** A licensed distributor or licensed dealer shall notify the attorney general of any change in the information contained on the license application form, including any change in ownership, and shall do so within thirty days of the change.

**SECTION 7.** Section 57-36-03.3 of the North Dakota Century Code is created and enacted as follows:

**57-36-03.3. Procedural requirements.** A license may not be revoked and a fine may not be imposed under this chapter, except in accordance with the due process procedures provided under chapter 28-32 and this chapter.

**SECTION 8.** Section 57-36-05.3 of the North Dakota Century Code is created and enacted as follows:

**57-36-05.3. Limitations on retail sales.** A dealer may not knowingly sell or distribute more than ten cartons of cigarettes to any person in a single transaction or in any series of transactions within a twenty-four-hour period. However, a dealer who is also licensed as a distributor may make any sales permitted to be made by a distributor under this chapter when acting in that capacity.

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

**57-36-08.1. Cigarette stamping requirements.**

1. The tax commissioner shall prepare and have available for sale exclusively to licensed distributors:

a. Stamps of the denominations and quantities as the tax commissioner considers necessary for the payment of taxes imposed under this chapter;  
and

b. Stamps that indicate that a pack of cigarettes is exempt from taxation under this chapter.

2. Only licensed distributors may purchase tax stamps. Licensed distributors may purchase tax stamps only from the tax commissioner.

- 1           3.   The stamps must be of such designs and materials as to make the removal and  
2               reuse of the stamps impossible after being affixed.
- 3           4.   Licensed distributors shall affix the stamps:
  - 4               a.   In a denomination that at least equals the tobacco tax due on the cigarettes in  
5               the package, if the cigarettes are subject to tax by this chapter;
  - 6               b.   On the smallest package that will be handled, sold, used, consumed, or  
7               distributed within this state; and
  - 8               c.   To the bottom of each individual pack of cigarettes in a manner so that the  
9               stamp cannot be removed from the package without being mutilated or  
10              destroyed.
- 11          5.   Any stamp required by this chapter must note whether the state tax under this  
12              chapter or any other provision of state law was paid, or whether the pack of  
13              cigarettes was not subject to taxation under this chapter or any other state law.  
14              Each roll or sheet of stamps must have a separate serial number, which must be  
15              visible and clearly identifiable at the point of sale on each pack of cigarettes.
- 16          6.   The tax commissioner shall keep records of which distributor purchases each roll  
17              or sheet of stamps identified by serial number.

18           **SECTION 10.** Section 57-36-08.2 of the North Dakota Century Code is created and  
19 enacted as follows:

20           **57-36-08.2. Stamping duties of licensed distributors.**

- 21           1.   Only a licensed distributor may receive unstamped packs of cigarettes.
- 22           2.   Distributors may not provide, sell, distribute, give, or otherwise transfer or assist,  
23              aid, or abet a person in selling, distributing, giving, or otherwise transferring  
24              stamps to any other distributor or person, nor may a distributor purchase or obtain  
25              stamps from any other distributor.
- 26           3.   Prior to shipment to another person, each distributor shall apply a stamp to each  
27              pack of cigarettes imported, distributed, or sold whether or not the cigarettes are  
28              subject to state taxation under this chapter or any other provision of state law,  
29              provided that a distributor may only apply a tax stamp to a pack of cigarettes  
30              manufactured, imported, purchased, or obtained directly from a licensed  
31              distributor.



1           4. Only a licensed distributor may ship or otherwise cause to be delivered unstamped  
2           packs of cigarettes in, into, or from this state, provided that a licensed distributor  
3           may transport unstamped packs of cigarettes to a facility, wherever located, owned  
4           by that distributor.

5           5. Any person who ships or otherwise causes to be delivered unstamped packs of  
6           cigarettes into, within, or from this state shall ensure that the invoice or equivalent  
7           documentation and the bill of lading or freight bill for the shipment identifies the  
8           true name and address of the consignor or seller, the true name and address of  
9           the consignee or purchaser, and the quantity by brand style of the cigarettes so  
10          transported. This chapter may not be construed to impose any requirement or  
11          liability upon any common or contract carrier.

12           **SECTION 11.** Section 57-36-13.1 of the North Dakota Century Code is created and  
13 enacted as follows:

14           **57-36-13.1. Possession of contraband cigarettes.** It is a violation of this chapter for  
15 any person to knowingly possess, or possess for sale, contraband cigarettes.

16           **SECTION 12. EFFECTIVE DATE.** This Act is effective for taxable events occurring  
17 after July 31, 2007.