

Sixtieth
Legislative Assembly
of North Dakota

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 57-36-02.1, 57-36-03.1, 57-36-03.2, 57-36-03.3,
2 57-36-05.3, 57-36-08.1, 57-36-08.2, and 57-36-13.1 of the North Dakota Century Code, relating
3 to tax stamping of cigarette packs; to amend and reenact section 57-36-01 of the North Dakota
4 Century Code, relating to tobacco products tax definitions; and to provide an effective date.

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

6 **SECTION 1. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **57-36-01. Definitions.** As used in this chapter, unless the context or subject matter
9 otherwise requires:

- 10 1. "Brand style" means a variety of cigarettes distinguished by the tobacco used, tar
11 and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette,
12 or packaging.
- 13 2. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the
14 mouth.
- 15 ~~2.~~ 3. "Cigar" means any roll of tobacco wrapped in tobacco.
- 16 ~~3.~~ 4. "Cigarette" means any roll for smoking made wholly or in part of tobacco and
17 encased in any material except tobacco.
- 18 ~~4.~~ 5. "Consumer" means any person who has title to or possession of cigarettes, cigars,
19 pipe tobacco, or other tobacco products in storage, for use or other consumption in
20 this state.
- 21 6. "Contraband cigarette" means:
 - 22 a. Cigarettes that do not bear a tax stamp required under this chapter;
 - 23 b. Cigarettes for which any required federal taxes have not been paid;
 - 24 c. Cigarettes that bear a counterfeit tax stamp or a false manufacturing label;

- 1 d. Cigarettes that are manufactured, fabricated, assembled, processed,
2 packaged, or labeled by any person other than the owner of the trademark
3 rights in the cigarette brand or a person who is directly or indirectly authorized
4 by such owner; or
- 5 e. Cigarettes imported into the United States, or otherwise distributed, in
6 violation of the Federal Imported Cigarette Compliance Act of 2000 [title IV of
7 Pub. L. 106-476; 114 Stat. 2176; 26 U.S.C. 5754].
- 8 ~~5-~~ 7. "Dealer" includes any person other than a distributor who is engaged in the
9 business of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other
10 tobacco products.
- 11 ~~6-~~ 8. "Distributor" includes any person engaged in the business of producing or
12 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco
13 products, or importing into this state cigarettes, cigarette papers, cigars, pipe
14 tobacco, or other tobacco products, for the purpose of distribution and sale thereof
15 to dealers and retailers.
- 16 ~~7-~~ 9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 17 ~~8-~~ 10. "Licensed distributor" means a distributor licensed under the provisions of this
18 chapter.
- 19 ~~9-~~ 11. "Other tobacco products" means snuff and chewing tobacco.
- 20 ~~40-~~ 12. "Person" means any individual, firm, fiduciary, partnership, corporation, limited
21 liability company, trust, or association however formed.
- 22 ~~44-~~ 13. "Pipe tobacco" means any tobacco that, because of its appearance, type,
23 packaging, or labeling, is suitable for use and likely to be offered to, or purchased
24 by, consumers as tobacco to be smoked in a pipe.
- 25 14. "Related party" means any person who is associated with any other person
26 because such person:
- 27 a. Is an officer or director of a business;
28 b. Is legally recognized as a partner in business; or
29 c. Is directly or indirectly controlled by another.
- 30 ~~42-~~ 15. "Sale" or "sell" applies to gifts, exchanges, and barter.

~~13.~~ 16. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.

17. "Stamp" means the indicia required to be placed on a pack of cigarettes which evidence payment of the tax on cigarettes under this chapter or the indicia used to indicate that the cigarettes are intended for a sale or distribution within this state which is exempt from state tax under any applicable provision of law.

~~14.~~ 18. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other tobacco products for use or consumption in this state.

~~15.~~ 19. "Use" means the exercise of any right or power incidental to the ownership or 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 2. 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 3. 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;

- 1 3. Is a distributor who manufactures cigarettes and who is neither a participating
2 manufacturer as defined in subsection II(jj) of the master settlement agreement as
3 referenced in section 51-25-02 nor in full compliance with chapter 51-25;
- 4 4. Has been found to have willfully imported or caused to be imported into the United
5 States for sale or distribution any cigarette in violation of 19 U.S.C. 1681a [Pub.
6 L. 106-476; 114 Stat. 2101];
- 7 5. Has been found to have willfully imported or caused to be imported into the United
8 States for sale or distribution or manufactured for sale or distribution in the United
9 States any cigarette that does not fully comply with the Federal Cigarette Labeling
10 and Advertising Act [Pub. L. 89-92; 79 Stat. 282; 15 U.S.C. 1331 et seq.]; or
- 11 6. Has willfully made a material false statement in the application or has willfully failed
12 to produce records required to be maintained by this chapter.

13 **SECTION 4.** Section 57-36-03.2 of the North Dakota Century Code is created and
14 enacted as follows:

15 **57-36-03.2. Notification of change.** A licensed distributor or licensed dealer shall
16 notify the attorney general of any change in the information contained on the license application
17 form, including any change in ownership, and shall do so within thirty days of the change.

18 **SECTION 5.** Section 57-36-03.3 of the North Dakota Century Code is created and
19 enacted as follows:

20 **57-36-03.3. Procedural requirements.** A license may not be revoked and a fine may
21 not be imposed under this chapter, except in accordance with the due process procedures
22 provided under chapter 28-32 and this chapter.

23 **SECTION 6.** Section 57-36-05.3 of the North Dakota Century Code is created and
24 enacted as follows:

25 **57-36-05.3. Limitations on retail sales.** A dealer may not knowingly sell or distribute
26 more than ten cartons of cigarettes to any person in a single transaction or in any series of
27 transactions within a twenty-four-hour period. However, a dealer who is also licensed as a
28 distributor may make any sales permitted to be made by a distributor under this chapter when
29 acting in that capacity.

30 **SECTION 7.** Section 57-36-08.1 of the North Dakota Century Code is created and
31 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.
3. The stamps must be of such designs and materials as to make the removal and reuse of the stamps impossible after being affixed.
4. Licensed distributors shall affix the stamps:
 - a. In a denomination that at least equals the tobacco tax due on the cigarettes in the package, if the cigarettes are subject to tax by this chapter;
 - b. On the smallest package that will be handled, sold, used, consumed, or distributed within this state; and
 - c. To the bottom of each individual pack of cigarettes in a manner so that the stamp cannot be removed from the package without being mutilated or destroyed.
5. Any stamp required by this chapter must note whether the state tax under this chapter or any other provision of state law was paid, or whether the pack of cigarettes was not subject to taxation under this chapter or any other state law. Each roll or sheet of stamps must have a separate serial number, which must be visible and clearly identifiable at the point of sale on each pack of cigarettes.
6. The tax commissioner shall keep records of which distributor purchases each roll or sheet of stamps identified by serial number.

SECTION 8. Section 57-36-08.2 of the North Dakota Century Code is created and enacted as follows:

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

1. Only a licensed distributor may receive unstamped packs of cigarettes.

- 1 2. Distributors may not provide, sell, distribute, give, or otherwise transfer or assist,
2 aid, or abet a person in selling, distributing, giving, or otherwise transferring stamps
3 to any other distributor or person, nor may a distributor purchase or obtain stamps
4 from any other distributor.
- 5 3. Prior to shipment to another person, each distributor shall apply a stamp to each
6 pack of cigarettes imported, distributed, or sold whether or not the cigarettes are
7 subject to state taxation under this chapter or any other provision of state law,
8 provided that a distributor may only apply a tax stamp to a pack of cigarettes
9 manufactured, imported, purchased, or obtained directly from a licensed distributor.
- 10 4. Only a licensed distributor may ship or otherwise cause to be delivered unstamped
11 packs of cigarettes in, into, or from this state, provided that a licensed distributor
12 may transport unstamped packs of cigarettes to a facility, wherever located, owned
13 by that distributor.
- 14 5. Any person who ships or otherwise causes to be delivered unstamped packs of
15 cigarettes into, within, or from this state shall ensure that the invoice or equivalent
16 documentation and the bill of lading or freight bill for the shipment identifies the true
17 name and address of the consignor or seller, the true name and address of the
18 consignee or purchaser, and the quantity by brand style of the cigarettes so
19 transported. This chapter may not be construed to impose any requirement or
20 liability upon any common or contract carrier.

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

23 **57-36-13.1. Possession of contraband cigarettes.** It is a violation of this chapter for
24 any person to knowingly possess, or possess for sale, contraband cigarettes.

25 **SECTION 10. EFFECTIVE DATE.** This Act is effective for taxable events occurring
26 after July 31, 2007.