

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1269

Introduced by

Representatives Porter, Price, Uglen

Senator Fischer

1 A BILL for an Act to create and enact a new section to chapter 57-36 of the North Dakota
2 Century Code, relating to the sale and distribution of tobacco products manufactured by
3 tobacco product manufacturers not in compliance with state or federal law; to amend and
4 reenact paragraph 2 of subdivision b of subsection 2 of section 51-25-02 of the North Dakota
5 Century Code, relating to the release of escrow funds deposited by tobacco product
6 manufacturers; to provide for anti-severability; to provide an effective date; and to declare an
7 emergency.

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

9 **SECTION 1. AMENDMENT.** Paragraph 2 of subdivision b of subsection 2 of section
10 51-25-02 of the North Dakota Century Code is amended and reenacted as follows:

11 (2) To the extent that a tobacco product manufacturer establishes that the
12 amount it was required to place into escrow on account of units sold in
13 the state in a particular year was greater than ~~the state's allocable~~
14 ~~share of the total payments that the manufacturer would have been~~
15 ~~required to make in that year under the master settlement agreement~~
16 ~~(as determined pursuant to section IX(i)(2) of the master settlement~~
17 ~~agreement, and before any of the adjustments or offsets described in~~
18 ~~section IX(i)(3) of that agreement other than the inflation adjustment)~~
19 the master settlement agreement payments, as determined pursuant to
20 section IX(i) of that agreement including after final determination of all
21 adjustments, that the manufacturer would have been required to make
22 on account of the units sold had it been a participating manufacturer,
23 the excess must be released from escrow and revert back to the
24 tobacco product manufacturer; or

1 **SECTION 2.** A new section to chapter 57-36 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Sale of noncompliant tobacco products.** A dealer, distributor, or other person may
4 not knowingly sell or distribute in this state any tobacco product manufactured by a tobacco
5 product manufacturer not in compliance with the laws of this state or the United States.

6 **SECTION 3. ANTI-SEVERABILITY - EFFECTIVE DATE.** If any portion of paragraph 2
7 of subdivision b of subsection 2 of section 51-25-02 as amended by this Act is held by a court
8 of competent jurisdiction to be unconstitutional, then paragraph 2 of subdivision b of
9 subsection 2 of section 51-25-02 is suspended. After suspension of paragraph 2 of
10 subdivision b of subsection 2 of section 51-25-02, if any other provision of subdivision b of
11 subsection 2 of section 51-25-02 is held by a court of competent jurisdiction to be
12 unconstitutional, then paragraph 2 of subdivision b of subsection 2 of section 51-25-02 takes
13 effect as it existed on January 1, 2003. Neither any holding of unconstitutionality nor the
14 suspension of paragraph 2 of subdivision b of subsection 2 of section 51-25-02 affects or
15 invalidates any other portion of section 51-25-02 or the application of the section to any person
16 or circumstance, and the remaining portions of section 51-25-02 continue in effect.

17 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.