

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1431

Page 1, line 2, after "57-36-13.1" insert ", 57-36-13.2"

Page 1, line 3, after "indicia" insert "and unfair and deceptive business practices"

Page 1, line 5, remove "to repeal section 57-36-25.1 of the North Dakota Century Code,"

Page 1, remove line 6

Page 6, after line 11, insert:

"SECTION 10. Section 57-36-13.2 of the North Dakota Century Code is created and enacted as follows:

57-36-13.2. Unfair and deceptive business practices. The advertising, offering for sale, or sale of cigarettes below cost to the retailer or cost to the wholesaler is an unfair and deceptive business practice. It is the policy of the state to promote the public welfare and it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes, and maximize and protect state revenues from this chapter. For purposes of this section:

1. "Cost to the retailer" means the cost to the wholesaler from whom the cigarettes were purchased by the retailer plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by the retailer in the retailer's determination of costs for income tax reporting purposes for the total operations of the retailer's establishment. Cost of doing business by the retailer includes costs of:
 - a. Labor, including salaries of executives and officers;
 - b. Rent;
 - c. Depreciation;
 - d. Selling;
 - e. Maintenance of equipment;
 - f. Delivery;
 - g. Licenses;
 - h. Business taxes;
 - i. Insurance;
 - j. Advertising;
 - k. Any rebates, patronage dividends, or concessions, no matter how defined;

- l. Expenses prior to opening for business, including costs of startup, land acquisition, construction, marketing studies, and similar expenses;
- m. Any district, central, regional, and national administrative and operation costs and expenses; and
- n. All other indirect or overhead costs with respect to the operation of the business of the retailer.

The cost of doing business by the retailer must be expressed as a percentage and applied to the cost to the wholesaler from whom the cigarettes were purchased.

A retailer who purchases directly from a manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining the cost to the retailer, add the cost of doing business by the wholesaler, to the basic cost of cigarettes to the retailer, as well as the cost of doing business by retailer.

In the absence of the filing with the commissioner of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer is presumed to be eight percent of the cost to the wholesaler.

2. "Cost to the wholesaler" means the basic cost of cigarettes purchased by the wholesaler from a manufacturer plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by the wholesaler in the wholesaler's determination of costs for income tax reporting purposes for the total operation of the wholesaler's business. The cost of doing business by the wholesaler includes costs of:

- a. Labor, including salaries of executives and officers;
- b. Rent;
- c. Depreciation;
- d. Selling;
- e. Maintenance of equipment;
- f. Delivery;
- g. Licenses;
- h. Business taxes;
- i. Insurance;
- j. Advertising;
- k. Any rebates, patronage dividends, or concessions, no matter how defined;
- l. Expenses prior to opening for business, including costs of startup, land acquisition, construction, marketing studies, and similar expenses;

- m. Any district, central, regional, and national administrative and operation costs and expenses; and
- n. All other indirect or overhead costs with respect to the operation of the wholesaler.

The cost of doing business by a wholesaler must be expressed as a percentage and applied to the basic cost of cigarettes.

In the absence of the filing with the commissioner of proof that the commissioner declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the cost of doing business by the wholesaler is presumed to be five percent of the basic cost of cigarettes to the wholesaler."

Page 8, remove lines 20 and 21

Renumber accordingly