

**FIRST ENGROSSMENT
with Conference Committee Amendments**

ENGROSSED HOUSE BILL NO. 1522

Introduced by

Representatives Carlson, Price

Senator Wardner

1 A BILL for an Act to create and enact chapter 51-30 of the North Dakota Century Code, relating
2 to regulation of sale and delivery of tobacco products; to amend and reenact section 57-36-27
3 of the North Dakota Century Code, relating to consumer's use tax; to provide a penalty; and to
4 declare an emergency.

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

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

8 **51-30-01. Prohibited acts regarding sale of tobacco products to minors.** It is
9 unlawful for any person in the business of selling tobacco products to take an order for a
10 tobacco product, other than from a person who is in the business of selling tobacco products,
11 through the mail or through any telecommunications means, including by telephone, facsimile,
12 or the internet, if in providing for the sale or delivery of the product pursuant to the order, the
13 person mails the product or ships the product by carrier, and the person fails to comply with
14 each of the following procedures:

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

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

19 b. A signed statement from the individual providing a certification that the
20 individual:

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

22 (2) Has selected an option on the statement as to whether the individual
23 wants to receive mailings from a tobacco company; and

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

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 a delivery sale or shipping cigarettes in connection with a sale, a
21 person shall file with the tax commissioner a statement setting forth the person's
22 name, trade name, and the address of the person's principal place of business and
23 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 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
14 subdivision a of subsection 5 of section 51-30-01 in another individual's name is
15 guilty of a noncriminal offense and is subject to the penalty provided under
16 subsection 1.
- 17 4. Any person that fails to pay any tax required in connection with a delivery sale
18 shall pay, in addition to any other penalty, a penalty of fifty percent of the tax due
19 but unpaid.
- 20 5. Any cigarettes sold or attempted to be sold in a delivery sale that does not meet
21 the requirements of this chapter are forfeited to the state and must be destroyed.

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

25 **SECTION 2. AMENDMENT.** Section 57-36-27 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **57-36-27. Consumer's use tax - Cigarettes - Reports - Remittances.**

- 28 1. A tax is hereby imposed upon the use or storage by consumers of cigarettes in this
29 state, and upon such consumers, at the following rates:
- 30 a. On cigarettes weighing not more than three pounds [1360.78 grams] per
31 thousand, five mills on each such cigarette.

- 1 b. On cigarettes weighing more than three pounds [1360.78 grams] per
2 thousand, five and one-half mills on each such cigarette.
- 3 2. This tax does not apply if the tax imposed by section 57-36-06 has been paid.
- 4 3. ~~This tax does not apply to the use or storage of cigarettes in quantities of two~~
5 ~~hundred or less in the possession of any one consumer nor to cigarettes exempt~~
6 ~~pursuant to section 57-36-24.~~
- 7 4. On or before the tenth day of each calendar quarter, every consumer who during
8 the preceding calendar quarter has acquired title or possession of cigarettes for
9 use or storage in this state, upon which cigarettes the tax imposed by section
10 57-36-06 has not been paid, shall file a return with the tax commissioner showing
11 the quantity of cigarettes so acquired. The return must be made upon a form
12 furnished and prescribed by the tax commissioner and must contain such other
13 information as the tax commissioner may require. The return must be
14 accompanied by a remittance for the full unpaid tax liability shown by it.
- 15 ~~5.~~ 4. As soon as practicable after any return is filed, the tax commissioner shall examine
16 the return and correct it, if necessary, according to the tax commissioner's best
17 judgment and information.
- 18 ~~6.~~ 5. In case any consumer required to pay the tax levied by this section fails to file a
19 return or remit the tax as herein required, the tax commissioner has the authority to
20 make an assessment of tax against the consumer according to the commissioner's
21 best judgment and information.
- 22 ~~7.~~ 6. All of the provisions of this chapter relating to corrections of returns, deficiency
23 assessments, protests thereto, hearings thereon, interest and penalties, and
24 collections of taxes are applicable to consumers under this section in like manner
25 as though set out in full herein.

26 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.