

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1434

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To Costa Richardson
Operator's Signature

10/16/03
Date

2003 HOUSE FINANCE AND TAXATION

HB 1434

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La Costa Richard
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10/6/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1434

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1	X		34
Committee Clerk Signature <i>Jane Stein</i>			

Minutes:

REP. BETTY GRANDE Introduced the bill. The bill deals with issuing of sales of tobacco to minors. She stated they dealt with this with the alcohol and this will work somewhat the same.

JOHN OLSON, REPRESENTING PHILIP MORRIS USA Testified in support of the bill.

This bill deals with the internet. He explained all the sections of the bill. He presented amendments which were prepared by Philip Morris. The bill deals with internet sales of cigarettes to minors.

JACK HOLLERAN, VICE-PRESIDENT OF BRAND INTEGRITY AT PHILIP MORRIS USA Testified in support of the bill. See written testimony.

JOHN QUINLAN, NORTH DAKOTA STATE TAX DEPARTMENT. Testified in a neutral position. He stated they had a couple of concerns. In Section 4, regarding the registration of tax permits from the attorney general's office. North Dakota law requires wholesalers and

Page 2

House Finance and Taxation Committee

Bill/Resolution Number HB 1434

Hearing Date February 5, 2003

retailers in North Dakota to be licensed with the North Dakota Attorney General's Office, that might be where this provision came from.

Section 5, there is a concern, placing the burden on out of state wholesalers and retailers shipping the goods in, we may have enforcement problems. The Quill case, which was the sales tax case, was heard by the federal Supreme Court, have indicated that it is illegal to tax or require registration of goods shipped as interstate commerce. We feel that may be a problem in this particular bill. I have not yet seen the amendments, but it is something to be considered.

With no further testimony, the hearing was closed.

COMMITTEE ACTION Tape #1, Side B, Meter #11.6

Discussion was held relating to Section 5 of the bill, which committee members felt needed to be amended. Also, there were concerns voiced regarding enforcement issues.

REP. BELTER Decided to act on the bill at a later date.

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LoCosta Rickford
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1434

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date February 12, 2003

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature <i>Janie Stein</i>			

Minutes:

COMMITTEE ACTION Tape #1 - did not record during committee action.

JOHN WALSTAD, LEGISLATIVE COUNCIL STAFF Appeared before the committee to explain two sets of amendments which Rep. Drovdal and Rep. Belter presented to the committee. Mrs. Walstad stated there would be problems with Section 4 in Amendment #30631.0201 and Section 6 of Amendment # 30631.0202 and Section 1 of the bill. Both amendments would not work together. He stated he was involved with the drafting of Amendment #30631.0202 which came from a law in Oklahoma.

REP. DROVDAL Explained his amendments stating Amendment 30631.0201 would make the North Dakota citizens who are ordering the tobacco products responsible for meeting all requirements. This amendment also replaces the attorney general with the tax commissioner.

JOHN WALSTAD Stated that Amendment #306310202 would make delivery of the products so distasteful to carriers, they would refuse to do it.

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10/16/03
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Page 2

House Finance and Taxation Committee

Bill/Resolution Number HB 1434

Hearing Date February 12, 2003

During discussion committee members commented whether there was any merit to have this law the same as the alcohol law.

REP. FROELICH Stated that some of the tribes were stamping cigarettes and charging a tax but some were not.

REP. DROVDAL Made a motion to adopt Amendment #30631.0201 as presented.

REP. IVERSON Second the motion. Motion carried by voice vote.

REP. DROVDAL Made a motion for a **DO PASS AS AMENDED**

REP. CLARK Second the motion. **MOTION CARRIED**

10 YES 3 NO 1 ABSENT

REP. DROVDAL Was given the floor assignment.

12

FISCAL NOTE
Requested by Legislative Council
02/14/2003

Amendment to: HB 1434

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

Engrossed HB 1434 addresses the sale of tobacco products through the mail, the Internet, or any other telecommunications method. The bill imposes the wholesale cigarette and tobacco taxes on the products delivered into the state that have not already been taxed. It is not possible to estimate the fiscal impact of the bill.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn L Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	02/17/2003

Kelista Richardson
Operator's Signature

10/16/03
Date

LR

FISCAL NOTE
Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1434

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

HB 1434 addresses the sale of tobacco products through the mail, the Internet, or any other telecommunications method. Section 5 imposes the wholesale cigarette and tobacco taxes on the products delivered into the state that have not already been taxed. It is not possible to estimate the fiscal impact of Section 5 of the bill.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	02/04/2003

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K. Costa
Operator's Signature

10/16/03
Date

From
John Olson
Prepared by Philip Morris

PROPOSED AMENDMENTS TO HOUSE BILL 1434

Page 1, line 9, delete "in or affecting interstate commerce"

Page 1, line 18, replace "Wants" with "Whether the individual wants"

Page 2, line 3, after "3.", insert "Before mailing or shipping the product, the person provides to the prospective consumer, via e-mail or other means, a notice that meets the requirements of section 4 of this Act. 4."

Page 2, line 6, replace "4." with "5."

Page 2, line 20, replace "5." with "6."

Page 2, after line 26, insert:

"SECTION 4. Disclosure Requirements. The notice required under subsection 3 of section 1 of this Act shall include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum age are illegal;
2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1333(a)(1)) rotated on a quarterly basis;
3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section 1 of this Act; and
4. A prominent and clearly legible statement that cigarette sales are subject to tax under §57-36-06 and §57-36-32, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale."

Page 3, line 18, delete ", or who knowingly and"

Page 3, delete line 19

Page 3, line 20, delete "this Act in another person's name,"

Page 3, line 21, after "3." insert "Any person who knowingly and falsely submits a certification under subdivision a of subsection 5 of section 1 of this Act in another person's name is guilty of a noncriminal offense. 4."

Page 3, line 24, replace "4" with "5"

Renumber Accordingly

30631.0201
Title.

Prepared by the Legislative Council staff for
Representative Drovda
February 6, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1434

Page 1, line 9, remove "in or affecting interstate commerce"

Page 1, line 15, remove "in writing"

Page 1, line 16, replace "person" with "individual"

Page 1, line 18, replace "Wants" with "Has selected an option on the statement as to whether the individual wants"

Page 2, line 3, after "3." insert "Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section 4 of this Act.

4."

Page 2, line 6, replace "4." with "5."

Page 2, line 20, replace "5." with "6."

Page 2, line 25, replace "persons" with "Persons"

Page 2, after line 26, insert:

"SECTION 4. Disclosure requirements. The notice required under subsection 3 of section 1 of this Act must include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum age are illegal;
2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act [15 U.S.C. 1333(a)(1)] rotated on a quarterly basis;
3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section 1 of this Act; and
4. A prominent and clearly legible statement that cigarette sales are subject to tax under sections 57-36-06 and 57-36-32, and an explanation of how the tax has been, or is to be, paid with respect to the delivery sale."

Page 2, line 29, replace "attorney general" with "tax commissioner"

Page 3, line 8, replace "making a" with "receiving", replace "sale" with "of any tobacco product", and remove "collect and"

Page 3, line 9, replace "levied by the state" with "due under chapter 57-36" and replace "sale pursuant to" with ". This section does not apply if the"

Page No. 1

30631.0201

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

Page 3, remove line 10

Page 3, line 12, replace the second "the" with "this" and after "state" insert "or another state"

Page 3, line 18, remove ", or who knowingly and"

Page 3, remove line 19

Page 3, line 20, remove "this Act in another person's name,"

Page 3, line 21, after "3." insert "Any individual who knowingly and falsely submits a certification under subdivision a of subsection 5 of section 1 of this Act in another individual's name is guilty of a noncriminal offense and is subject to the penalty provided under subsection 1.

4."

Page 3, line 24, replace "4." with "5."

Renumber accordingly

Page No. 2

30631.0201

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Richard Costa
Operator's Signature

10/16/03
Date

Date: 2-12-03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1434

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30631.0201

Action Taken

Do Pass as amended

Motion Made By

Rep Drovdal

Seconded By

Rep. Clark

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN	✓				
DROVDAL, VICE-CHAIR	✓				
CLARK	✓				
FROELICH		✓			
GROSZ	✓				
HEADLAND	A				
IVERSON	✓				
KELSH	✓				
KLEIN	✓				
NICHOLAS	✓				
SCHMIDT		✓			
WEILER	✓				
WIKENHEISER	✓				
WINRICH		✓			

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep. Drovdal

If the vote is on an amendment, briefly indicate intent:

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La Costa Rickford
Operator's Signature

10/6/03
Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 8:37 a.m.

Module No: HF-28-2522
Carrier: Drovda
Insert LC: 30631.0203 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1434: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1434 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "In or affecting interstate commerce"

Page 1, line 15, remove "in writing"

Page 1, line 16, replace "person" with "individual"

Page 1, line 18, replace "Wants" with "Has selected an option on the statement as to whether the individual wants"

Page 2, line 3, after "3." Insert "Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section 4 of this Act.

4."

Page 2, line 6, replace "4." with "5."

Page 2, line 20, replace "5." with "6."

Page 2, line 25, replace "persons" with "Persons"

Page 2, after line 26, insert:

"SECTION 4. Disclosure requirements. The notice required under subsection 3 of section 1 of this Act must include:

1. A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum age are illegal;
2. A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act [15 U.S.C. 1333(a)(1)] rotated on a quarterly basis;
3. A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with section 1 of this Act; and
4. A prominent and clearly legible statement that cigarette sales are subject to tax under sections 57-36-06 and 57-36-32, and an explanation of how the tax has been, or is to be, paid with respect to the delivery sale."

Page 2, line 29, replace "attorney general" with "tax commissioner"

Page 3, line 8, replace "making a" with "receiving", replace "sale" with "of any tobacco product", and remove "collect and"

Page 3, line 9, replace "levied by the state" with "due under chapter 57-36" and replace "sale pursuant to" with ". This section does not apply if the"

Page 3, remove line 10

(2) DESK, (3) COMM

Page No. 1

HR-28-2522

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Richard Costa
Operator's Signature

10/16/03
Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 8:37 a.m.

Module No: HR-28-2522
Carrier: Drovdal
Insert LC: 30631.0203 Title: .0300

Page 3, line 12, replace the second "the" with "this" and after "state" insert "or another state"

Page 3, line 18, remove ", or who knowingly and"

Page 3, remove line 19

Page 3, line 20, remove "this Act in another person's name,"

Page 3, line 21, after "3." insert "Any individual who knowingly and falsely submits a certification under subdivision a of subsection 5 of section 1 of this Act in another individual's name is guilty of a noncriminal offense and is subject to the penalty provided under subsection 1.

4."

Page 3, line 24, replace "4." with "5."

Page 3, line 26, after the boldfaced period insert "**Enforcement.**"

Renumber accordingly

2003 SENATE FINANCE AND TAXATION

HB 1434

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1434

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 18, 2003

Tape Number	Side A	Side B	Meter #
1		X	1425-3665

Committee Clerk Signature

Minutes:

Senator Urlacher opened the hearing on HB1434. All committee members are present. This bill relates to regulating the sale and delivery of tobacco products by certain methods.

Representative Bette Grande (mtr #1460) - Introduced HB1434. Feels the purchase of cigarettes should be in compliance with the Master Settlement agreement. Hopes this bill helps youth cessation of tobacco use.

Senator Urlacher (mtr #1596) - You mentioned alcohol, is age verified when ordered over the Internet?

Representative Grande (mtr #1605) - Upon delivery in ND, put into place last session, the wording in this bill is almost mirrored to that.

Senator Seymour (mtr #1632) - Are younger people smoking more today?

Representative Grande (mtr #1645) - I don't notice as much, don't have that issue in my school.

Law enforcement has brought it up to me.

Page 2

Senate Finance and Taxation Committee

Bill/Resolution Number HB1434

Hearing Date March 18, 2003

Senator Syverson (mtr #1768) - In the bill, the requirement that the delivery organization has to check the ID of the receiver, do you feel there may be reluctance on the part of some national transportation organizations?

Representative Grande (mtr #1804) - Understands that in the case of alcohol, with US Mail it is a drop of thing, UPS is more than willing to. They also leave outside the door, just drop-off.

Toby Spangler, Regional Director of Government Affairs at Altria Corporate Services Inc.

(mtr #1933) - Testified in support of HB1434. Feels HB1434 enhances the states ability to prevent minor from obtaining cigarettes. Written testimony is attached.

Senator Seymour (mtr #2198) - How many ND companies sell cigarettes on the Internet?

Mr. Spangler (mtr #2207) - Are trying to track that down, not able to find ND based Internet sellers at this time.

Senator Syverson (mtr #2329) - Indicated that you researched on the number of Internet sellers of cigarettes, have you established locations or backgrounds? Are a number of sellers from Indian Reservations, in northeastern US.

Mr. Spangler (mtr #2402) - Is a growing problem. Is a challenge to get a handle on how much sales are coming from the reservations. Can not give a specific number but it is large.

John Olson, Phillip Morris USA (mtr #2500) - Couple of comments. As a concept there is unified support to get a handle on cigarette sales to minors and Internet sales. Acknowledged the expertise of Gary Anderson and John Clemens (?) in this area. Main concern with the bill is the enforcement provision. In terms of looking at the law and how do you enforce it. After working through this bill, I think there are concerns that may need to be addressed. Doesn't mean we give up just because enforcement is hard. Bill is a good start. Allows the state to recoup lost

Page 3

Senate Finance and Taxation Committee

Bill/Resolution Number HB1434

Hearing Date March 18, 2003

revenues. Will be drafting and presenting an amendment. Amendment is not prepared in written form, but did explain the impact of the amendment on this bill.

Rick Clayburgh, State Tax Commissioner (mtr #3075) - Supports the bill and will work with the committee on any amendments. Feels that states do need to address underage purchases, but also that taxes applicable to those products are fairly and appropriately collected. To ensure maintaining a level playing field. Talked about the difficulty of enforcement along with the lack of jurisdiction over the postal service.

Richard Elken, RJR Tobacco Company (mtr #3607) - Testified in support of HB1434 for reasons already stated.

Senator Urlacher (mtr #3665) - Given no further testimony, closed the hearing on HB1434

March 19, 2003 Tape 1, Side A

Senator Urlacher (mtr #4037) - Amendments are coming on this bill, will hold.

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LoCosta Richard
Operator's Signature

10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1434

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 24, 2003

Tape Number	Side A	Side B	Meter #
1		X	1625-3480
Committee Clerk Signature <i>[Signature]</i>			

Minutes:

Senator Urlacher opened the discussion on HB1434. All committee members are present. This bill relates to the regulation of the sale and delivery of tobacco products by certain methods.

Addresses collecting Internet sales and selling to minors.

Senator Wardner (mtr #1731) - Feels we have been discussing this bill right along with HB1431.

Question that Senator Tollefson had, seems directed at this bill. Feels the point is that we have to start someplace.

Senator Tollefson (mtr #1785) - Question regarding section 6 of HB1434. Is there an amendment.

Senator Seymour (mtr #1816) - Clarified that committee talked about amending the last few words. Clarified which words would be removed and also pointed out the changes talked about on page 2.

Page 2

Senate Finance and Taxation Committee

Bill/Resolution Number HB1434

Hearing Date March 24, 2003

Senator Syverson (mtr #1930) - Why could we not ask the seller to remit taxes to the state tax department. Lack of probability that the buyer will submit taxes to the state.

Mr. Anderson (mtr #2019) - The Jenkins Act is an excellent piece of legislation if used properly.

One problem all states have, with the US Attorney Generals Office which has the jurisdiction of enforcing, US Attorney Generals Office has not pursued any enforcement action on this Act because they don't feel it is material enough to expend resources. States Attorneys and tax agencies continue to put pressure on the US Attorney General to enforce.

Senator Tollefson (mtr #2150) - That is interstate sales. If they don't support it we have nothing.

Mr. Anderson (mtr #2173) - Agreed with Senator Tollefson's comment.

Senator Syverson (mtr #2259) - If not they will not comply with Jenkins Act to pay taxes, will they comply with our bill, that requires them to make a report.

John Quinlan, State Tax Department (mtr #2326) - Explained the Jenkins Act and the compliance issues with that Act.

Senator Urlacher (mtr #2450) - Is this bill, as written, enforceable?

Mr. Quinlan (mtr #2456) - Portions are good, enforcement is not as good as we would like it to be. Section 6, the change to that is a good change. Also talked about the disclosures on web sites in other states. Section 4 includes the disclosure requirements

Senator Syverson (mtr #2726) - Observation, both bills are going after the wrong target. Should be more concerned with people moving cigarettes by truck/cartons.

Mr. Quinlan (mtr #2847) - Biggest noncompliance issue is not with retailers that purchase untaxed product, it is with the individual. The individual problem is much greater than the retail problem.

Page 3

Senate Finance and Taxation Committee

Bill/Resolution Number HB1434

Hearing Date March 24, 2003

Senator Syverson (mtr #2896) - Clarified that it is really the reservation sales.

Mr. Quinlan (mtr #2915) - That is correct, enforcement on the individual is difficult. Gave examples of enforcement difficulties.

Senator Wardner (mtr #2984) - Question on the amount of cartons that they allowed to buy right now.

Mr. Quinlan (mtr #2996) - Are allowed to buy one carton under the existing law.

Senator Urlacher (mtr #3034) - If it is stamped, is that one carton legal if it is not stamped?

Mr. Quinlan (mtr #3046) - At this time none are stamped. If stamped with tribal stamp, is still untaxed under the law. The one carton would remain the legal purchasing limit of untaxed product.

Senator Wardner (mtr #3088) - Back to Senator Syverson's question regarding section 6 of the bill. Does it do anything?

Mr. Quinlan (mtr #3125) - Section 6 is basically the provision that requires the consumer within the state to report the tax if they purchase from an out of state vendor. Could assess if we would receive the Jenkins information.

Senator Wardner moves to amend HB1434 with page 2, line 7, and page 3, line 27 and line 28.

Second by Senator Nichols. Voice vote 6 yea, 0 nay, 0 absent.

Intern will draw up the amendment.

Senator Urlacher (mtr #3480) - Closed the discussion on HB1431, will address on Tuesday.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1434

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 25, 2003

Tape Number	Side A	Side B	Meter #
1	X		4880-5835
Committee Clerk Signature <i>Mary Kay Glick</i>			

Minutes:

Senator Urlacher opened the discussion on HB1434. All committee members are present.

Senator Wardner (mtr #4945) - The Intern updated the amendment.

Senator Urlacher (mtr #5040) - The amendments are before you. There are some minor corrections.

Senator Wardner (mtr #5063) - Question for Gary Anderson of the Tax Department. Without the stamping does this bill have any teeth in it? Can it stand alone?

Gary Anderson, State Tax Department (mtr #5106) - The bill addresses product coming from outside of the state from unlicensed distributor. Those companies would not have had a stamping requirement under that bill. The bill as is will allow some enforcement authorities with carriers such as UPS or FedEx but we have no jurisdiction with the US Post Office.

Senator Wardner (mtr #5293) - Should we have a study on cigarette sales and taxes in the state?

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10/16/03
Date

Page 2

Senate Finance and Taxation Committee

Bill/Resolution Number HB1434

Hearing Date March 25, 2003

Mr. Anderson (mtr #5331) - The biggest problem is probably the individual going to the reservation and purchasing nontaxed cigarettes. We know there is a small amount of Internet sales activity occurring, don't believe it is that significant in ND yet. Best solution is that the State continue to have communications with the Tribes in terms of arriving at an agreement.

Amendment had been adopted 3-25-03 by voice vote.

Senator Nichols moves a Do Not Pass as Amended. Second by Senator Tollefson.

Roll call vote 5 yea, 1 nay, 0 absent. Carrier is Senator Wardner.

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Salvatore Riccardi

Date

10/16/03

30631.0301
Title.0400

Adopted by the Finance and Taxation
Committee

March 25, 2003

JB
3-25-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1434

Page 2, line 7, after "card" insert ", debt card,"

Page 3, line 27, remove the second "or"

Page 3, line 28, remove "another state"

Renumber accordingly

Page No. 1

30631.0301

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Date: 3-25-03
Roll Call Vote #: \

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1434

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass As Amended

Motion Made By Sen. Nichols Seconded By Sen. Tollefson

Senators	Yes	No	Senators	Yes	No
Senator Urlacher - Chairman	/		Senator Nichols	/	
Senator Wardner - Vice Chairman	/		Senator Seymour		/
Senator Syverson	/				
Senator Tollefson	/				

Total (Yes) 5 No 1

Absent _____

Floor Assignment Sen. Urlacher

If the vote is on an amendment, briefly indicate intent:

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REPORT OF STANDING COMMITTEE (410)
March 25, 2003 4:18 p.m.

Module No: SR-53-5740
Carrier: Wardner
Insert LC: 30631.0301 Title: .0400

REPORT OF STANDING COMMITTEE

HB 1434, as engrossed: Finance and Taxation Committee (Sen. Urlacher, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed
HB 1434 was placed on the Sixth order on the calendar.

Page 2, line 7, after "card" insert ", debit card,"

Page 3, line 27, remove the second "or"

Page 3, line 28, remove "another state"

Renumber accordingly

2003 TESTIMONY

HB 1434

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10/6/03
Date

LP

**TESTIMONY BEFORE THE NORTH DAKOTA LEGISLATURE IN SUPPORT OF
HOUSE BILL 1434
February 5, 2003**

Mr. Chairman, members of the committee, good morning. My name is Jack Holleran, and I am the Vice President of Brand Integrity at Philip Morris USA. Thank you for giving me this opportunity to present our views in support of House Bill 1434.

This legislation offers the State of North Dakota an important opportunity to help further North Dakota's efforts to prevent youth smoking by establishing tougher controls that will reduce youth access to cigarettes over the Internet.

A weak economy, heightened consumer frugality, and dramatic increases across the country in state cigarette excise taxes and other costs have caused smokers across the nation to seek avenues for purchasing cigarettes at a lower price. While there is nothing wrong with looking for a bargain, unfortunately this purchasing behavior has led to a growing number of unintended consequences. These include an increase in Internet sales that often occur without the proper payment of excise taxes or escrow payments, effective age verification, and in violation of trademark and other laws.

This illegal activity hurts everyone, whether or not they are smokers or engaged in the tobacco trade. Illegal Internet cigarette sales deprive governments of tax revenue and can result in distortions in the legitimate market. Such sales are currently posing a threat to the State of North Dakota in the form of lost revenue that, if collected, could improve the state's budget situation. It is currently estimated that billions of dollars in federal and state tax revenue is lost each year due to illegal

NO. 231 P. 8

PM CORPORATE AFFAIRS

FEB. 5, 2003 8:50PM

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Jack Holleran
Operator's Signature

10/16/03
Date

activity related to cigarette sales. (See e.g. GAO Report: Internet Cigarette Sales: Giving ATF Investigative Authority May Improve Reporting and Enforcement (August 2002).)

Illegal Internet sales of cigarettes also hurt law-abiding businesses including wholesalers, retailers and manufacturers who are competing against those that have unfair economic advantages due to illegal activity – for example, Internet sites that don't report purchasers to the tax authority in their state so that excise taxes can be collected.

Finally, illegal sales negatively impact our brands, including Marlboro. This is in part because Internet sites often mislead consumers into violating State excise tax laws and the laws against re-importing versions of domestic brands that are not intended to be sold in the United States or are imported in violation of Federal law.

Philip Morris USA takes the issue of illegal Internet sales of cigarettes very seriously, and we are pleased to support House Bill 1434. We commend Reps. Grande and Eckre for their leadership in putting forth legislation that, if enacted and enforced, would help disrupt, reduce and ultimately eliminate illegal Internet sales of cigarettes.

Internet sales of cigarettes pose a threat to the State of North Dakota if smokers purchasing cigarettes over the Internet illegally evade taxes and or purchase brands sold by manufacturers that have not made required escrow payments. This activity puts North Dakota retailers at risk.

While online sales currently represent a small percentage of total cigarette sales, a recent report estimated that within the next ten years, at least one-fifth of annual U.S. cigarette sales will occur over the Internet alone. There are currently more than 400 web sites selling tobacco products.

6 P. 9 NO. 231

PM CORPORATE AFFAIRS FEB. 5, 2003 8:50PM

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According to the U.S. General Accounting Office, three-quarters of all Internet tobacco sellers explicitly say that they will not report cigarette sales to tax collection officials. Moreover, Internet sites often mislead consumers into violating State excise tax and escrow payment laws, and the laws against importing versions of domestic brands that are not intended to be sold in the United States.

An increase in alternative cigarette distribution channels, such as the Internet, telephone or direct mail, also could run counter to efforts to prevent youth access to cigarettes. This is because many of these transactions occur in a way where age cannot be verified effectively therefore presenting a potential opportunity for minors to purchase cigarettes.

House Bill 1434 helps address this issue by enhancing the State's ability to prevent minors from obtaining access to cigarettes by imposing regulations at both the point-of-sale and the point-of-delivery. There are a number of provisions, however, that could be strengthened in order to better achieve the state's goals of ensuring its laws are fully complied with and preventing youth access to cigarettes. Moreover, the fiscal provisions of the bill could be significantly strengthened so that law enforcement officials have more effective tools to ensure that all required excise taxes are paid and escrow payments are made. We'd be happy to work with you on these issues, as well.

Conclusion

The issue of illegal internet sales of cigarettes is one that Philip Morris USA takes very seriously, and we are committed to working with you to help stop this growing problem. While Philip Morris USA will continue to work with law enforcement in North Dakota and elsewhere in order to provide intelligence information and cooperate with their investigations, there is a clear need for the existing laws to be strengthened so that law enforcement has the tools it needs to address this issue.

NO. 231 P. 10

PM CORPORATE AFFAIRS FEB. 5. 2003 8:51PM

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Jo Costa Richardson
Operator's Signature

10/16/03
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House Bill 1434 is an important step toward solving this issue. We urge you to support it. Thank

xu.

NO. 231 P. 11

FEB. 5. 2003 8:51PM PM CORPORATE AFFAIRS

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10/16/03
Date

TESTIMONY BEFORE THE NORTH DAKOTA LEGISLATURE IN SUPPORT OF
HOUSE BILL 1434
March 18, 2003

- Mr. Chairman, members of the committee, good morning. My name is Toby Spangler, and I am the Regional Director of Government Affairs at Altria Corporate Services Inc. I am here on behalf of our affiliate, Philip Morris USA, and want to thank you for giving me this opportunity to present our views in support of House Bill 1434.
- Philip Morris USA takes the issue of illegal Internet sales of cigarettes very seriously, and we are pleased to support this legislation.
- We commend Reps. Grande, and Eckre for their leadership in putting forth this bill, which, if enacted and enforced, would establish more effective controls to help prevent youth access to cigarettes over the Internet.
- A weak economy, heightened consumer frugality, and dramatic increases across the country in state cigarette excise taxes and other costs have caused smokers across the nation to seek avenues for purchasing cigarettes at a lower price.
- Unfortunately, this purchasing behavior has led to a growing number of unintended consequences, including an increase in Internet sales that often occur without effective age verification, without the proper payment of excise taxes, and in violation of other laws.
- This illegal activity hurts everyone, whether or not they are smokers, and whether or not they are engaged in the tobacco trade.

- Illegal Internet sales are currently posing a threat to the State of North Dakota in the form of lost revenue that, if collected, could help improve the state's budget situation.
- Illegal Internet cigarette sales also hurt law-abiding businesses including wholesalers, retailers and cigarette companies who are competing against those that have unfair economic advantages due to illegal activity.
- Internet sales of cigarettes pose a threat to the State of North Dakota when smokers illegally evade taxes. This activity negatively impacts North Dakota's budget situation to the extent that excise taxes are not properly collected and it puts North Dakota retailers at risk.
- Finally, an increase in alternative cigarette distribution channels, such as the Internet, telephone or direct mail, also could run counter to the state's efforts to prevent youth access to cigarettes. This is because many of these transactions occur in a way where age cannot be verified effectively therefore presenting a potential opportunity for minors to purchase cigarettes.
- House Bill 1434 would enhance the State's ability to prevent minors from obtaining access to cigarettes by imposing regulations at both the point-of-sale and the point-of-delivery.
- While this legislation is a step in the right direction, we believe there are a number of provisions that could be strengthened in order to better achieve the state's goals of ensuring its laws are fully complied with and preventing youth access to cigarettes.

Moreover, the fiscal provisions of the bill could be significantly strengthened so that law enforcement officials have more effective tools to ensure that all required excise taxes are paid and escrow payments are made. We'd be happy to work with you on these issues.

- The issue of illegal Internet cigarette sales is one that Philip Morris USA takes very seriously, and we are committed to working with you to help stop this growing problem.
- This legislation offers the State of North Dakota an important opportunity to help further the State's efforts to prevent youth smoking by establishing tougher controls that will help reduce youth access to cigarettes over the Internet.
- We urge you to support it.
- Thank you.