

HOUSE BILL NO. 1375

Introduced by

Representatives Headland, Carlson, Owens, Delmore, S. Kelsh

Senators Miller, O'Connell

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 57-36-08.1, 57-36-08.2, and 57-36-13.1 of the North Dakota Century Code, relating to tax
3 stamping of cigarette packs; to amend and reenact section 57-36-01 and 57-36-25.1 of the
4 North Dakota Century Code, relating to tobacco products tax definitions; and to provide an
5 effective date.

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

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

9 **57-36-01. Definitions.**

10 As used in this chapter, unless the context or subject matter otherwise requires:

- 11 1. "Brand style" means a variety of cigarettes distinguished by the tobacco used, tar and
12 nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or
13 packaging.
- 14 2. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the 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 encased
17 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;

- 1 b. Cigarettes contained in packages labeled "for export only", "U.S. Tax exempt",
2 "for use outside U.S.", or similar wording indicating that the manufacturer did not
3 intend that the product be sold in the United States;
- 4 c. Cigarettes that bear a counterfeit tax stamp or a false manufacturing label;
- 5 d. Cigarettes that are manufactured, fabricated, assembled, processed, packaged,
6 or labeled by any person other than the owner of the trademark rights in the
7 cigarette brand or a person who is directly or indirectly authorized by such owner;
- 8 e. Cigarettes imported into the United States, or otherwise distributed, in violation of
9 the Federal Imported Cigarette Compliance Act of 2000 [title IV of
10 Pub. L. 106-476; 114 Stat. 2176; 26 U.S.C. 5754]; or
- 11 f. Cigarettes contained in packages that do not comply with all requirements of the
12 Federal Cigarette Labeling and Advertising Act [15 U.S.C. 1331 et seq.] for the
13 placement of labels, warnings, or any other information upon a package of
14 cigarettes that is sold within the United States.
- 15 ~~5-7.~~ "Dealer" includes any person other than a distributor who is engaged in the business
16 of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products.
- 17 ~~6-8.~~ "Distributor" includes any person engaged in the business of producing or
18 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco
19 products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco,
20 or other tobacco products, for the purpose of distribution and sale thereof to dealers
21 and retailers.
- 22 ~~7-9.~~ "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 23 ~~8-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 24 ~~9-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- 25 ~~10-12.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
26 company, trust, or association however formed.
- 27 ~~11-13.~~ "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging,
28 or labeling, is suitable for use and likely to be offered to, or purchased by, consumers
29 as tobacco to be smoked in a pipe.
- 30 14. "Related party" means any person that is associated with any other person because
31 such person:

1 a. Is an officer or director of a business;

2 b. Is legally recognized as a partner in business; or

3 c. Is directly or indirectly controlled by another.

4 ~~12-15.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.

5 ~~13-16.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
6 placed in the mouth.

7 17. "Stamp" means the indicia required to be placed on a pack of cigarettes which
8 evidence payment of the tax on cigarettes under this chapter.

9 ~~14-18.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other
10 tobacco products for use or consumption in this state.

11 ~~15-19.~~ "Use" means the exercise of any right or power incidental to the ownership or
12 possession of cigarettes, cigars, pipe tobacco, or other tobacco products.

13 20. "Within this state" means within the exterior limits of the state of North Dakota and
14 includes all territory within these limits owned by or ceded to the United States of
15 America.

16 **SECTION 2.** Section 57-36-02.1 of the North Dakota Century Code is created and enacted
17 as follows:

18 **57-36-02.1. Transaction only with licensed distributors and licensed dealers.**

19 A distributor may sell or distribute cigarettes to a person located or doing business within
20 this state, only if the person receiving the cigarettes is a licensed distributor or licensed dealer. A
21 dealer may sell only cigarettes obtained from a licensed distributor.

22 **SECTION 3.** Section 57-36-03.1 of the North Dakota Century Code is created and enacted
23 as follows:

24 **57-36-03.1. License availability.**

25 The attorney general may not grant or renew a license issued under this chapter or allow
26 such a license to be maintained if the attorney general determines the applicant or any person
27 that owns more than fifteen percent of the ownership interests in the applicant or a related
28 party:

29 1. Owes five hundred dollars or more in delinquent cigarette taxes at the time of
30 application;

- 1 2. Had a license issued under this chapter revoked within the past two years by the
2 attorney general for willful misconduct relating to stolen or contraband cigarettes or
3 has been convicted of a state or federal crime, punishable by imprisonment of one
4 year or more, relating to stolen or contraband cigarettes;
- 5 3. Is a distributor that manufactures cigarettes and who is neither a participating
6 manufacturer as defined in subsection II(jj) of the master settlement agreement as
7 referenced in section 51-25-02 nor in full compliance with chapter 51-25;
- 8 4. Has been found to have willfully imported or caused to be imported into the United
9 States for sale or distribution any cigarette in violation of 19 U.S.C. 1681a
10 [Pub. L. 106-476; 114 Stat. 2101];
- 11 5. Has been found to have willfully imported or caused to be imported into the United
12 States for sale or distribution or manufactured for sale or distribution in the United
13 States any cigarette that does not fully comply with the Federal Cigarette Labeling and
14 Advertising Act [Pub. L. 89-92; 79 Stat. 282; 15 U.S.C. 1331 et seq.]; or
- 15 6. Has willfully made a material false statement in the application or has willfully failed to
16 produce records required to be maintained by this chapter.

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

19 **57-36-03.2. Notification of change.**

20 A licensed distributor or licensed dealer shall notify the attorney general of any change in
21 the information contained on the license application form, including any change in ownership,
22 and shall do so within thirty days of the change.

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

25 **57-36-03.3. Procedural requirements.**

26 A license may not be revoked and a fine may not be imposed under this chapter, except in
27 accordance with the due process procedures provided under chapter 28-32 and this chapter.

28 **SECTION 6.** Section 57-36-08.1 of the North Dakota Century Code is created and enacted
29 as follows:

1 **57-36-08.1. Cigarette stamping requirements.**

- 2 1. The tax commissioner shall prepare and have available for sale exclusively to licensed
3 distributors stamps of the denominations and quantities as the tax commissioner
4 considers necessary for the payment of taxes imposed under this chapter.
- 5 2. Only licensed distributors may purchase tax stamps. Licensed distributors may
6 purchase tax stamps only from the tax commissioner.
- 7 3. The stamps must be of such designs and materials as to make the removal and reuse
8 of the stamps impossible after being affixed.
- 9 4. Licensed distributors shall affix the stamps:
- 10 a. In a denomination that at least equals the tobacco tax due on the cigarettes in the
11 package, if the cigarettes are subject to tax by this chapter;
- 12 b. On the smallest package that will be handled, sold, used, or distributed within this
13 state; and
- 14 c. To the bottom of each individual pack of cigarettes in a manner so that the stamp
15 cannot be removed from the package without being mutilated or destroyed.
- 16 5. Any stamp required by this chapter must note whether the state tax under this chapter
17 was paid. Each roll or sheet of stamps must have a separate serial number, which
18 must be visible and clearly identifiable at the point of sale on each pack of cigarettes.
- 19 6. The tax commissioner shall keep records of which distributor purchases each roll or
20 sheet of stamps identified by serial number.

21 **SECTION 7.** Section 57-36-08.2 of the North Dakota Century Code is created and enacted
22 as follows:

23 **57-36-08.2. Stamping duties of licensed distributors.**

- 24 1. Only a licensed distributor may receive unstamped packs of cigarettes.
- 25 2. Distributors may not provide, sell, distribute, give, or otherwise transfer or assist, aid,
26 or abet a person in selling, distributing, giving, or otherwise transferring stamps to any
27 other distributor or person, nor may a distributor purchase or obtain stamps from any
28 other distributor.
- 29 3. Prior to shipment to another person, each distributor shall apply a stamp to each pack
30 of cigarettes imported, distributed, or sold whether or not the cigarettes are subject to
31 state taxation under this chapter or any other provision of state law, provided that a

1 distributor may only apply a tax stamp to a pack of cigarettes manufactured, imported,
2 purchased, or obtained directly from a licensed distributor.

3 4. Only a licensed distributor may ship or otherwise cause to be delivered unstamped
4 packs of cigarettes in, into, or from this state, provided that a licensed distributor may
5 transport unstamped packs of cigarettes to a facility, wherever located, owned by that
6 distributor.

7 5. Any person that ships or otherwise causes to be delivered unstamped packs of
8 cigarettes into, within, or from this state shall ensure that the invoice or equivalent
9 documentation and the bill of lading or freight bill for the shipment identifies the true
10 name and address of the consignor or seller, the true name and address of the
11 consignee or purchaser, and the quantity by brand style of the cigarettes so
12 transported. This chapter does not impose any requirement or liability upon any
13 common or contract carrier.

14 **SECTION 8.** Section 57-36-13.1 of the North Dakota Century Code is created and enacted
15 as follows:

16 **57-36-13.1. Possession of contraband cigarettes.**

17 It is a violation of this chapter for any person to knowingly possess, or possess for sale,
18 contraband cigarettes.

19 **SECTION 9. AMENDMENT.** Section 57-36-25.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-36-25.1. Deduction to reimburse licensed distributor for administrative expenses.**

22 1. A licensed distributor who pays the tax due under this chapter within the time
23 limitations prescribed may deduct and retain one and one-half percent of the tax due
24 to reimburse the distributor for expenses incurred in affixing tax indicia to packages of
25 cigarettes, keeping records, preparing and filing returns, collecting, and remitting the
26 tax, and supplying information requested by the commissioner.

27 ~~2. The total deduction allowed by this section may not exceed one hundred dollars per~~
28 ~~month for each licensed distributor.~~

29 **SECTION 10. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
30 July 31, 2013.