

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1358

2007 HOUSE FINANCE AND TAXATION

HB 1358

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1358

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01-29-2007

Recorder Job Number: 2135

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Belter opened the hearing on HB 1358.

Senator O'Connell introduced the bill. See written testimony.

Rep. Weiler: To your knowledge, does the fiscal take into consideration any increased value?

Sen. O'Connell: Not to my knowledge. I believe we are one of three states that don't have a stamp on this.

Rep. Carlson spoke in support of the bill. See attachment.

Rep. Carlson: This bill is about the third time to be introduced for the stamping bill for cigarettes. Years ago ND did stamp cigarettes and the purpose of the bill has always been to know that all of the cigarette packs that are sold in our state have paid the tax. We have had the same arguments and discussions every time and I am not sure they will be any different this time. I think there are some questions that you as a committee need to sort through and see if you can come to some resolution. First of all take a look at the revenue that we generate from cigarettes and tobacco tax. Revenue sources listed on the handout, you will see that the cigarette tax contrary to what most people would think, with all of the campaigns for antismoking, you would think that the revenue on cigarette sales would be down. On the contrary, they are up. They have gone from thirty-nine point three million dollars in 2003 and

stayed about the same in 2003-2005 and then 2005-2007 Minnesota put a seventy cent tax on there and they called it the health impact fee. Very imaginative name for a cigarette tax. Our sales have gone up and now South Dakota just raised their cigarette sales tax a dollar a pack. So ND whether we like it or not, has become a haven for buying cigarettes. People are buying them because they are cheaper here than anyplace else. I don't think that in anyway does this condone that the state likes people to smoke, but on the other hand, it's a legal product and I've always maintained that if we are selling a legally product, the tax should be paid on it. I think our tax is forty-four cents a pack. It has been that way since 1993, we raised it eleven cents back in 1993. I remember that because I was a freshman on this tax committee and nobody wanted to carry it to balance the budget, so the Chairman assigned me the bill. We passed that and it has been the same ever since. So the question then if you are stamping cigarettes, and the people are here from the industry and I will explain to you how the process works and how the cigarettes come and it is administered by the wholesalers and they are here today. You need to ask, are there any contraband cigarettes here in ND? I think if you ask two groups of people this, you get two different numbers. I would like you to ask the industry people what they believe the number is and then you should ask the tax dept. if they missed any. There has always been some disagreement on whether we have or have not missed any. Last time we addressed the internet sales for young kids. Because of that, most of the major carriers have stopped shipping cigarettes into our young kids. However, when we have the Indian Reservations, plus there are knock offs. Last time, Rep. Weiler or Porter bought some cigarettes online from Russia, so is there opportunity, I believe there is. Get those two numbers. Then you should ask a viable question that we all struggle with. Is this a burden on ND business? We require them to do something that they haven't done before and the answer in most cases is no, but there are some. Some of our wholesalers are stamping for other

states right now. There are only three states in the nation that do not stamp cigarettes. Now there are all kinds of things that you will here, that it is easy to counterfeit and I think the people in the industry will talk about the fact that counterfeiting isn't as, you can find them if you know what you are looking for on the counterfeits. Our wholesaler is important to me. We don't want to put an undo burden on our wholesalers. In many cases in our tax system we make our wholesale and retailers our tax collectors so we don't want to overburden them. What would this mean to you in terms of cost if we require you to put those stamps on? As I understand, the cartons come open and they have a machine, they stamp them and the cartons are sealed, so there is a process that needs to be done. I have not seen it, but it is a good question to ask. Then ask the tax department because we've had the problem before with death by fiscal note. Where all of the sudden they need a large amount of money and a larger amount of enforcement to make sure that this gets done properly. I think we need to sort through that. There are some amendments that will be offered after this bill is done, some of them will need reimbursement for the wholesalers and we can address those things later. Those are the questions you should ask the parties involved here. I believe there are cigarettes being sold in this state that are not taxed and that is why the bill is before you again. I would hope you would give this careful consideration and notice that it does have a significant revenue. Nobody would have ever thought that one pack at a time you would have forty million dollars worth of revenue on cig tax in the biennium. We need to make sure that all of those that are sold are taxed if that is our policy.

Rep. Drovdal: You talk about contraband cigarettes coming in, mainly off of the reservation and I would have to agree with you that it is happening, but Minnesota, South Dakota and Montana has an increased higher tax rate than North Dakota. If we put this stamps on, will this

not help Montana and border states identify ND cigarettes that are going over there, because wouldn't they consider our cigarettes contraband to their states?

Rep. Carlson: I don't believe they consider contraband but I will let the industry people answer that. I don't know. A lot of our parents smoked and there was stamps on all of their cigarettes back then and I would have never viewed it as being contraband if they took a ND pack and went to the lake and had a smoke in MN, but I don't know the law there. But that is a valuable question. The logical question would be, can you sell enough, if you stamp the cigarettes, will there be enough revenue raised to offset any cost that might be attributed to the manufacturer or the wholesaler and the tax department for administering it. The tax department becomes a vendor, they sell the stamps. The wholesaler puts them on and the wholesaler submits the money, so the process is all identified, it is something we have done in the past. I hope that you can find those answers.

Andrea Heller, Senior Manager of Brand Integrity at Phillip Morris USA, spoke in support of the bill. See written testimony.

There were no questions from the committee.

Opposition was heard at this time.

John Quinlan, Office of State Tax Commissioner, spoke in opposition to the bill. See written testimony.

Rep. Belter: What are the tax laws? If somebody comes over from Minnesota or South Dakota and buys cigarettes here, are they supposed to submit tax to MN or something?

Quinlan: MN has a one carton exemption like we used to have that allows the consumer to have one carton in their possession tax free. SD has zero tolerance. Technically anything purchased here and taken back to SD becomes contraband.

Rep. Belter: I think my next question; there are only three states that do not stamp. I would assume that if forty-seven other states are stamping, that if this committee, that if this committee or the legislature should pass the stamping bill that the tax department would be able to implement that?

Quinlan: Certainly. We have had a bill that we have sat on for many years that would bring back stamping if we felt it were necessary or it can be shown that we were losing revenue. We don't feel that has been the case and the stamping doesn't address the issues that we have identified where we feel there is diversion and so we haven't reintroduced the stamping request.

Rep. Belter: Why does the tax department come in here in opposition to the bill instead of as neutral testimony?

Quinlan: We feel that since 1991 we have affectively administered and collected the tax. There is a significant expense to enforcing stamping and that is the primary reason. We certainly have done it in the past, we can do it in the future, but we are not certain that expense is warranted at this time.

Rep. Froseth: The 1.5 fiscal note on the bill to administer the cost of stamping, have you any idea what that would equate to per package?

Quinlan: No, I haven't crunched those numbers to determine how many would have to be sold to make up the cost. I can get back to you on it.

Rep. Headland: Ms. Heller's testimony indicated that there were several states that have recently went back to stamping cigarettes and they have shown substantial increases in their tax revenue and I just am having a hard time understanding how you can be so confident that what you are doing is not allowing for any of that counterfeit cigarettes to be sold here in the state so I would like you to explain to us the process.

Quinlan: The state of ND is a small population base and as far as cigarette consumption we do a year what Minnesota does a month. Some of the other states have different problems as far as we do organized crime and counterfeiting. Michigan at the time they raised their rate that has seventy-five cent a pack tax increase and based on that, that is what prompted them to go to stamping because of their significant tax increase, knowing that there might be diversion from other states. Alaska was the last state to actually go to a cigarette stamp change they didn't stamp and last year, Alaska had a nine percent decrease in taxable products so they are trying to understand where that came from. Certainly some of it is internet diversion, but the year they imposed the stamp, they had a two percent increase in sales and last year they had a nine percent decrease statistically and they haven't figured that out yet, so the fact that they started stamping, they can't necessarily blame it on stamping, but they did have a significant loss in revenue. They also had a significant price increase.

Rep. Headland: That didn't really answer my question. How many packs of cigarettes does the state of ND collect tax on in a year?

Quinlan: Based on last year's numbers it was just over forty-eight million packs that a tax was collected on.

Rep. Weiler: I doubt you are going to have this information, but perhaps you can get the committee this information. You said that back in 1991 that we quit stamping. Could you get us the information as to what happened to the revenue in this state? Also any increases or decreases in cigarette packs that would have gone along with that. Secondly as I look to your testimony at the bottom of the cover page, number six it says that the state tax commissioner has not received information from the industry indicating that smuggling exists in ND, so because they have not received any information, does that mean that it doesn't exist?

Quinlan: We haven't identified that it exists. Phillip Morris and their Brand Integrity department, Ms. Heller's people, come into ND and they hire people to go out and make purchases and they buy a product and send back for testing trying to identify counterfeit products. The last information we got from them was regarding a package of cigarettes that had another state's tax stamp sold on it in the north western corner of the state. We feel that with the support of the wholesalers and the information that we do receive, that if there were counterfeit cigarettes, law enforcement would have to be in touch with us to let us know what is going on.

Rep. Weiler: My parents I don't think were able to identify some of the things I did in high school either and there wasn't any information out there but that doesn't mean I wasn't doing anything. The fiscal note, explain to me the process of why we would need two FTE's.

Quinlan: The two FTE's is for a field person and an in office clerical staff to deal with the paperwork involved with stamping the stamps and processing the order and recording the transactions and then the follow up paperwork required for reconciliation by the wholesalers. There is additional paperwork required in this process. Field inspectors if we are stamping would have to go out and do inspections with the wholesalers, the retail inspections to make sure that the stamps that are there, similar to some of the packs that I showed you, have the correct space printed on them.

Rep. Weiler: Back in 1991 when we quit stamping, did we get rid of two FTE's? And then the last question that I have is we missing any packs of cigarettes that come into this state?

Quinlan: We are only now reporting cigarettes that are reported to us. If cigarettes are coming in and interstate commerce directly to the Indian Reservation over which we have no authority, that could be happening and we would not know it.

Rep. Drovdal: What are the other two states that don't require stamping?

Quinlan: It is North and South Carolina.

Rep. Drovdal: In your testimony I see you stated that the main source of tax states, of which we have none close to us and you also stated that you had inspected one hundred and sixty licenses last year. Any of those that you inspected that were on military reservation or Indian reservations or internet sales?

Quinlan: No, those are retailers outside the reservations across the state.

Rep. Drovdal: Then we really can't say that there is no problem because we aren't auditing those places that the problem comes from, can we?

Quinlan: We have no authority on the Indian reservation or the Military bases.

Rep. Froseth: If in fact we stamped cigarettes to make them legal and follow the contraband, most of us live fairly close to an Indian Reservation, where we can go and buy cigarettes without paying the tax, so if we stamped ours, and went and bought them on the reservation, would that be an illegal sale?

Quinlan: Yes, currently if you buy cigarettes on the Reservation and take those off it is an illegal sale and you are expected to remit the tax on the tax form provided on our website.

John Job,, Division Manager of AMCON Distributing Company, spoke in opposition to the bill. See written testimony.

Rep. Drovdal: Could you tell us what things like Minnesota and South Dakota remit and what the schedule is for wholesalers?

Job: They are a minimum pricing formula. What it does is it takes a manufacturer cost of the product and the state and the list price of the stamp and there is an up charge for the wholesalers to recoup his investment.

Rep. Brandenburg: You are doing the stamping for other states right now?
And you are working four days a week stamping?

Job: Yes, they are. Ten hour shifts.

Rep. Brandenburg: You wouldn't do it at a loss. You would figure out how to make some money.

Job: Obviously.

Matt Bjornson, Cavalier, spoke in opposition to the bill.

Bjornson: My family has a retail business in Cavalier ND and I am here testifying on our behalf. I would agree that ND has a significant problem with tax evasion on cigarettes. The problem is, as it stands, this bill will not address our problem. It will do nothing to fix the problem that this state has. As a responsible retailer, as I believe my competitors are, I want to save all the excise taxes that are due collected. It makes for a level playing field in the retail market. When it comes to non Native American outlets, I can tell you from experience that the tax department does come out to retailers. They look at the sales and mark ups and wholesale purchases. I think they do a pretty good job of checking up on your regular retailers. But as you have heard, they have no authority on the Reservation. If all of the cigarettes sold on Reservations, were smoked on the Reservations you would need your fog lights on to drive through at high noon. It would be impossible for them to smoke that many cigarettes. Reputable retailers such as ourselves compete with these outlets and we are frankly frustrated with a tax being avoided on Reservations. I recognize and am very well intent the legislators have brought this forward to fix the problem. Phillip Morris's own people admit that they have not found a significant amount of counterfeit cigarettes in ND. In fact they told me this morning that they hadn't found any. You have to ask where the problem is. They recognize that often times; organized crime is involved in these activities. We are pretty tight nit group up in the northeast corner of the state. To compete in the retail market place, retailers need to participate in manufactured programs. It is basically a contract. We agree with the

manufacturers that they will allow us to participate in their discount program which is essential to be able to compete with other retailers and in return they dictate to us what kind of signs we will have and where they will be and how the product will be placed and they dictate things. I think it is important for you to know how important these contracts with manufactures are. It is important for you to know that they also contract with Native American Reservations and smoke shops. The place where the state is losing tax payers money. So the state has a problem of sovorgn immunity and it is pretty tough not to correct. How could we really address this problem and get it fixed? I say before coming to you that the cigarette manufacturers should come and notify outlets and in addition to all of their rules, they should say, if your business does not have a tax or stamp in the state of ND then therefore you are participating in tax evasion and we will not contract with you. That amount of power, through contracts is something that can help them and you save the solution to this problem and it would really demonstrate that the cigarette manufacturers really are interested in state tax collection. We are not going to fix tax evasion with this bill then we are passing this bill for the sake of Phillip Morris. I don't think that is your number one goal and I know it isn't retailers and wholesalers goal. We all want to see a level playing field. We want to see the taxes collected and this is the hammer that could be used. If you pass this bill and give them their stamping, they have no incentive to change the way they do business. It urques me that they come to my store and dictate how we are going to run our business and then go ten miles south of Devils Lake and participate with the retail business knowing that they are evading taxes. I think it's important to know that small retailers like me, we deal with small wholesalers. We don't like dealing with the big guys and I would hate to see you pass a bill that puts a bunch of additional expense on those in state businesses that we like to deal with. In all fairness, if the state is going to make them incur additional cost, we really should get an allowance that goes with the cost.

Roger Borkas, Wholesale supply company in Minot, spoke in opposition to the bill.

Roger: I too would like to speak in opposition because of the cost that has been explained.

Right now we stamp in those other states but we are to a minimal amount, we are not doing a lot. It would cost us money and additional people to do it. We would have to restructure our layout and business plan. I too don't believe that counterfeiting is a problem in ND and I have been in the business all of my life and I don't think I've ever seen a counterfeit pack. I have seen returns come back from other accounts with stamps from other states and what happens there is someone brings them in and says they got a carton by mistake and that is the only time we have ever seen. I think also that stamping is going to decrease, we are not a border town such as Fargo with MN people purchasing. Right now we want to keep our revenues high in this state because it helps infrastructure and there are not any more smokers in ND but more purchases in ND. I think the impact of the youth smoking is taking care of it. I also support Mr. Bjornson's decision on the assessment of and how the major cigarette companies could help counter this problem. The incentive is the same there, they could monitor this better than everybody. Maybe they should stamp at the national level.

There were no questions from the committee. The hearing was closed. No action was taken at this time.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1358 B

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2184

Committee Clerk Signature *Mickie Schmitt*

Minutes:

Chairman Belter opened the hearing on HB 1358. Amendments were passed out to the committee members. **(See attachment #1)** Chairman asked the Intern, Kyle to find out who drafted these amendments. I think we need these amendments explained to us. We'll hold this

Bill yet. We'll close the hearing on HB 1358.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1358 C

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2374

Committee Clerk Signature

Mickie Schmidt

Minutes:

Chairman Belter opened the hearing on HB 1358. This is the tobacco stamping Bill and we have John Walstad from Legislative Counsel to explain the amendments.

John Walstad, Legislative Counsel: I am not for or against the Bill or amendments. The two amendments before you, these are amendments that were provided by various tobacco interests and I put them on paper. I will explain what I understand they try to do. On #0101, this one is relating to sales of tobacco through vending machines and obtaining tobacco by minors. These are issues that the Legislature has seen before. This one prohibits the sales of tobacco products through a vending machine unless that machine is located in an area in which minors are not permitted access, i.e. bar, or when a sales person has to control the dispensing of the product. The first part makes it a non criminal offense for a minor to work up a fake ID to try to get cigarettes.

Representative Froseth: What does this do with the stamping issue?

John Walstad: It really doesn't relate to the stamping. It's the thing that controls obtaining cigarettes by minors which have as much connection in standing I guess as you think it does. It does relate to tobacco, so I guess it is to remain to the Bill, but it's not directly related to the tax issue.

Representative Wrangham: For the sake of explaining, I can possibly help a little there. That is so that in case of say a convenience store who wanted to have the cigarettes secured in a machine, and the money kept separate, they make the device for the machine so that the mechanical lock out, so the machine can't be operated unless the clerk from behind the counter presses the button to allow the person. That way the person has to come to the counter and prove their age and then they will enable the machine so they can make their purchase.

Representative Pinkerton: This Bill does not require stamps to be put on the cigarettes then?

John Walstad: The Bill does. The amendment does not.

Representative Pinkerton: This Bill requires stamps to go on all cigarettes that are distributed in North Dakota except those that are distributed to the Indian reservations?

John Walstad: That is correct.

Representative Pinkerton: Could you turn this around so the stamps are not required?

John Walstad: No. State law has only as much impact on a reservation as the tribal folks are willing to accept. State law cannot force tribal action on anything.

Representative Froseth: I don't even see a cigarette machine anymore. How many are used anymore?

Representative Froelich: You know that Standing Rock has got a compact with the State with gas and cigarette tax. I asked why the other tribes don't get the same thing. And this is the information that I received, he said well up at Fort Berthold, they are collecting gas and cigarette tax, the State is still getting their money out of it, they don't have a compact. I need certification on that. So I asked Rep. Schmidt in Fort Totten, does the tribe collect the cigarette tax on it? He said I'm not sure. And he assured me that the sales tax is not collected. This information that this attorney gave me says because they don't at Fort Berthold doesn't have a

compact, they're still collecting gas tax and that's what their haggle was with the tribe up there. So I need to talk to someone from the Tax Dept. and find out what each individual Indian Reservation is doing. This is the point of the contention is that the people on reservations are not paying the cigarette tax. I need to get to the bottom of that, I don't which ones are and which ones aren't.

Chairman Belter: I guess you can do that, but does it have any bearing on this Bill?

Representative Froelich: No, I need to correct because we can't enforce the Tribes to do anything. But my point being with the discussion was being held here the gentleman was saying that they're underselling on the reservation. And I'm not sure.

Representative Pinkerton: I did meet with the Tax people after the meeting and my understanding is that it is only Standing Rock that has a compact and they're the only ones who receive that aren't charging taxes.

Representative Froelich: That is true, they have this compact to collect the money, the State takes the money back and they give some money back to the Tribes that are the compact. But I believe some of the other Reservations are collecting gas and cigarette tax. I got to get to the bottom of this.

Representative Vig: When we had this Bill, it was how the Reservations get tobacco and it comes from ND Retailers and the stamp is provided by them and that's how the Reservations get their tobacco?

John Walstad: No ND Distributors are stamping cigarettes now, however the tobacco is reaching the Reservation retailers, and I don't think it's going to have a stamp on it.

Chairman Belter: Do you want to move the amendments?

Representative Weiler: I'll move the amendments 0101.

Representative Headland: Second it.

Chairman Belter: Any discussion? If not all in favor of the amendments 0101 signify by saying aye. The motion carries.

Representative Brandenburg: I move a Do Pass as Amended & Rerefered to Appropriations.

Representative Owens: Mr. Walstad said something about another amendment?

Chairman Belter: Yes... There are but we're just talking about this one.

Representative Owens: Second it.

Representative Froelich: I'm going to oppose it on the simple fact that the Tax Dept. come out and said we don't need it.

Representative Pinkerton: I also will oppose this Bill. I see there's no advantage to this Bill.

Chairman Belter: They could come from South Carolina; we're not necessarily dealing with cigarettes that are coming from another State. I mean it can be coming from a foreign country or, I just saw a program the other day they were talking about Al Kida that was moving millions of dollars worth of cigarettes out of North Carolina and selling them in Michigan, because I think the tax difference is like about \$7.00 a pack, and they were making millions of dollars and that would be an example of what you're talking about, but now days there's the possibility of cigarettes being made that aren't being handled by any State, they just can come in from wherever and not buy any reputable tobacco company and can get sold and buy stamping they maybe have a chance of catching some of those.

Representative Pinkerton: That is a frightening scenario. If there is someone who is sophisticated enough to avoid customs, then I would think they would be sophisticated enough to duplicate a stamp.

Vice Chairman Drovdal: As they pointed out that the Tax Dept. said this is not going to help them is very important, but there were no law enforcement officers in here saying that they

needed this in order to help them out and so to support the law enforcement officer, I'm going to oppose the Bill also.

Chairman Belter: Any other discussion? If not will the clerk read the roll; 7-y; 6-n; 1-absent;

Rep. Brandenburg will carry the Bill. We will close the hearing on HB 1358.

FISCAL NOTE
Requested by Legislative Council
02/14/2007

Amendment to: Engrossed
 HB 1358

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1358 Second Engrossment removes the cigarette stamping requirement that was contained in the original bill. The tax department expenditures would not be affected by this bill.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact - if any - of the vending machine provisions or provisions affecting minors contained within this bill cannot be estimated by the tax department.

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/14/2007

FISCAL NOTE

Requested by Legislative Council

01/15/2007

Bill/Resolution No.: HB 1358

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$1,508,000			
Appropriations						

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1358 reinstates the requirement that cigarette packs sold in the state must be affixed with a tax stamp.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

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.*

The tax stamping requirements of HB 1358 would cause an increase in expenditures for the Tax Department totaling an estimated \$1.508 million for the 2007-09 biennium. These expenses include stamps, insured delivery of stamps, computer system changes, and two FTE.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/25/2007

**House Amendments to HB 1358 (70653.0101) - Finance and Taxation Committee
01/31/2007**

Page 1, line 1, after "sections" insert "12.1-31-03.1,"

Page 1, line 3, after the first "to" insert "limitation of sales of cigarettes or other tobacco products through vending machines and" and replace "section" with "sections 12.1-31-03 and"

Page 1, line 4, after the first "to" insert "sales to and use by minors of tobacco products and" and after the semicolon insert "to provide a penalty;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale of tobacco to minors and use by minors prohibited.

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. It is a noncriminal offense for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing.
4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which includes prohibitions in addition to those in subsection 1, 2, or 3. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2 or 3. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
4. 5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must pay a fee of twenty-five dollars.

- a. Any individual who has been cited for a violation of subsection 2 or 3 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
 - b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.
 - c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
- 5- 6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a preponderance of the evidence.
 - 6- 7. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.
 - 7- 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

SECTION 2. Section 12.1-31-03.1 of the North Dakota Century Code is created and enacted as follows:

12.1-31-03.1. Vending machines prohibited - Penalty.

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through a vending machine, except as provided in subsection 2.
2. Subsection 1 does not apply to:
 - a. A vending machine that is located in an area in which minors are not permitted access; or
 - b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through the operation of a device that requires a salesperson to control the dispensation of such product.

3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine."

Renumber accordingly

Date: 1-31-07
Roll Call Vote #: 1358

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House _____ Finance & Tax _____ Committee

Check here for Conference Committee

Legislative Council Amendment
Number _____

Action Taken Do Pass as Amended and Rereferred to Appropriations

Motion Made By Rep. Brandenburg Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich		✓
Vice Chairman Drovdal		✓	Rep. Kelsh	✓	
Rep. Brandenburg	✓		Rep. Pinkerton		✓
Rep. Froseth		✓	Rep. Schmidt		✓
Rep. Grande	✓		Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens		✓			
Rep. Weiler	✓				
Rep. Wrangham	✓				

Total (Yes) 7 No 6

Absent 1

Floor Assignment Rep. Brandenburg

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

REPORT OF STANDING COMMITTEE

HB 1358: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1358 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "12.1-31-03.1,"

Page 1, line 3, after the first "to" insert "limitation of sales of cigarettes or other tobacco products through vending machines and" and replace "section" with "sections 12.1-31-03 and"

Page 1, line 4, after the first "to" insert "sales to and use by minors of tobacco products and" and after the semicolon insert "to provide a penalty;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale of tobacco to minors and use by minors prohibited.

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. It is a noncriminal offense for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing.
4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which includes prohibitions in addition to those in subsection 1, 2, or 3. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2 or 3. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

- 4- 5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must pay a fee of twenty-five dollars.
- a. Any individual who has been cited for a violation of subsection 2 or 3 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
- b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.
- c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
- 5- 6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a preponderance of the evidence.
- 6- 7. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.
- 7- 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

SECTION 2. Section 12.1-31-03.1 of the North Dakota Century Code is created and enacted as follows:

12.1-31-03.1. Vending machines prohibited - Penalty.

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through a vending machine, except as provided in subsection 2.
2. Subsection 1 does not apply to:
- a. A vending machine that is located in an area in which minors are not permitted access; or

- b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through the operation of a device that requires a salesperson to control the dispensation of such product.
3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine."

Renumber accordingly

2007 HOUSE APPROPRIATIONS

HB 1358

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1358**

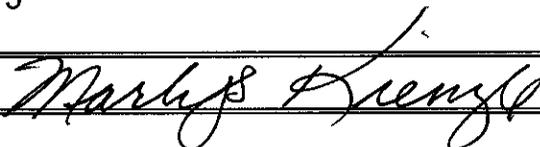
House Appropriations Committee

Check here for Conference Committee

Hearing Date: 02/06/07

Recorder Job Number: 2975

Committee Clerk Signature



Minutes:

Chairman Svedjan opened the hearing for 1358. This will be on the First Engrossment as well as the FN.

Rep Belter: Explained the intent of 1358 is to require the state of North Dakota to stamp all cigarettes. The thought of the sponsors of this bill that there is always an opportunity for cigarettes to be sold illegally that are not paying their fair share of the tax. So there for we would hope that with the passage of this bill that there would not be cigarettes sold that are not stamped and are not paying the proper tax. The FN is the additional cost that the Tax Dept. believes it would need to administer. I believe the sponsor of the bill is working on the bill that would include compensation to the distributors because the distributors who stamp these cigarettes would need some compensation to cove the cost of stamping these.

Chairman Svedjan: I understand that this process is to prevent the illegal sale of cigarettes or surely it would lessen that possibility. What does this do as far as future revenue? We have a sizable, million and half expense for the biennium, what will this do in the longer term, in terms of revenue?

Rep Belter: We don't know what so I can't give you a number and the Tax Dept couldn't give us a number either.

Chairman Svedjan: Do you have any sense for how prevalent the illegal sale of cigarette is because they are not stamped?

Rep Belter: No the only thing I would say is I think there are only three states that do not stamp cigarettes, North Carolina, South Carolina and North Dakota.

Rep Glassheim: Do you know how much we do collect on cigarettes biannually?

Rep Belter: We do have a hand out that we received today. Are you talking about taxes? It is about 45.5 million.

Rep Kempenich: We went through this, I am unsure if it was one or two bienniums ago. It does not look like technology has changed any because they still got a big price tag on it, which was a problem we had. But the other thing is that these states are high tax states are charging a buck and a half or two bucks a pack. It is a tax collecting issue. Where we are sitting right now they are probability buying here and shipping them to some place else.

Chairman Svedjan: Is there a question in there?

Rep Kempenich: What did change since 2 or 4 years ago?

Rep Belter: I would say the distributors were opposed to it? In the original bill there was no compensation for them either.

Rep Carlson: I see that the Tax Department is here. Do you have any numbers of how many packs of cigarettes we collected taxes on last year?

Tax Dept: 48 million

Rep Carlson: This same bill I had in last session, which has to do with stamping cigarettes. The packs cartons come open to the wholesaler and they are unsealed and he stamps those with a stamp and they seal up the cartons and send them out. I have numbers from the wholesalers of cigarette that has been shipped into ND in the last year and they show that there were 53 million 777 thousand 400 packs of cigarettes that entered into ND and we

collected tax on 48 million packs. That is we did not collect 5 million packs of cigarettes that we did not collect tax on. We are a haven for cigarettes sales if you look at the orange book, our revenue for sales for cigarettes is going up because Minnesota has a \$.70 a pack tax that they put on last year and South Dakota put on a dollar a pack tax. So we have people coming in and buying our cigarettes because they are cheaper. The question is, are all those cigarettes being sold at the Native American Reservations, are those cigarettes brought in by mail or are they brought in by truck? Because without a stamp, you have absolutely no way of knowing where those cigarettes are coming from or who they have been sold to or been recycled without paying the tax.

There are always to opponents to the bill. The wholesalers want to be reimbursed. Right now our wholesalers are stamping for Minnesota, SD and for Montana. This is not a new process for the wholesalers. Now there is new technology, some of them are not stamping a lot of cigarettes and there is some expense. We tried to come up with a reasonable number that we would reimburse, like other states do to the wholesalers, and I think that is a reasonable thing to do.

The Tax Department, last time if you would dig back in your records, had a FN of \$700,000 and this time for the same bill is a million and a half. I am unsure as to how you get a million and a half because they do not put the stamp on. They issue the stamp, they sell the stamp and the wholesaler does all the work and he collects the tax for us at \$.44 a pack.

Many of the cigarettes that are coming into the state are from non participating members of the tobacco settlement. So the money we distribute for water and schools and health is not being collected from those companies that are none participating. We have attempted through numerous ways of legislation to track them down.

So if it is a legal product and we want to sell it, I believe we should collect the tax on it. This requires for us to do something we got rid of a number of years ago.

I think we should pursue the bill and find out where these 5.7 million packs of cigarettes that is different from what the wholesaler had in his hand and the Tax Department said that they received the tax on.

Rep Williams: I question some of this. I know for example that the casinos like Dakota Magic, will only sell 7 cartons at a time. They get a truck load every 2 days.

Rep Carlson: There is one of the tribes that collect the tax which is Standing Rock.

Rep Williams: Would the legal taxes that you are talking about make up the difference?

Rep Carlisle: What does this do for Internet sales? Was that discussed?

Rep Carlson: We discussed the Internet Sales a session ago dealing with delivery of those to minors. We did not really close down the Internet sales it self.

Rep Carlisle: For Rep Williams what did he say about Dakota Magic?

Rep Williams: When I was down there a couple of weeks ago, a couple of people in front of me and they were all buying 7 cartons of cigarettes.

Rep Nelson: If this bill passes, the Indian Casino still could sell them without a stamp but we would have enforcement tool from the state of North Dakota if we chose to collect them, is that correct?

Rep Carlson: Yes. If there was a retailer in your town that was selling cigarettes and they don't have a stamp on it and he would have bought them at a casino or without a stamp on them, he would be in non-compliance because he would have cigarettes without the stamp on them.

Someone is selling cigarettes without paying tax.

Rep Skarphol: Section 11 of the bill it says it is a possessions of contraband cigarettes is a violation. What is the penalty?

Rep Carlson: I do not have the answer to that.

Rep Kempenich: On the FN was the expenses the same last session?

Rep Carlson: I do believe they were the same and the volume was fairly similar. What the difference is in the note I can't tell you.

Rep Kempenich: I make a motion that we lower the FN to about \$808,000.

Chairman Svedjan: The question is there is no appropriation in the bill. So if we pass this bill we would have to have an appropriation made and it would have to be to the Tax Department. I see that the FN expenses include stamps, insured delivery of stamps, computer system changes and 2 FTE?

Rep Carlson: There are already are some compliance done on cigarettes on the wholesalers. They obvious audit so they make sure that they are getting all their money. I can speak for Tax Department as to why we need 2 more people to do this. Obviously they are not in favor of doing this.

Chairman Svedjan: What I heard you say is that you would like to advance this. The Tax Department budget is in the Senate. So this would have to square up at some time and it wouldn't have to be now.

Donnita Wald: I am the Legal council of the Tax Department. Our budget has passed out of the Senate already.

I also have some information to pass out. See attachments.

Rep Carlson: Are there any enforcement on cigarettes now?

John Quinland: I am a Compliance Officer from the office of the State Tax Commissioner.

Currently we use our sales tax audits staff on a limited bases to do inspections state wide of retailers who sell cigarettes based on licensees information we get from the Attorney Generals office.

Rep Carlson: There is no wholesale checking at all because they are submitting the taxes are they not?

John: They are submitting the tax and we do office revues of the information we get from the wholesalers to help do those checks. Right now because they do not stamp, we don't need to inspect the stamps. We would need to inspect the authenticity of the stamps that are being applied by the wholesalers. You ask about the number of taxable stamps before the package is sold, a point of fact is that we report on taxable sticks and that is the \$48 million that we collected the tax on. There are obviously additional cigarettes that were sold to enrolled tribal members that were not taxed, which I think would make up the difference between the number that you showed and the number of pack we taxed.

Rep Carlisle: Could the price of a package of cigarettes go up because of this bill?

Rep Carlson: Yes, unless we reimburse the wholesaler for putting them on.

Rep Hawken: Is that in the FN to reimburse the wholesaler?

Rep Carlson: It is not in the bill at this time.

Rep Kempenich made a motion for a "Do not pass".

Rep Klein seconded the motion.

Roll Call Vote is 13 Yes, 10 No and 1 absent.

Carrier for the bill is Rep Kempenich.

Date: 2/6/07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1358

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Not Pass

Motion Made By Kempenich Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan		✓			
Vice Chairman Kempenich	✓				
Representative Wald		✓	Representative Aarsvold		✓
Representative Monson		✓	Representative Gullerson	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson		✓	Representative Glassheim	✓	
Representative Carlisle		✓	Representative Kroeber	✓	
Representative Skarphol		✓	Representative Williams	✓	
Representative Thoreson		✓			
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew	✓		Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson		✓			
Representative Wieland		✓			

Total (Yes) 13 No 10

Absent 1

Floor Assignment Kempenich

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

Date: 2/8/07
 Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1358

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Reconsiders action on bill

Motion Made By Kempenich Seconded By Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleson		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Vote carries

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1358

Page 1, line 1, replace "sections" with "section" and remove ", 57-36-02.1, 57-36-03.1,"

Page 1, line 2, remove "57-36-03.2, 57-36-03.3, 57-36-05.3, 57-36-08.1, 57-36-08.2, and 57-36-13.1"

Page 1, line 4, remove "and tax stamping of cigarette packs" and replace "sections" with "section"

Page 1, line 5, remove "and 57-36-01"

Page 1, line 6, remove "and tobacco products tax definitions", after the first semicolon insert "and", and remove "; and to"

Page 1, line 7, remove "provide an effective date"

Page 4, remove lines 3 through 31

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 17

Renumber accordingly

Date: 2/8/07
 Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 1358

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number 70653.0201

Action Taken Adopt. 0201

Motion Made By Kemperich Seconded By Pollert

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan					
Vice Chairman Kempenich					
Representative Wald			Representative Aarsvold		
Representative Monson			Representative Gulleason		
Representative Hawken					
Representative Klein					
Representative Martinson					
Representative Carlson			Representative Glassheim		
Representative Carlisle			Representative Kroeber		
Representative Skarphol			Representative Williams		
Representative Thoreson					
Representative Pollert			Representative Ekstrom		
Representative Bellew			Representative Kerzman		
Representative Kreidt			Representative Metcalf		
Representative Nelson					
Representative Wieland					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voic Vote - carries

Date: 2/8/01
 Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1358

House Appropriations Full Committee

Check here for Conference Committee

Legislative Council Amendment Number 70653.0201

Action Taken No Pass as Amended. 0201

Motion Made By Kempnich Seconded By Wald

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempnich	✓				
Representative Wald	✓		Representative Aarsvold	✓	
Representative Monson	✓		Representative Gulleson	✓	
Representative Hawken	✓				
Representative Klein	✓				
Representative Martinson	✓				
Representative Carlson	✓		Representative Glassheim	✓	
Representative Carlisle	✓		Representative Kroeber	✓	
Representative Skarphol	✓		Representative Williams	✓	
Representative Thoreson	✓				
Representative Pollert	✓		Representative Ekstrom	✓	
Representative Bellew	✓		Representative Kerzman	✓	
Representative Kreidt	✓		Representative Metcalf	✓	
Representative Nelson	✓				
Representative Wieland	✓				

Total (Yes) 24 No 0

Absent 0

Floor Assignment Kempnich

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

REPORT OF STANDING COMMITTEE

HB 1358, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (24 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1358 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections" with "section" and remove ", 57-36-02.1, 57-36-03.1,"

Page 1, line 2, remove "57-36-03.2, 57-36-03.3, 57-36-05.3, 57-36-08.1, 57-36-08.2, and 57-36-13.1"

Page 1, line 4, remove "and tax stamping of cigarette packs" and replace "sections" with "section"

Page 1, line 5, remove "and 57-36-01"

Page 1, line 6, remove "and tobacco products tax definitions", after the first semicolon insert "and", and remove "; and to"

Page 1, line 7, remove "provide an effective date"

Page 4, remove lines 3 through 31

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 17

Renumber accordingly

2007 SENATE JUDICIARY

HB 1358

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1358

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 5, 2007

Recorder Job Number: 4401

Committee Clerk Signature *Mona L. Solby*

Minutes: Relating to the sales and use by minors of tobacco products.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

John Olson, Lobbyist for Altria, Introduced the bill – Att. #1 reviewing the bill and its changes he also spoke to the offenses and penalties.

Sen. Nelson referred (meter 7:00) to the days of the sheets of stamps.

Sen. Marcellais asked if the vending machines have signs indicating the age of use? Yes and they are also in facilities that allow only 21 years and older to enter i.e. a bar.

Testimony Against the bill:

None

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1358

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4879

Committee Clerk Signature *Mona L. Salby*

Minutes: Relating to the sales and use by minors of tobacco products.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Olafson wondered why this was not already in law. The discussed the bill having had started as a stamping bill and in the house was converted into the current state.

Sen. Marcellais made the motion to Do Pass HB 1358 and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Marcellais**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
March 12, 2007 3:26 p.m.

Module No: SR-46-5043
Carrier: Marcellais
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1358, as reengrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1358 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1358

House Bill 1358 Summary

Senator David P. O'Connell

A bill that creates a cigarette tax stamp on all tobacco products.

The stamps are placed on tobacco products to ensure their authenticity and to reduce counterfeiting and bootlegging of tobacco products as well as other illegal activity.

These stamps also help our law enforcement identify illegal activity because unauthorized dealers would not have the stamps on the products.

The law also protects legitimate businesses from having to compete against those engaging in unlawful activity and creates a system of tracking for sales.

In addition, the law also protects state revenues by providing visual evidence of payment of the applicable tax.

#2

1-29-07 Am
HB 1358A

**GENERAL FUND REVENUE ESTIMATES FOR THE 2005-07 AND 2007-09 BIENNIUMS
AND ACTUAL COLLECTIONS FOR PRIOR BIENNIUMS**
(Excludes Beginning General Fund Balances)

Revenue source	Actual		Estimated		2007-09 Increase (Decrease) Compared to 2005-07	2007-09 Percentage Increase (Decrease) Compared to 2005-07
	2001-03 Biennium	2003-05 Biennium	2006-07 Biennium ¹	2007-09 Biennium ²		
Sales and use tax	\$640,618,364	\$717,758,293	\$847,845,753	\$925,709,000	\$77,863,247	9.2%
Motor vehicle excise tax	119,592,232	128,010,103	121,010,559	129,346,000	8,335,441	6.9%
Individual income tax	396,153,000	452,547,326	553,317,952	607,992,000	54,674,048	9.9%
Corporate income tax	88,417,166	102,926,972	187,873,587	164,635,000	(23,238,587)	(12.4%)
Insurance premium tax	48,990,027	56,284,535	53,977,148	56,770,000	2,792,852	5.2%
Business privilege tax	6,257,389	4,958,673	8,372,320	9,400,000	1,027,680	12.3%
Cigarette and tobacco tax	39,313,360	39,476,712	45,567,081	46,518,000	950,919	2.1%
Oil and gas production tax	39,159,000 ³	45,534,044 ³	45,774,119 ³	39,839,000 ³	(5,935,119)	(13.0%)
Oil extraction tax	22,841,000 ³	25,465,956 ³	25,225,881 ³	31,161,000 ³	5,935,119	23.5%
Coal conversion tax	46,878,511	47,196,831	48,522,047	47,947,000	(575,047)	(1.2%)
Gaming tax	27,612,652	20,850,911	18,428,847	18,253,694	(175,153)	(1.0%)
Lottery	0	7,269,005	12,000,000	11,600,000	(400,000)	(3.3%)
Wholesale liquor tax	11,155,834	11,889,465	12,668,589	12,737,000	68,411	0.5%
Mineral leasing fees	6,440,513	11,024,583	15,046,893	13,000,000	(2,046,893)	(13.6%)
Interest income	8,509,483	6,935,015	30,450,326	36,500,000	6,049,674	19.9%
Departmental collections	57,506,019	61,004,537	53,222,025	55,403,310	2,181,285	4.1%
Total revenues	\$1,559,444,550	\$1,739,132,961	\$2,079,303,127	\$2,206,811,004	\$127,507,877	6.1%
Transfers and other sources						
Sale of DD loans	\$2,004,257 ⁴	\$0	\$0	\$0	\$0	0.0%
Transfer - Bank of North Dakota	60,000,000	60,000,000	60,000,000	60,000,000	0	0.0%
Transfer - Bank of North Dakota (contingent)	18,699,787 ⁵	0	0	0	0	0.0%
Transfer - Student loan trust	9,000,000	26,258,969	9,000,000	3,100,000	(5,900,000)	(65.6%)
Transfer - Mill and Elevator	6,000,000	5,000,000	5,000,000	5,000,000	0	0.0%
Transfer - Gas tax administration	1,363,392	1,396,200	1,400,000	1,274,056	(125,944)	(9.0%)
Transfer - Lands and minerals trust fund	3,545,102	2,000,000	6,800,000	15,000,000	8,200,000	120.6%
Transfer - Permanent oil tax trust fund	0	11,910,000	55,300,000	0	(55,300,000)	(100.0%)
Transfer - State bonding fund	0	2,800,000	0	0	0	0.0%
Transfer - Water development trust fund	9,733,820	10,070,373	16,900,000	0	(16,900,000)	(100.0%)
Transfer - Health care trust fund	0	35,911,035	0	0	0	0.0%
Transfer - Information technology savings	0	0	0	0	0	0.0%
Transfers - Other	87,332	2,461,911	319,838	0	(319,838)	(100.0%)
Total transfers and other sources	\$110,433,690	\$157,808,488	\$154,719,838	\$84,374,056	(\$70,345,782)	(45.5%)
Total general fund revenues and transfers	\$1,669,878,240	\$1,896,941,449	\$2,234,022,965	\$2,291,185,060	\$57,162,095	2.6%
Federal fiscal relief payments	0	56,456,581 ⁶	0	0	0	0.0%
Total revenues, including federal fiscal relief payments	\$1,669,878,240	\$1,953,398,030	\$2,234,022,965	\$2,291,185,060	\$57,162,095	2.6%

#3

HB 1358 A

1-29-07

9:00 AM



TESTIMONY BEFORE THE NORTH DAKOTA
FINANCE and TAXATION COMMITTEE
IN SUPPORT OF HOUSE BILL NO. 1358

January 29, 2007

Mr. Chairman, members of the Finance and Taxation Committee, good morning. My name is Andrea Heller, and I am the Senior Manager of Brand Integrity at Philip Morris USA. Philip Morris USA's Brand Integrity Department plays a pivotal role in protecting the integrity of our cigarette brands and the legitimate trade channels through which they are distributed and sold. From our experience, cigarette tax stamps are an effective way to help protect state revenues and also provide law enforcement with an important tool to help them address the problem of contraband cigarette sales. For these reasons, we appreciate this opportunity to present our views in support of House Bill 1358.

For several years now the Brand Integrity Department has worked with law enforcement, regulatory authorities and others to learn more about contraband cigarette activity and to seek ways to address it. As a result, we recognize that these issues are very complex and require many stakeholders to address them, including cigarette manufacturers, wholesalers, retailers, law enforcement, regulatory authorities and public policymakers.

Significant cigarette excise tax increases in many states over the past few years have increased the incentive for adult smokers to purchase cigarettes through a variety of alternative venues, many of which are illegal. This illegal activity includes counterfeit, illegally imported, untaxed and under-taxed cigarettes.¹

¹ A 2003 report conducted by the General Accounting Office has also identified illegal cigarette activity as a source of funding for terrorist activity. See "Terrorist Financing: U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms." United States General Accounting Office. (November 2003).



Illegal trade in cigarettes deprives governments of tax revenue, harms law-abiding members of the wholesale and retail trade channels and hinders efforts to prevent youth access to cigarettes because reliable age verification generally does not occur when illegal sales happen. In addition, when adult smokers purchase counterfeit cigarettes, believing that they are authentic, or when they unknowingly purchase other forms of contraband product, Philip Morris USA's trademarks and brand reputations are adversely affected.

Every state in the union imposes a state excise tax upon cigarettes. In addition, every state, with the exception of North Dakota, North Carolina and South Carolina requires that a tax stamp be affixed to cigarette packs denoting that the payment of the appropriate state excise tax has been made. The tax stamp requirement is one way by which a state can help protect the revenue streams it should be receiving from legal cigarette sales because the tax stamp provides visual evidence that the appropriate taxes have been paid.

Philip Morris USA, in its effort to protect the integrity of its brands and the legitimate trade channels, pursues numerous strategies to attempt to address contraband related activity. For example,

- We have a number of trade programs and trade policies intended to make clear to wholesalers and retailers our expectation that our products will be distributed and sold in full compliance with all applicable laws.
- We gather information on contraband trade related to our products and take appropriate business actions in response to that information.
- We support law enforcement's efforts to address illegal activities, and we pursue civil remedies, including litigation, against those found to be selling counterfeit cigarettes carrying our brand names and trademarks.



- Finally, we support the passage of legislation to address contraband-related activity and illegal sales of PM USA products.

Philip Morris USA is very pleased to support House Bill 1358. This legislation could help reduce contraband cigarette activity by providing additional tools for law enforcement officials to address contraband cigarette activity. This bill would, among other things, require tax indicia on each pack of cigarettes sold in North Dakota, helping to ensure that North Dakota receives the tax revenue that the law intends.

Cigarette packs without tax stamps can provide an opportunity for contraband cigarette activity in several ways:

- First, the absence of a tax stamp facilitates tax evasion and hinders a state's ability to collect the tax revenues it is owed.
- Second, the lack of a tax stamp impacts law enforcement's efforts to identify the origin of a cigarette pack.
- Finally, the lack of a tax stamp makes it much easier to apply a counterfeit tax stamp to a cigarette pack.²

We know that contraband cigarette activity is both complex and illegal, making it difficult to accurately measure or quantify. Nonetheless, it is estimated that millions, and possibly billions of dollars in federal and state tax revenue are lost each year due to illegal activity related to cigarette sales.³ Tax stamps are an effective way to help protect state revenues and also provide law enforcement with an important tool to help them address the problem of contraband cigarette sales. The tax stamps allow law enforcement to more effectively trace product and reduce the illegal diversion of legitimate product.

² Ovaska, Sarah. "Raleigh Cigarette Reseller Targeted." *The News & Observer*. February 15, 2006.

³ See Testimony of Patrick Fleenor, Chief Economist, Fiscal Economics Inc., before the Subcommittee on Courts, the Internet and Intellectual Property, Committee on the Judiciary, House of Representatives (May 1, 2003); Bureau of Alcohol, Tobacco, Firearms and Explosives, 2005 Annual Report (2005), p.31-32.



Since 2003 more than 20 states have enacted legislation designed to address contraband cigarette activity and they have seen notable improvements in state revenues. For example, in 2005 California revenue officials attributed an additional \$125 million in tax revenue to the licensing and enforcement efforts that went into effect as the result of the enactment of legislation aimed at addressing the illegal trade in cigarettes.⁴ Michigan realized more than a 13% increase in cigarette excise tax collection after adding tax stamps to all cigarette packs in May of 1998.⁵ Cigarette tax stamps are one important way by which a state can help protect the revenue streams it should be receiving from legal cigarette sales.

In conclusion, contraband cigarette-related activity is a complex, ever-changing problem that affects many, including Philip Morris USA, federal, state and local governments, law enforcement, law-abiding wholesalers and retailers and individual adult consumers. At Philip Morris USA, we believe we have a role to play in addressing contraband activity related to our products, but we also know that we cannot solve these issues on our own. We further believe that law enforcement and regulatory authorities play a critical role, and think this legislation, similar to what has been enacted in all but three states, is a significant step toward furthering our shared objectives of addressing these contraband issues. We urge you to support House Bill 1358 and thank you for your consideration.

⁴ Chiang Announces \$125 million Surge in Tax Receipts from Cigarette and Tobacco Sales. California Board of Equalization Press Release. 12/1/2005.

⁵ The sum of monthly tax-paid sales from May 1997 through April 1998 was \$705,486 and from May 1998 through April 1999 was \$802,344. Orzechowski, Bill & Walker, Rob. "The Tax Burden on Tobacco" (vol. 40) 2005; funded in part by PM USA.

HB 1358
Cigarette Tax Facts
Prepared by: John Quinlan
Office of State Tax Commissioner

1. North Dakota is one of three states not currently stamping cigarettes. The other two states are North and South Carolina. North Dakota stamped cigarettes until 1991. Stamping was discontinued at the request of the wholesalers when Pitney Bowes discontinued their stamping equipment. The Tax Commissioner's Office has effectively and efficiently collected cigarette tax using a monthly report form.
2. The cigarette rate in North Dakota is \$4.40 per carton of 200 cigarettes. Of that amount, \$4.10 goes to the general fund and 30 cents is distributed by the North Dakota Treasurer's Office to all cities. The tax rates per carton in surrounding states are as follows:
 - a. \$14.93 Minnesota
 - b. \$17.00 Montana
 - c. \$15.30 South Dakota
 - d. \$ 6.00 Wyoming
 - e. \$35.00 Canada (varies by Province)
3. Total taxable cigarette sticks and revenue for the past 5 years are listed below:

a. 2006	961,128,686	\$21,172,230.71
b. 2005	886,399,747	\$19,519,803.71
c. 2004	833,352,974	\$18,359,868.52
d. 2003	831,210,823	\$18,298,320.94
e. 2002	846,175,280	\$18,595,554.30
4. Cigarette stamping does not stop the main sources of consumer cigarette diversion:
 - a. Low tax states
 - b. Military reservations
 - c. Indian reservations
 - d. Internet purchases
5. The Tax Commissioner's Office completed inspections of 160 licensed cigarette retailers (10% of total licensed retailers) in December 2006. No violations were found.
6. The State Tax Commissioner has not received information from the cigarette industry, ND wholesalers, Bureau of Alcohol, Tobacco & Firearms, or US Customs indicating smuggling exists in North Dakota.



STATE CIGARETTE EXCISE TAX RATES & RANKINGS

Overall All States' Average: \$1.00 per pack
 Major Tobacco States' Average: 26.5 cents per pack
 Other States' Average: \$1.09 per pack

State	Tax	Rank
Alabama	\$0.425	40th
Alaska ¹	\$1.80	7th
Arizona ²	\$2.00	4th
Arkansas	\$0.59	34th
California	\$0.87	25th
Colorado	\$0.84	26th
Connecticut	\$1.51	12th
Delaware	\$0.55	37th
DC	\$1.00	21st
Florida	\$0.339	45th
Georgia	\$0.37	41st
Hawaii ³	\$1.60	10th
Idaho	\$0.57	35th
Illinois	\$0.98	23rd
Indiana	\$0.555	36th
Iowa	\$0.36	42nd
Kansas	\$0.79	29th
Kentucky	\$0.30	46th

State	Tax	Rank
Louisiana	\$0.36	42nd
Maine	\$2.00	4th
Maryland	\$1.00	21st
Massachusetts	\$1.51	12th
Michigan	\$2.00	4th
Minnesota ⁴	\$1.493	15th
Mississippi	\$0.18	49th
Missouri	\$0.17	50th
Montana	\$1.70	9th
Nebraska	\$0.64	32nd
Nevada	\$0.80	27th
New Hampshire	\$0.80	27th
New Jersey	\$2.58	1st
New Mexico	\$0.91	24th
New York	\$1.50	14th
North Carolina	\$0.35	44th
North Dakota	\$0.44	39th
Ohio	\$1.25	18th

State	Tax	Rank
Oklahoma	\$1.03	20th
Oregon	\$1.18	19th
Pennsylvania	\$1.35	17th
Rhode Island	\$2.46	2nd
South Carolina	\$0.07	51st
South Dakota ⁵	\$1.53	11th
Tennessee	\$0.20	48th
Texas ⁶	\$1.41	16th
Utah	\$0.695	31st
Vermont ⁷	\$1.79	8th
Virginia	\$0.30	46th
Washington	\$2.025	3rd
West Virginia	\$0.55	37th
Wisconsin	\$0.77	30th
Wyoming	\$0.60	33rd
Puerto Rico	\$1.23	NA
Guam	\$1.00	NA
Northern Marianas	\$1.75	NA

¹ Additional 2¢ increase effective 7/1/06.

² Effective 5/1/07.

³ Additional 20¢ each 7/1 through 2011.

⁴ Includes 75¢ health impact fee & 26.3¢ wholesale sales tax (all part of tax stamp).

⁵ Effective 1/1/07.

⁶ Effective 1/1/07.

⁷ Additional 20¢ 7/1/07.

Table shows all cigarette taxes already passed into law that will go into effect in FY 06-07. Since 2001, 42 States, DC and several U.S. territories have increased their cigarette tax rates more than 75 times. States in **bold type** have not increased their cigarette tax since 2001 or much earlier. Tobacco States are KY, VA, NC, SC, GA, TN. States' average includes DC, but not Puerto Rico or other U.S. territories. Local cigarette taxes not included. Including Puerto Rico (which has a larger U.S. population than more than 20 states and DC) raises the state average to almost \$1.01 per pack and the non-tobacco state average to \$1.10. The median tax rate is now 84¢ per pack. MI, MN, and UT also have special 35¢ per pack taxes or fees on brands of manufacturers not participating in the state tobacco lawsuit settlements (NPMs).

The highest combined state-local tax rate is now \$3.66 in Chicago, with Evanston, IL second at \$3.30 per pack. Other high state-local rates include Anchorage at \$3.10 and New York City at \$3.00 per pack. For more on local cigarette taxes, see: <http://tobaccofreekids.org/research/factsheets/pdf/0267.pdf>.

Federal cigarette tax is 39¢ per pack. From the beginning of 1998 through 2002, the major cigarette companies increased the prices they charge by more than \$1.25 per pack (but also instituted aggressive retail-level discounting for competitive purposes and to reduce related consumption declines). In January 2003, Philip Morris instituted a 65-cent per pack price cut for four of its major brands, to replace its retail-level discounting and fight sales losses to discount brands, and RJ Reynolds followed suit. In 2005, Philip Morris and Reynolds American announced price increases of about ten cents per pack. **The U.S. Centers for Disease Control & Prevention estimates that smoking-caused health costs total \$10.28 per pack sold and consumed in the United States.**

The average price for a pack of cigarettes nationwide is roughly \$4.26 (including statewide sales taxes but not local cigarette or sales taxes, other than NYC's \$1.50 per pack cigarette tax), with considerable state-to-state differences because of different state tax rates, and different manufacturer, wholesaler, and retailer pricing and discounting practices. AK, DE, MT, NH & OR have no state retail sales tax at all; CO & MN have a state sales tax but it do not apply it to cigarettes; and AL, GA & MO (unlike the rest of the states) do not apply their state sales tax to that portion of retail cigarette prices that represents the state's cigarette excise tax.

Campaign for Tobacco-Free Kids, November 17, 2006 / Eric Lindblom

For additional information see the Campaign's website at <http://tobaccofreekids.org/reports/prices>. Sources: Orzechowski & Walker, *Tax Burden on Tobacco*, 2005; media reports.

HB 1358-A

#5

1-29-07 Am



*P.O. Box 1472
3125 East Thayer
Bismarck, ND 58502-1472
701-258-3618*

January 26, 2007

Mr. Chairman and members of the House Finance and Taxation committee, my name is John Job. I am the Division Manager for AMCON Distributing Company located in Bismarck. AMCON is a wholesale distributing company that distributes consumer products to retailers. From the Bismarck distribution center we serve customers in SD, MT, MN, WI, and all over ND. We specialize in distributing to convenience stores.

Passage of HB 1358 will create additional costs of doing business for all cigarette wholesale distributing companies. Some of those costs are: Tax indicia affixing machines will need to be purchased or leased by wholesalers. In the case of AMCON Distributing Company we do have one machine and would need to purchase an additional machine as 50 % of our present volume is stamped out of state and 50% is in state. Our present machine runs 8 – 10 hours per day 4 days a week. Estimated cost of a machine is from \$30,000.00 – to \$120,000.00 depending on manufacturer, and options. We also would need to factor in machine maintenance cost. A service agreement from the machine's manufacturer would be around \$500.00 per month. Cost of labor to operate the stamping machine would be an annual figure of \$35,000.00 to \$45,000.00 additional for AMCON to affix indicia on ND sold cigarettes. The labor cost is less if a higher priced machine is purchased. There are at least two wholesalers in ND that do not own stamping equipment as their business is in state only. One question on our minds is will the wholesaler pay for rolls of stamps when we pick them up, or do we pay taxes for the prior month on the 15th of the following month as we presently do now. If we pay in advance we must factor in 8.25% prime rate for the excise taxes paid for prior to sale of product to achieve a return of the tax dollars invested in excise tax inventory.

With proposed HB 1358 it is apparent that the wholesalers will need to invest in additional equipment, labor and perhaps inventory in order to tax each package of cigarettes in the state of ND. The amendment that is proposed today is patterned after Minnesota's statute 325 D. That amendment was offered to make sure the wholesaler's are able to make the equipment and additional labor investments to stamp indicia on the cigarettes to collect the ND taxes. Montana and South Dakota have similar statutes on their books.

1358

#6

January 28, 2007

House Finance and Tax Committee
ND House of Representatives
State Capitol
Bismarck, North Dakota 58505

Re: 1358 (tobacco tax stamp)

Dear Chairman Belter and Committee Members:

On behalf of the North Dakota Grocers Association I want to express our support for HB 1358. The bill establishes a cigarette tax stamp requirement, to reduce the sale of untaxed cigarettes in North Dakota. It reduces the potential for having untaxed cigarettes in areas of the state that create havens of unfair competition for many North Dakota businesses. Why should one business in ND enjoy an unfair tax advantage, at the expense of a neighboring business?

The bill should reduce the illegal sale of:

- stolen cigarettes
- illegally imported cigarettes
- counterfeit cigarettes
- un-taxed cigarettes

-and under-taxed cigarettes, all of which deprive the state of revenues lawfully due in cigarette taxes, and which create unfair competition for law abiding businesses who are playing by the rules.

As a taxpayer and on behalf of an organization whose members promote free enterprise and fair markets I urge a DO PASS recommendation for HB 1358.

Sincerely,

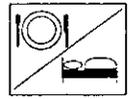


Tom Woodmansee
ND Grocers Association

#7 1358



ND's Restaurant, Lodging & Beverage Association



P.O. Box 428 • Bismarck, ND 58502 • Phone: 701-223-3313 • Fax: 701-223-0215
E-mail: ndha@btinet.net • www.ndhospitality.com

Finance and Tax Committee
North Dakota House of Representatives
January 29, 2007

HB 1358

Chairman Belter and members of the Committee, my name is Nicki Weissman and I am the Executive Director of the North Dakota Hospitality Association. We have over 350 members in North Dakota engaged in all aspects of the hospitality industry.

The North Dakota Hospitality Association supports HB 1358

The Association supports the proper taxation of cigarettes, and supports a system that minimizes the sale of illegally imported cigarettes, counterfeit cigarettes, stolen cigarettes, or un-taxed or under-taxed cigarettes. HB 1358 creates such a system. The Hospitality Association supports a tax mechanism that more accurately tracks the distribution and sale of cigarettes and protects legitimate and lawful channels of commerce. Un-taxed cigarettes, or under-taxed cigarettes (regardless of the manner in which they are obtained by the vendor) hurt those North Dakota vendors who play by the rules and pay taxes lawfully assessed upon cigarettes. Those vendors, who don't play by the rules, enjoy an unfair and an unlawful advantage that should not be allowed to remain. HB 1358 will fix that unfair advantage.

Finally, we are not in favor of raising taxes, but we are in favor of all businesses paying the taxes that have been lawfully imposed by the Legislature. HB 1358 will help close a tax system that allows a few to avoid paying taxes that have been assessed on cigarettes sold in this state. We ask for a DO PASS on HB 1358.

HH #1

3-5-07

HB 1358 Summary

House Bill 1358 originated in the House as a bill to require tax stamps on cigarettes. Although the House eliminated the tax stamp provision, the bill was amended to enhance current law preventing youth access to smoking.

The law currently provides for the prohibition of the sale of tobacco to minors as well as its use. However, Section 1 of the bill further provides that a minor is prohibited from using a false or fraudulent "proof of age" for the purpose of purchasing or possessing tobacco. Consistent with other provisions prohibiting minors from possessing or using tobacco, it also establishes a \$25.00 fee for a sanction against a minor found in violation.

Section 2 of the bill specifically addresses the prohibition of tobacco vending machines where minors are permitted access. As an alternative, a vending machine that requires a salesperson to control the dispensation of tobacco is permitted. Currently, state law does prohibit dispensing tobacco from a vending machine to a minor.

Testimony indicated that there are few vending machines in the state that are accessible to minors, and the bill clarifies and establishes these controls to further enhance the enforcement effort against minors using or possessing tobacco. One of the major tobacco companies did testify in favor of House Bill 1358, indicating that these provisions were consistent with laws in other states and are beneficial in preventing the use and possession of tobacco products by minors.

The state has an important role to play in helping to prevent children from using tobacco products. This bill provides increased efforts in use access prevention by (1) extending the enforcement against the use of false id's, and (2) preventing children from buying cigarettes or other tobacco products from vending machines. Your Senate Judiciary Committee recommends a do pass on this legislation.

For further information, contact:

John M. Olson, Lobbyist for Altria
418 E. Broadway Ave., Suite 9
Bismarck, ND 58501
701-222-3485
(f) 701-222-3091
olsonpc@midconetwork.com

Attach 1
Dist. by
Dorrita
2/6/07

OFFICE OF STATE TAX COMMISSIONER
FISCAL NOTE COSTS FOR HB 1358
60TH LEGISLATIVE ASSEMBLY

Completed: 1/29/2007
Prepared by: Glenda Anderson

	<u>Low Range</u>	<u>High Range</u>
Stamp costs	\$929,500	\$1,098,500
Cost to mail orders	26,193	216,871
Cigarette program rewrite	150,000	150,000
2 FTE: 1 Auditor; 1 Audit Technician includes biennium salary, training, equipment & travel expenses	219,680	219,680
TOTAL	<u>\$1,325,373</u>	<u>\$1,685,051</u>