MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

1269

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgaud 10/3/03
Operator's Signature Date

2003 HOUSE HUMAN SERVICES

HB 1269

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford
Operator's Signature

10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1269

House Human Services Committee

☐ Conference Committee

Hearing Date January 20, 2003

Tape Number	Side A	Side B	Meter #
2	x		26.5 - 50.1
Committee Clerk Signature	Sharon Rayfield		

Minutes:

Rep. Porter appeared as prime sponsor with written testimony stating it is unfair to companies who went in on the master settlement to begin with. The master settlement created an unlevel playing field amongst companies and feels it needs to be leveled out, creates an unfair competitive advantage.

Doug Barr, Litigation Attorney with the Attorney General's Office appeared in support with proposed amendments. Stating that the statute Chapter 51-25 basically does is that if the party is not part of the master settlement agreement, they have to put into an escrow account each year a certain amount of funds based upon their sales in ND. Those funds continue to be theirs but in that escrow account for a certain amount of time so that if the State or some other party from ND sues them, we are assured there is a fund upon which recovery can be made. The concern is that a lot of these companies come and go in 2 or 3 years and if they put out a product that someone gets harmed from, there is no place to go for recovery.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford
Operator's Signature

10/3/03
Date

The amendments mean that if you don't comply with ND Law, you cannot do business here, basically do what you want, but you need to comply with ND Law.

Questions from the committee on how would this affect the sale on the Reservations and what is a dealer vs. distributor on Reservations (response both are licensed and are retailers in the State) Is the bulk going to the Reservations and that a distributor may pick up a lot of product but distributed elsewhere. How many MPM's are we looking at (response 18, 6 are not in compliance, the one's overseas are harder to get to come into compliance)

Gary Anderson, Director for Sales and Special Taxes for the Tax Dept. appeared to answer questions and in support of this bill stating that one of the difficulties in regard to the Tribal sales, is being sold in ND are products being purchased by ND wholesalers, although its not taxed, its going through our wholesales and doesn't prevent any of our Indian Retailers from purchasing products from outside the state and its that product that is being shipped across the state line directly to the Reservation, which is regarded as interstate commerce sale and the State of ND is preempted by federal law from interfering with that shipment of product in. So in effect we lose our jurisdiction if we wanted to try to apply tax to that transaction.

No opposition.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgard
Operator's Signature

10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1269

House Human Services Committee

☐ Conference Committee

Hearing Date January 27, 2003

Tape Number	Side A	Side B	Meter #
1	x		3.4 - 10.4
Committee Clerk Signature	Sharon Renfew		

Minutes: Doug Barr of the Attorney General Office appeared on behalf of the committee stating he would support an emergency clause as noted in the testimony of last week. One of the purposes of this bill is to have those who are not compliant with ND law to fire, discontinuing selling in ND. Some of them have been out of compliance with ND Law for a number of years.

Rep. Niemeier asked what the master settlement was.

Explanation: One of the specific concerns, 2 sessions ago, ND adopted a law that requires those who are not parties to the U.S.A. to put a statutory amount of money into an escrow account so that those funds were available if those individuals are sued based upon their sale of product. A lot of these companies come, market their product, do the damage then disappear and there is no way to get relief.

Rep. Pollert asked what the current statute is.

Answer: This is not a tax, the funds are theirs but it is put into an escrow account, if they pull it out and are not sued, they can take it out when they leave.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgard 10/3/03
Operator's Signature Date

Rep. Devlin moved the amendment by Attorney General's Office and add emergency clause,

send by Rep. Weisz. 13 - 0 - 0

Rep. Porter moved a DO PASS as AMENDED, second by Rep. Wieland. 13 - 0 - 0

Rep. Porter will carry the bill.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgard 10/3/03
Operator's Signature Date

FISCAL NOTE

Requested by Legislative Council
03/06/2003

Amendment to: HB 1269

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

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

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

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

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

If enacted, Engrossed HB 1269 with Senate amendments will likely have little or no fiscal impact as users of the prohibited brands of tobacco products will switch to other brands and continue to pay all required taxes.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

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

Name:	Kathryn L. Strombeck	**Agency:**	Tax Department
Phone Number:	328-3402	**Date Prepared:**	03/07/2003

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

FISCAL NOTE

Requested by Legislative Council
01/14/2003

Bill/Resolution No.: HB 1269

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

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

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

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

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

HB 1269 prohibits the sale of tobacco products supplied by manufacturers who have not participated in the master settlement agreement. If enacted, HB 1269 will likely have little or no fiscal impact as users of the prohibited brands of tobacco products will switch to other brands and continue to pay all required taxes.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

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

Name:	Kathryn L. Strombeck	**Agency:**	Tax Dept.
Phone Number:	328-3402	**Date Prepared:**	01/17/2003

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

30370.0101
Title.0200

Adopted by the Human Services Committee
January 27, 2003

VR
1/27/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1269

Human Services 1-28-03

Page 1, line 2, remove "a prohibition on"

Page 1, line 3, replace "produced" with "manufactured", remove "certain", and after "manufacturers" insert "not in compliance with state or federal law; and to declare an emergency"

Page 1, line 7, after the first "of" insert "noncompliant" and remove "of nonparticipating tobacco manufacturers prohibited"

Page 1, line 8, after "not" insert "knowingly"

Page 1, line 9, replace "that did not participate in the master" with "not in compliance with the laws of this state or the United States.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Page 1, remove line 10

Renumber accordingly

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

Date: January 27, 2003
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1269

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP as Amended

Motion Made By Rep Porter Seconded By Rep Wieland

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair	✓		Rep. Bill Amerman	✓	
Rep. Robin Weisz	✓		Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Gary Kreidt	✓				
Rep. Alon Wieland	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep Porter

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgard 10/3/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
January 28, 2003 8:14 a.m.

Module No: HR-16-1185
Carrier: Porter
Insert LC: 30370.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1269: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1269 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "a prohibition on"

Page 1, line 3, replace "produced" with "manufactured", remove "certain", and after "manufacturers" insert "not in compliance with state or federal law; and to declare an emergency"

Page 1, line 7, after the first "of" insert "noncompliant" and remove "of nonparticipating tobacco manufacturers prohibited"

Page 1, line 8, after "not" insert "knowingly"

Page 1, line 9, replace "that did not participate in the master" with "not in compliance with the laws of this state or the United States.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Page 1, remove line 10

Renumber accordingly

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

2003 SENATE HUMAN SERVICES

HB 1269

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1269

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 3, 2003

Tape Number	Side A	Side B	Meter #
2	X		4260 - 5569
		X	544-660
Committee Clerk Signature	Donna Kramer, Clerk		

Minutes:

SENATOR JUDY LEE opened the public hearing on HB 1269 relating to the sale and distribution of tobacco products manufactured by tobacco product manufacturers not in compliance with state or federal law; and to declare an emergency.

REPRESENTATIVE TODD PORTER introduced the bill. (Meter # 4274 - 4442)

DOUGLAS BARR, Director of the Civil Litigation Division in the Office of the Attorney General, testified. (Written testimony and amendments to Engrossed HB 1269 provided) (Meter # 4450 - 4900)

SENATOR FAIRFIELD: Why are any products being sold in ND that are not in compliance? Response by DOUGLAS BARR and continued questions and answers regarding cost prohibitive, impact from foreign companies and penalty for cigarettes with out stamps. (Meter # 4907 - 5555)

SENATOR LEE closed the public hearing as there was no further testimony. (Meter # 5597)

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

SENATOR JUDY LEE opened the committee discussion on HB 1269. She referred to the amendment given to the committee by Douglas Barr. Clerk directed to give the proposed amendments to the Legislative Council to be drafted. (Meter # 544 - 660)

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1269

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 4, 2003

Tape Number	Side A	Side B	Meter #
1		X	1614 - 2176
Committee Clerk Signature	Donna Kramer, Clerk		

Minutes:

SENATOR LEE called the committee back to order to discuss HB 1269 relating to the sale and distribution of tobacco products. The amendments from the Attorney General's office were mentioned and discussed.

SENATOR ERBELE moved to amend..

SENATOR BROWN seconded the motion.

Discussion.

Roll call was read. 6 yeas 0 nays.

SENATOR POLOVITZ made a motion to DO PASS AS AMENDED.

SENATOR FISCHER seconded the motion.

Roll call was read. 6 yeas 0 nays.

SENATOR FISCHER will be the carrier. (Meter # 2176)

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

30370.0201
Title.

Prepared by the Legislative Council staff for
Senate Human Services
March 4, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1269

Page 1, line 3, after the semicolon insert "to amend and reenact paragraph 2 of subdivision b of subsection 2 of section 51-25-02 of the North Dakota Century Code, relating to the release of escrow funds deposited by tobacco product manufacturers; to provide for anti-severability; to provide an effective date;"

Page 1, after line 5, insert:

"**SECTION 1. AMENDMENT.** Paragraph 2 of subdivision b of subsection 2 of section 51-25-02 of the North Dakota Century Code is amended and reenacted as follows:

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than ~~the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment)~~ the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to the tobacco product manufacturer; or"

Page 1, after line 10, insert:

"**SECTION 3. ANTI-SEVERABILITY - EFFECTIVE DATE.** If any portion of paragraph 2 of subdivision b of subsection 2 of section 51-25-02 as amended by this Act is held by a court of competent jurisdiction to be unconstitutional, then paragraph 2 of subdivision b of subsection 2 of section 51-25-02 is suspended. After suspension of paragraph 2 of subdivision b of subsection 2 of section 51-25-02, if any other provision of subdivision b of subsection 2 of section 51-25-02 is held by a court of competent jurisdiction to be unconstitutional, then paragraph 2 of subdivision b of subsection 2 of section 51-25-02 takes effect as it existed on January 1, 2003. Neither any holding of unconstitutionality nor the suspension of paragraph 2 of subdivision b of subsection 2 of section 51-25-02 affects or invalidates any other portion of section 51-25-02 or the application of the section to any person or circumstance, and the remaining portions of section 51-25-02 continue in effect."

Renumber accordingly

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

Date: 03-04-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendment

Motion Made By Sen. Erbele Seconded By Sen. Brown

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent _____

Floor Assignment _____

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/2/03
Operator's Signature Date

Date: 03-04-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1269

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken "Do Pass" as amended

Motion Made By Sen. Polovitz Seconded By Sen. Fischer

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield	✓				
Senator Michael Polovitz	✓				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Sen. Fischer

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE

HB 1269, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1269 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to amend and reenact paragraph 2 of subdivision b of subsection 2 of section 51-25-02 of the North Dakota Century Code, relating to the release of escrow funds deposited by tobacco product manufacturers; to provide for anti-severability; to provide an effective date;"

Page 1, after line 5, insert:

"**SECTION 1. AMENDMENT.** Paragraph 2 of subdivision b of subsection 2 of section 51-25-02 of the North Dakota Century Code is amended and reenacted as follows:

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than ~~the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment)~~ the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to the tobacco product manufacturer; or"

Page 1, underscore lines 8 through 10

Page 1, after line 10, insert:

"**SECTION 3. ANTI-SEVERABILITY - EFFECTIVE DATE.** If any portion of paragraph 2 of subdivision b of subsection 2 of section 51-25-02 as amended by this Act is held by a court of competent jurisdiction to be unconstitutional, then paragraph 2 of subdivision b of subsection 2 of section 51-25-02 is suspended. After suspension of paragraph 2 of subdivision b of subsection 2 of section 51-25-02, if any other provision of subdivision b of subsection 2 of section 51-25-02 is held by a court of competent jurisdiction to be unconstitutional, then paragraph 2 of subdivision b of subsection 2 of section 51-25-02 takes effect as it existed on January 1, 2003. Neither any holding of unconstitutionality nor the suspension of paragraph 2 of subdivision b of subsection 2 of section 51-25-02 affects or invalidates any other portion of section 51-25-02 or the application of the section to any person or circumstance, and the remaining portions of section 51-25-02 continue in effect."

Renumber accordingly

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

2003 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1269

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03

Operator's Signature Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1269

House Human Services Committee

☑ Conference Committee

Hearing Date 4-03-03

Tape Number	Side A	Side B	Meter #
1	x		0.-6.0
Committee Clerk Signature	Sharon Renfrow		

Minutes:

Chairman Porter: called the conference committee to order on HB 1269.

Representative Porter, Representative Niemeier, Representative Uglem, Senator Polovitz, Senator Erberle, Senator Fischer were present.

Representative Porter: stated that was hog housed in the House and the Attorney General amended in the Senate.

Doug Barr: was present and explained the changes in the amendment to HB 1269.

Representative Porter: nonparticipating companies the basically have a competitive edge.

Doug Barr: it has a dramatic difference.

Senator Polovitz: what is the purpose of the escrow?

Doug Barr: the purpose of the escrow is 2 fold, and the courts have up held it a lot of the nonparticipating manufactures have challenged the constitutionality, we had federal court at the lower level, its 2 fold one it is to balance the amount, and the public interest of not making

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

extremely low product because that is what the youth go for because they don't have the funds to pay for the name brands, and the second is so that there is a fund, since they are selling a dangerous product, so that there is an escrow, for the many law suits based on tobacco products, so that the money is there for the next 25 years until they are not sued they get it back after it has been there for a while.

Representative Polovitz: how do they get it back ,and why would they want it back, you said that they could take it out after some time.

Doug Barr: under the statute they have to put a certain percentage in, and if they sold mainly in a couple of states the statute permits them to get a refund of a certain amount of it, so they try to get it all out because then they can use it like any business, the more cash flow they have to lower their prices can be and this just makes it so their payments are more equal to everyone else.

Representative Niemeier: I'm looking at the addition here of units sold in the state, what is the significance of that, of just restricting this to just our state.

Doug Barr: they had to put in escrow a percentage of their national sales, then each state looked at their percentage of the MSA payments, and North Dakota is a smaller state so we get like .0 something of the MSA payments. To the extent they put more in then they would have paid to North Dakota, they get the rest back. If you sold it all in one state, you would get most of it back, and this provides that now its based upon what they would have paid overall and not to just the individual state, its a very difficult reading language.

Representative Niemeier: does this mean that when they are selling in other states, they pay into a escrow account in those states individually, its every state for itself.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgaud 10/3/03
Operator's Signature Date

Doug Barr: yes, the manufacturers have to pay into all the states that have adopted a statute, these companies have and escrow account with North Dakota as a beneficiary.

Senator Polovitz: are we working off of Senate amendments?

Doug Barr: yes we are.

Representative Porter: we will reconvene next week, meeting adjourned

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1269

House Human Services Committee

☑ Conference Committee

Hearing Date 4-9-03

Tape Number	Side A	Side B	Meter #
1	x		22.3-26.3
Committee Clerk Signature	Sharon Renfrow		

Minutes: Chairman Porter: called the conference committee meeting to order on HB 1269.

Representative Porter, Representative Uglem, Representative Neimeier, Senator Erberle, Senator Fischer, Senator Polovitz were present.

Representative Porter: as we left yesterday we had a homework assignment for Mr. Barr.

Doug Barr: I spoke to representatives from RJR and Philip Morse, at the local and national level and we worked out a sensible amendment to section 2, which provides that if the portion of 5125 that's the escrow statute, that relates to nonparticipating manufacturers, all it does is instead of saying the laws of the state or the United States it says subsection 2 of Section 51-25-02, and that's the section that requires companies that are not parties to the master settlement agreement, to pay the escrow, so if any of those companies are not in compliance then we would give them the right to a 2832 hearing, and then we would notify distributors that they are not in compliance

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

and those companies can no longer sell in North Dakota. The office of Attorney General is comfortable with that change and I believe representatives of the companies will confirm that they are also.

Representative Porter: committee are we in agreement of that change?

Senator Fischer: I will make the motion to RECEDE from the SENATE AMENDMENTS, and further AMEND the amendment presented by Mr. Barr.

Senator Polovitz: SECOND.

Representative Porter: the motion takes out 1 and 3 and further amending Section 2 to read, as the attorney general as presented with subsection 2 of section 51-25 02.

VOTE: 6-YES 0-NO 0-ABSENT.

Meeting adjourned.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

Roll Call

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

(Bill Number) HB 1269 (, as (re)engrossed):

Your Conference Committee for HOUSE HUMAN SERVICES

For the Senate:	**For the House:**
Rep. Porter ✓	Senator Erbele ✓
Rep. Uglem ✓	Senator Fischer ✓
Rep. Niemeier ✓	Senator Polovitz ✓

____ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE FROM)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

____ and place _____ on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____ having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4/3/03

CARRIER: Rep Porter

LC NO. _____ . _____ of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1 & 2) LC (3) DESK (4) COMM.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgard 10/3/03
Operator's Signature Date

Roll Call

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

(Bill Number) HB 1269 (, as (re)engrossed):

Your Conference Committee for HOUSE HUMAN SERVICES

For the Senate:		**For the House:**	
Rep. Porter	✓	Senator Erbele	✓
Rep. Uglem	✓	Senator Fischer	✓
Rep. Niemeier	✓	Senator Polovitz	✓

___ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE FROM)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

____ and place _____ on the Seventh order.

____ , adopt (further) amendments as follows, and place _____ on the Seventh order:

____ having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4/8/03

CARRIER: _____

LC NO. _____ . _____ of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1 & 2) LC (3) DESK (4) COMM.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgard 10/3/03
Operator's Signature Date

30370.0203
Title.0400

Adopted by the Conference Committee
April 9, 2003

Conference Committee Amendments to Engrossed HB 1269 - 04/09/2002

That the Senate recede from its amendments as printed on page 840 of the House Journal and pages 661 and 662 of the Senate Journal and that Engrossed House Bill No. 1269 be amended as follows:

Page 1, line 10, replace "the laws of this state or the United States" with "subsection 2 of section 51-25-02"

Renumber accordingly

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

(Bill Number) HB 1269 (, as (re)engrossed):

Your Conference Committee for HOUSE HUMAN SERVICES

For the ~~House~~ House: For the ~~Senate~~ Senate:

Rep. Porter	yes ✓	Senator Erbele	yes ✓
Rep. Uglem	yes ✓	Senator Fischer	yes ✓
Rep. Niemeier	yes ✓	Senator Polovitz	yes ✓

____ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE FROM)

the (Senate/House) amendments on (SJ/HJ) page(s) 840 -- _____

____ and place _____ on the Seventh order.

✓, adopt (further) amendments as follows, and place _____ on the Seventh order:

____ having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1269 was placed on the Seventh order of business on the calendar.

DATE: 4/9/03

CARRIER: Porter

LC NO. _____ . _____ of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1 & 2) LC (3) DESK (4) COMM.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is du to the quality of the document being filmed.

LaCosta Rickford 10/2/03
Operator's Signature Date

REPORT OF CONFERENCE COMMITTEE (420)
April 10, 2003 12:16 p.m.

Module No: HR-65-7324

Insert LC: 30370.0203

REPORT OF CONFERENCE COMMITTEE

HB 1269, as engrossed: Your conference committee (Sens. Erbele, Fischer, Polovitz and Reps. Porter, Uglem, Niemeier) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 840, adopt amendments as follows, and place HB 1269 on the Seventh order:

That the Senate recede from its amendments as printed on page 840 of the House Journal and pages 661 and 662 of the Senate Journal and that Engrossed House Bill No. 1269 be amended as follows:

Page 1, line 10, replace "the laws of this state or the United States" with "subsection 2 of section 51-25-01"

Renumber accordingly

Engrossed HB 1269 was placed on the Seventh order of business on the calendar.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgord 10/3/03
Operator's Signature Date

2003 TESTIMONY

HB 1269

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickgaud 10/3/03

Operator's Signature Date

HB 1269

Good afternoon Madam Chairman and members of the House Human Services Committee. For the record, my name is Todd Porter, State Representative District 34 Mandan.

HB 1269 is a fairness issue.

Currently all the major tobacco manufacturers are subjected to the master agreement (tobacco settlement). This was a settlement funded by the tobacco companies through sales of tobacco products.

HB 1269 addresses concerns that there are small tobacco companies engaging in the business in North Dakota that are not a part of the master settlement. This creates an unlevel playing field with the companies that have agreed to participate in the master agreement.

I would be happy to answer any questions the Committee may have.

Thank you

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

Amendments to HB 1269

Offered by Office of Attorney General

January 20, 2003

Page 1, line 2, delete "a prohibition on"

Page 1, line 3, delete "produced" and insert "manufactured"

Page 1, line 3, delete "certain"

Page 1, line 3, after "manufacturers" insert "not in compliance with state or federal law"

Page 1, line 7, after the first "of" insert "noncompliant" and delete "of nonparticipating tobacco manufacturers prohibited"

Page 1, line 8, after "not" insert "knowingly"

Page 1, line 9, after "manufacturer" insert "not in compliance with the laws of this state or the United States" and delete "that did not participate in the master settlement agreement, as defined in section 51-25-01"

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03

Operator's Signature Date

Amendments to HB 1269
Offered by Office of Attorney General
January 20, 2003

House Bill 1269 with amendments would read as follows:

A Bill for an Act to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to the sale and distribution of tobacco products manufactured by tobacco product manufacturers not in compliance with state or federal law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

Section 1. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Sale of noncompliant tobacco products. A dealer, distributor, or other person may not knowingly sell or distribute in this state any tobacco product manufactured by a tobacco product manufacturer not in compliance with the laws of this state or the United States.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

Amendments to Engrossed HB 1269

Offered by Office of Attorney General

March 3, 2003

Page 1, line 3, after "law;" insert "to create and enact a new section to chapter 51-25 of the North Dakota Century Code, relating to a savings clause of section 2; to amend and reenact paragraph (2) of subdivision b of subsection 2 of section 51-25-02 of the North Dakota Century Code, relating to release of escrow funds deposited by tobacco product manufacturers;"

Page 1, line 11 after "2." insert "**AMENDMENT.** Paragraph (2) of subdivision b of subsection 2 of section 51-25-02 of the North Dakota Century Code is amended and reenacted as follows:

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than ~~the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment)~~ the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product manufacturer; or

SECTION 3. A new section to chapter 51-25 of the North Dakota Century Code is created and enacted as follows:

If section 2 of this Act, or any portion of the amendment to paragraph (2) of subdivision b of subsection 2 of section 51-25-02 made by this Act, is held by a court of competent jurisdiction to be unconstitutional, then paragraph (2) shall be deemed to be repealed in its entirety. If subdivision b of subsection 2 of section 51-25-02 shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then section 2 of this Act shall be deemed repealed, and paragraph (2) of subdivision b of subsection 2 of section 51-25-02 be restored as if no such amendments had been made. Neither any holding of unconstitutionality nor the repeal of paragraph (2) of subdivision b of subsection 2 of section 51-25-02 shall affect, impair or invalidate any other portion of section 51-25-02, or the application of such section to any other person or circumstance, and such remaining portions of section 51-25-02 shall at all times continue in full force and effect.

SECTION 4.

Renumber accordingly.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03

Operator's Signature Date

TESTIMONY BEFORE THE
SENATE HUMAN SERVICES COMMITTEE
IN SUPPORT OF ENGROSSED HOUSE BILL NO. 1269

Douglas A. Bahr
Director, Civil Litigation Division
Office of Attorney General

March 3, 2003

Engrossed House Bill 1269 prohibits tobacco distributors from knowingly selling tobacco product manufactured by tobacco product manufacturers who are not in compliance with North Dakota and federal law. The bill applies to laws regarding areas such as labeling, packaging, importing, and escrow deposits under N.D.C.C. ch. 51-25. If a tobacco distributor knowingly sells tobacco product manufactured by a noncompliant tobacco product manufacturer, the tobacco distributor could be subject to the sanctions provided in N.D.C.C. ch. 57-36. See N.D.C.C. § 57-36-04 (licensure action); N.D.C.C. § 57-36-33 (class A misdemeanor, confiscation and forfeiture).

Engrossed HB 1269 will assist the state in enforcing laws against tobacco product manufacturers. Tobacco product manufacturers are not licensed by the state. Some are located in foreign countries and it is very hard and costly to sue them. Even if the state does successfully sue a foreign tobacco product manufacturer, it could be difficult if not impossible to enforce the judgment in a foreign country. By enactment of Engrossed HB 1269, the state will be able to prevent tobacco companies that refuse to comply with the law from selling product in North Dakota.

The Attorney General proposes the attached amendment to Engrossed HB 1269. Chapter 51-25, N.D.C.C., was enacted by the 1999 Legislative Assembly. The purpose of the statute is to support the enforcement of the Master Settlement Agreement ("MSA"), which was entered into in 1998 by North Dakota, 45 other states, and the major tobacco manufacturers and numerous smaller manufacturers. As a result of the MSA, to date North Dakota has received payments of approximately $87,511,350. The states and their citizens, especially youth, have also benefited from the marketing restrictions in the MSA.

Chapter 51-25, N.D.C.C., was designed to ensure a source of recovery for future harm caused North Dakota and its citizens by tobacco companies that are not parties to the MSA. It requires NPMs whose cigarettes are sold in the state to establish and annually fund an escrow account in an amount determined by their sales volume in the state. Funds placed in an escrow account are released to the NPM after 25 years if not used before then to pay a judgment against the NPM.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

The proposed amendment would amend chapter 51-25 by eliminating an unintended consequence of the original language that has compromised the law's effectiveness. Section 51-25-02(2)(b)(2) permits an NPM to obtain a release of funds from escrow "[t]o the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the master settlement agreement . . . ." Experience has shown that this provision enables NPMs that concentrate their sales in a single state or a few states to obtain an early release of the great majority of their escrow deposits.

The proposed amendment would cure this unintended consequence by amending section 51-25-02(2)(b)(2) to limit releases from escrow accounts under that provision to any amounts paid into escrow in excess of the MSA payments that the NPM would have been required to make on account of cigarettes sold in the state for a particular year had it participated in the MSA in that year. Those payments would not be limited to the state's allocable share of total MSA payments, so the release would be much less significant than it is under the current statute for NPMs that concentrate their sales in one or a few states.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03
Operator's Signature Date

A dealer, distributor, or other person may not knowingly sell or distribute in this state tobacco product manufactured by a tobacco product manufacturer not in compliance with subsection 2 of section 51-25-02 ~~the laws of this state or the United States~~.

Amendment passed

Presented by Dag Bar

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

LaCosta Rickford 10/3/03

Operator's Signature Date