

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

1431

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10/16/03
Date

2003 HOUSE FINANCE AND TAXATION

HB 1431

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1431**

House Finance and Taxation Committee

Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1	X		1.5

Committee Clerk Signature *Janice Stein*

Minutes:

REP. DAVID DROVDAL, VICE-CHAIR Called the hearing to order.

REP. WESLEY BELTER, DIST. 22, Introduced the bill at the request of the industry. The bill allows for the stamping of cigarettes for taxing purposes. Instead of calling it stamping, it is now called indicia. He stated when he first came to the legislature in 1985, they were stamping cigarettes, then they went away from the stamping. Now, we are considering it again. This is being brought about by the differentials in taxing which is taking place throughout the country. There are also a lot of cigarettes sold right now, which are not being taxed. The intent here, is to make sure that cigarettes which are being sold, are being taxed properly.

Rep. Belter, submitted amendments to the bill.

REP. WEILER What was the reason that they went away from the stamping?

REP. BELTER I don't recall when it was, I think it was felt that it was an unnecessary cost at that time. There may be others that can information on that.

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JOHN OLSON ON BEHALF OF PHILIP MORRIS USA This bill was put in at the request of Philip Morris USA. We were working with the industry and the attorney general, the state tax commissioner and the wholesalers. The amendments presented to you, are primarily, designed to accommodate the wholesalers, in terms of their responsibilities. He explained all sections of the bill. He stated, we are one of four states, who do not have stamping. This stamping law was in effect until 1991.

REP. WINRICH Questioned the discount in Section 6, according to the fiscal note, this would decrease revenues by about 1.8 million, was a similiar discount in effect prior to 1991, when we did have this stamp in there, or is this something new about this particular version of the law?

JOHN OLSON Deferred the question.

JACK HOLLERAN, VICE-PRESIDENT OF BRAND INTEGRITY AT PHILIP MORRIS USA, Testified in support of the bill. See written testimony. During his testimony, he presented counterfeit cigarettes to committee members for their comparison to the approved cigarettes being sold. Most of the counterfeit cigarettes sold in the U.S. also have counterfeit stamps, therefore, the nation loses a large amount of money.

REP. BELTER Is there more of a problem with the importation then with trafficking out of a low tax state, where is the largest problem?

JACK HOLLERAN All of these problems are of equal weight. The difficulty is that it is all illegal activity. We can detect trends, but we can't find the scope or the magnitude of anyone of the problems, counterfeit versus illegal imports, versus diversion of unstamped illegal products.

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JOHN JOB, DIVISION MANAGER OF AMCON DISTRIBUTING COMPANY,

BISMARCK, Testified in support of the amended version of the bill. See written testimony.

REP. DROVDAL You mentioned, the 72 hours would be a problem, do you have a better time frame, or more lenient time frame?

JOHN JOB It is an unknowing situation. In order to have the brands, and there are numerous brands on the market right now, at the present time, we are stocking four hundred different brands, when you buy a case of thirty of them and are shipping it in four different packs, etc., the clock starts ticking as soon as the product arrives, and we have 72 hours to affix a tax stamp to that. Once we affix a tax stamp, it can be sold in any other state. I have to pay an inventory cost to have it on inventory, it is a guessing game for us. We pay a substantial amount of money for a security system, to insure our inventory is protected.

REP. BELTER The business that you do with other states, do you have businesses located in other states, or do you store cigarettes here in North Dakota and ship them to Montana or Minnesota, or

JOHN JOB We ship them right out of Bismarck into Montana, the orders are all processed right here in Bismarck. As the orders are pulled, they go on a conveyer line right up to the cigarettes stamping area, the order is then checked for accuracy and then it goes through the cigarettes stamping machine, where the tax is applied, then they go out to the loading area. We put the stamp on at the time that product is pulled to go to the customers.

JOHN QUINLAN, NORTH DAKOTA TAX DEPARTMENT Testified in a neutral position. He explained the bill as the tax department understands the bill. He stated they have a

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concern in Section 3, line 29, which talks about rolling your own tobacco, that was changed last session, and currently, there are no stamps available to roll your own packages. We have options there. Prior to the last session, roll your own product was taxed at a twenty eight percent tobacco tax rate, because at the time we didn't stamp, and because of inflation, roll your own product was removed from the twenty eight percent category to treat it as a cigarette. It is an area of concern, however, we don't have an amendment at this time. The variable discount could cause some confusion both administratively and for the wholesaler. He suggested that a flat rate of discount be considered rather than a variable discount. There is a little confusion in Section 11 and then in Section 14, it repeals that section. The fiscal note prepared, takes into consideration the three percent which is listed in Section 11, page 6. In Section 12, under the bad debt deduction, as we understand it, the wholesaler could claim a credit from the tax department, if the retailer doesn't pay.

REP. BELTER The variable rate discount, is in Section 6?

JOHN QUINLAN Yes

REP. BELTER Do you know how other states handle it?

JOHN QUINLAN A number of other states, do use a fixed rate discount, which varies in several states. He submitted a handout to committee members which showed what the results are with fixed rate discounts and variable rate discounts. See attached copy.

JACK HOLLERAN Commented again regarding the counterfeit cigarettes, the fiscal note, and revenue impact from enforcement if this bill is enacted.

KELLY KAISER, O.K. DISTRIBUTING, WILLISTON Submitted testimony in opposition of the bill unamended.

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With no further testimony, the hearing was closed.

COMMITTEE ACTION

REP. BELTER Asked for any input as to how committee members felt regarding the bill.

Discussion was held why stamping was stopped in 1991, it was felt it was a cost factor.

Questions were also raised whether cigarettes were stamped on the military bases and how it will get handled on the reservations.

The fiscal note was also discussed. The question was raised whether the amendments would affect the fiscal note. Committee members felt the seventy two hour requirement may have to be amended.

REP. BELTER decided to wait until later in the day to act on the bill.

COMMITTEE ACTION Later in the day. Tape #1, Side B, Meter #37.0

REP. CLARK Made a motion to adopt amendments #30633.0201 as presented.

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

REP. GROSZ Referred to page 8, line 20 of the bill and page 6, line 26, suggested that lines 20 and 21 of page 8 should be deleted.

REP. GROSZ Made a motion to further amend 30633.0201 to include the deletion of page 8, line 20 and 21.

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

REP. CLARK Made a motion for a **DO PASS AS AMENDED AND BE REREFERRED**

TO APPROPRIATIONS

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

14 YES 0 NO 0 ABSENT

REP. GROSZ Was given the floor assignment.

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FISCAL NOTE
 Requested by Legislative Council
 02/20/2003

Amendment to: HB 1431

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 1431 Third Engrossment requires the stamping of all cigarettes for sale in the state. The discount to tobacco wholesalers has been removed and the stamping expenses are required to be paid by the distributors. Therefore, HB 1431 Third Engrossment has no fiscal impact.

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

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

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

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

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	02/21/2003

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