

Sixty-sixth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1495**

Introduced by

Representative Mitskog

1 A BILL for an Act to amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05,  
2 57-36-09, 57-36-09.1, 57-36-24, 57-36-25, 57-36-26, 57-36-28, 57-36-29, and 57-36-33 of the  
3 North Dakota Century Code, relating to the imposition of tax on liquid nicotine; and to provide a  
4 penalty.

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

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

8 **57-36-01. Definitions.**

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

- 10 1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
- 11 2. "Cigar" means any roll of tobacco wrapped in tobacco.
- 12 3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed  
13 tobacco and encased in any material except tobacco. "Cigarette" also means any  
14 product of a cigarette-making machine.
- 15 4. "Cigarette-making machine" means a machine used for commercial purposes to  
16 process tobacco into a roll or tube, formed or made from any material other than  
17 tobacco, at a production rate of more than five rolls or tubes per minute.
- 18 5. "Consumer" means any person who has title to or possession of cigarettes, cigars,  
19 pipe tobacco, liquid nicotine, or other tobacco products in storage, for use or other  
20 consumption in this state.
- 21 6. "Dealer" includes any person other than a distributor who is engaged in the business  
22 of selling cigarettes, cigarette papers, cigars, pipe tobacco, liquid nicotine, or other  
23 tobacco products, or any product of a cigarette-making machine.

- 1       7. "Distributor" includes any person engaged in the business of producing or  
2       manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, liquid nicotine, or  
3       other tobacco products, or importing into this state cigarettes, cigarette papers, cigars,  
4       pipe tobacco, liquid nicotine, or other tobacco products, for the purpose of distribution  
5       and sale thereof to dealers and retailers.
- 6       8. "Electronic smoking device" means a nonlighted, noncombustible device that employs  
7       a mechanical heating element, battery, or circuit, regardless of shape or size, to  
8       produce aerosolized or vaporized nicotine for inhalation into the body of an individual,  
9       including a device manufactured, distributed, marketed, or sold as an e-cigarette,  
10      e-cigar, e-pipe, e-hookah, vape pen, or any other similar product with any other  
11      product name or descriptor.
- 12      9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 13      ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 14      ~~40-11.~~ "Liquid nicotine" means any solution containing nicotine designed or sold for use with  
15      an electronic smoking device.
- 16      ~~12.~~ "Other tobacco products" means snuff and chewing tobacco.
- 17      ~~44-13.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability  
18      company, trust, or association however formed.
- 19      ~~42-14.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,  
20      packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,  
21      consumers as tobacco to be smoked in a pipe.
- 22      ~~43-15.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- 23      ~~44-16.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be  
24      placed in the mouth.
- 25      ~~45-17.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, liquid  
26      nicotine, or other tobacco products for use or consumption in this state.
- 27      ~~46-18.~~ "Use" means the exercise of any right or power incidental to the ownership or  
28      possession of cigarettes, cigars, pipe tobacco, liquid nicotine, or other tobacco  
29      products.

30       **SECTION 2. AMENDMENT.** Section 57-36-02 of the North Dakota Century Code is  
31      amended and reenacted as follows:

1       **57-36-02. Distributors and dealers to be licensed.**

2       Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars,  
3       liquid nicotine, or tobacco in this state, including any distributor or dealer, must secure a license  
4       from the attorney general before engaging or continuing to engage in business. A separate  
5       application and license is required for each distributor at each outlet or place of business within  
6       the state, and a separate dealer's license is required for each retail outlet when a person owns  
7       or controls more than one place of business dealing in cigarettes, cigarette papers, snuff,  
8       cigars, liquid nicotine, or tobacco. No retailer will be granted a distributor's license except a  
9       retailer who, in the usual course of business, performed a distributor's or wholesaler's function  
10      for at least one year prior to filing the license application. The application prescribed by the  
11      attorney general must include the name and address of the applicant, the address and place of  
12      business, the type of business, and other information as required for the proper administration  
13      of this chapter. Each application for a wholesale or distributor's outlet license must be  
14      accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney  
15      general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen  
16      dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for  
17      each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed  
18      five hundred dollars for any one licensee in any fiscal year. A distributor's license does not  
19      authorize the holder to make retail sales. Each license issued must be prominently displayed on  
20      the premises covered by the license.

21      **SECTION 3. AMENDMENT.** Section 57-36-04 of the North Dakota Century Code is  
22      amended and reenacted as follows:

23      **57-36-04. Revocation of license - Penalty.**

24      The attorney general may revoke the license of any dealer or distributor for failure to comply  
25      with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax  
26      commissioner or the attorney general. When a license has been legally revoked, no license  
27      may be issued again to the licensee for a period of one year thereafter. A person may not sell  
28      any cigarettes, cigarette papers, snuff, cigars, liquid nicotine, or tobacco after that person's  
29      license has been revoked as provided in this chapter.

30      **SECTION 4. AMENDMENT.** Section 57-36-05 of the North Dakota Century Code is  
31      amended and reenacted as follows:

1       **57-36-05. Unlawful to sell without license.**

2       A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, liquid nicotine,  
3 or tobacco in this state at wholesale or at retail unless a license has been issued to that dealer  
4 or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess  
5 with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, liquid nicotine, or tobacco  
6 without such license.

7       **SECTION 5. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9       **57-36-09. Records to be kept by distributors and reports made - Penalty.**

10       Distributors shall keep records and make reports relating to purchases and sales of  
11 cigarettes, cigarette papers, cigars, pipe tobacco, liquid nicotine, or other tobacco products  
12 made by them, and must be punished for failure so to do, as follows:

- 13       1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco,  
14       liquid nicotine, or other tobacco products shall keep and preserve for one year all  
15       invoices of cigarettes, cigarette papers, cigars, pipe tobacco, liquid nicotine, or other  
16       tobacco products purchased by the distributor and shall permit the state tax  
17       commissioner, and assistants, authorized agents, or representatives of the state tax  
18       commissioner, to inspect and examine all taxable merchandise, invoices, receipts,  
19       books, papers, and memoranda as may be deemed necessary by the state tax  
20       commissioner, and assistants, authorized agents, or representatives of the state tax  
21       commissioner in determining the amount of the tax as may be yet due. Each person  
22       selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco,  
23       liquid nicotine, or other tobacco products as a distributor shall keep a record of all  
24       sales made within the state showing the name and address of the purchaser and the  
25       date of sale. For sales of other tobacco products, the records must also include the net  
26       weight in ounces, as listed by the manufacturer.
- 27       2. On or before the fifteenth day of each month, each licensed distributor, on such form  
28       as the state tax commissioner shall prescribe, shall report to the tax commissioner all  
29       purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, liquid  
30       nicotine, or other tobacco products made from or to any persons either within or  
31       without this state during the preceding month. For sales of other tobacco products,

each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.

3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

**SECTION 6. AMENDMENT.** Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-09.1. Warehouse - Record of deliveries and shipments.**

Records of all deliveries of shipments of cigarettes and snuff from a licensed public warehouse to persons within this state must be kept by the warehouse and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity of cigarettes, snuff, cigars, liquid nicotine, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, liquid nicotine, or other tobacco products.

**SECTION 7. AMENDMENT.** Section 57-36-24 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-24. Exemptions.**

All gift cigarettes, snuff, cigars, liquid nicotine, and other tobacco products, not for resale, which are given to the North Dakota veterans' home or the North Dakota state hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under this chapter.

**SECTION 8. AMENDMENT.** Section 57-36-25 of the North Dakota Century Code is amended and reenacted as follows:

1       **57-36-25. Cigars and pipe tobacco - Excise tax on wholesale purchase price -**  
2       **~~Other~~Liquid nicotine and other tobacco products - Excise tax on weight - Penalty -**  
3       **Reports - Collection - Allocation of revenue.**

4           1.   There is hereby levied and assessed upon all cigars and pipe tobacco sold in this  
5               state an excise tax at the rate of twenty-eight percent of the wholesale purchase price  
6               at which ~~such~~the cigars and pipe tobacco are purchased by distributors. For the  
7               purposes of this section, the term "wholesale purchase price" ~~shall mean~~means the  
8               established price for which a manufacturer sells cigars or pipe tobacco to a distributor  
9               exclusive of any discount or other reduction.

10          2.   There is levied and assessed upon all liquid nicotine sold in this state an excise tax at  
11               the rate of ten cents per fluid milliliter on the volume of the liquid nicotine as listed by  
12               the manufacturer, and a proportionate rate on all fractional parts of a fluid milliliter of  
13               volume of liquid nicotine as listed by the manufacturer.

14          3.   There is levied and assessed upon all other tobacco products sold in this state an  
15               excise tax at the following rates:  
16               a.   Upon each can or package of snuff, sixty cents per ounce and a proportionate tax  
17                   at the like rate on all fractional parts of an ounce.  
18               b.   On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like  
19                   rate on all fractional parts of an ounce.

20               For purposes of this subsection, the tax on other tobacco products is computed based  
21               on the net weight as listed by the manufacturer.

22          ~~3.4.~~   The proceeds of the taxes imposed under this section, together with such forms of  
23               return and in accordance with such rules and regulations as the tax commissioner may  
24               prescribe, shall be remitted to the tax commissioner by the distributor on a calendar  
25               quarterly basis on or before the fifteenth day of the month following the quarterly  
26               period for which paid. The tax commissioner shall, however, have authority to  
27               prescribe monthly returns upon the request of the licensee distributor and such returns  
28               accompanied with remittance shall be filed before the fifteenth day of the month  
29               following the month for which the returns are filed.

30          ~~4.5.~~   Any person failing to file any prescribed form or return or to pay any tax within the time  
31               required or permitted by this section is subject to a penalty of five percent of the

amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

~~5-6.~~ All moneys received by the tax commissioner under the provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.

**SECTION 9. AMENDMENT.** Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-26. Cigars, pipe tobacco, liquid nicotine, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.**

1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price and, upon liquid nicotine and all other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer

1           has more than one location and thereby would be required to file more than one  
2           return.

3           2. If cigars, pipe tobacco, liquid nicotine, or other tobacco products have been subjected  
4           already to a tax by any other state in respect to their sale in an amount less than the  
5           tax imposed by this section, the provisions of this section apply, but at a rate  
6           measured by the difference only between the rate fixed in this section and the rate by  
7           which the previous tax upon the sale was computed. If the tax imposed in the other  
8           state is twenty percent of the wholesale purchase price or more, then no tax is due on  
9           the article. The provisions of this subsection apply only if the other state allows a tax  
10          credit with respect to the excise tax on cigars, pipe tobacco, liquid nicotine, or other  
11          tobacco products imposed by this state which is substantially similar in effect to the  
12          credit allowed by this subsection.

13          3. Any person failing to file any prescribed forms of return or to pay any tax within the  
14          time required by this section is subject to a penalty of five dollars or a sum equal to  
15          five percent of the tax due, whichever is greater, plus one percent of the tax for each  
16          month of delay or fraction thereof excepting the month within which the return was  
17          required to be filed or the tax became due. The tax commissioner, if satisfied that the  
18          delay was excusable, may waive all or any part of the penalty. The penalty must be  
19          paid to the tax commissioner and disposed of in the same manner as are other  
20          receipts under this chapter.

21          4. All moneys received by the tax commissioner under the provisions of this section must  
22          be transmitted to the state treasurer at the end of each month and deposited in the  
23          state treasury to the credit of the general fund.

24          **SECTION 10. AMENDMENT.** Section 57-36-28 of the North Dakota Century Code is  
25          amended and reenacted as follows:

26          **57-36-28. Consumer's use tax - Cigars, pipe tobacco, liquid nicotine, and other**  
27          **tobacco products - Reports - Remittances.**

28          1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, liquid  
29          nicotine, and other tobacco products in this state, and upon those consumers, at the  
30          rates indicated in section 57-36-25.



2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been paid and it does not apply to cigars, pipe tobacco, liquid nicotine, or other tobacco products exempt under section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco, liquid nicotine, or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return must be made upon a form furnished and prescribed by the tax commissioner and must contain such other information as the tax commissioner may require. The return must be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. If any consumer required to pay the tax levied by this section fails to file a return or remit the tax as required, the tax commissioner shall make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests, hearings, interest and penalties, and collections of taxes apply to consumers under this section.

**SECTION 11. AMENDMENT.** Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-29. Correction of errors.**

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.

- 1           2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, liquid nicotine, or  
2           other tobacco products accidentally, or intentionally, because of staleness or other  
3           unfitness for sale, a credit or refund must be given to the wholesaler under the terms  
4           and conditions prescribed by the tax commissioner.

5           **SECTION 12. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **57-36-33. Penalties for violation of chapter.**

8           Except as otherwise provided in this chapter:

- 9           1. Any person who violates any provision of this chapter is guilty of a class A  
10          misdemeanor.
- 11          2. All cigarettes, cigarette papers, cigars, pipe tobacco, liquid nicotine, or other tobacco  
12          products in the possession of the person who violates any provision of this chapter, or  
13          in the place of business of the person, may be confiscated by the tax commissioner as  
14          provided under section 57-36-14 and forfeited to the state. Any cigarette-making  
15          machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4,  
16          or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state  
17          in accordance with chapter 29-31.1.