

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 ~~10-11.~~ "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 ~~11-13.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
18 company, trust, or association however formed.
- 19 ~~12-14.~~ "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 ~~13-15.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- 23 ~~14-16.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
24 placed in the mouth.
- 25 ~~15-17.~~ "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 ~~16-18.~~ "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,

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

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

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

15 **57-36-09.1. Warehouse - Record of deliveries and shipments.**

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

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

25 **57-36-24. Exemptions.**

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

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

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

7 ~~5-6.~~ All moneys received by the tax commissioner under the provisions of this section shall
8 be transmitted to the state treasurer at the end of each month and deposited in the
9 state treasury to the credit of the general fund.

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

12 **57-36-26. Cigars, pipe tobacco, liquid nicotine, and other tobacco products - Excise**
13 **tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.**

14 1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another
15 state and brought into this state by a dealer for the purpose of sale at retail, an excise
16 tax at the rate of twenty-eight percent of the wholesale purchase price and, upon liquid
17 nicotine and all other tobacco products purchased in another state and brought into
18 this state by a dealer for the purpose of sale at retail, an excise tax at the rates
19 indicated in section 57-36-25, at the time the products were brought into this state. For
20 the purposes of this section, the term "wholesale purchase price" means the
21 established price for which a manufacturer sells cigars or pipe tobacco to a distributor
22 exclusive of any discount or other reduction. However, the dealer may elect to report
23 and remit the tax on the cost price of the products to the dealer rather than on the
24 wholesale purchase price. The proceeds of the tax, together with the forms of return
25 and in accordance with any rules and regulations the tax commissioner may prescribe,
26 must be remitted to the tax commissioner by the dealer on a monthly basis on or
27 before the fifteenth day of the month following the monthly period for which it is paid.
28 The tax commissioner shall have the authority to place any dealer on an annual
29 remittance basis when in the judgment of the tax commissioner the operations of the
30 dealer merit that remittance period. In addition, the tax commissioner shall have the
31 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.

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

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

26 **57-36-29. Correction of errors.**

- 27 1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has
28 been paid which was not due under the provisions of this chapter, then such amount
29 becomes due under this chapter, and the amount must be credited or refunded to
30 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.