

SENATE BILL NO. 2189

Introduced by

Senators Bekkedahl, Oban, K. Roers

Representatives Keiser, Klemin, 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 electronic smoking devices; and
4 to provide a 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"~~The term also means
14 any 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, electronic smoking devices, or other tobacco products in storage, for
20 use or other consumption in this state.
- 21 6. "Dealer" includes a retailer and any person other than a distributor who is engaged in
22 the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, electronic
23 smoking devices, or other tobacco products, or any product of a cigarette-making
24 machine.

- 1 7. "Distributor" includes any person engaged in the business of producing or
2 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking
3 devices, or other tobacco products, or importing into this state cigarettes, cigarette
4 papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products,
5 for the purpose of distribution and sale thereof to dealers and retailers. The term also
6 includes a dealer that fabricates, repackages, compounds, or mixes electronic
7 smoking devices for purposes of sale to a consumer.
- 8 8. "Electronic smoking device" means a device that may be used to deliver an
9 aerosolized, vaporized, or heated substance containing nicotine, regardless of
10 whether the nicotine is natural or synthetic, to an individual inhaling from the device,
11 and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and e-hookah. The
12 term includes any substance containing nicotine, regardless of whether the nicotine is
13 natural or synthetic, that may be aerosolized, vaporized, or heated by the device,
14 regardless of whether the device is sold separately. The term does not include:
- 15 a. A cigarette as defined in section 51-25-01;
16 b. A cigarette as defined in this section;
17 c. A drug, device, or combination product, as those terms are defined in the federal
18 Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved
19 for sale by the United States food and drug administration; or
20 d. A battery or battery charger when sold separately.
- 21 9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 22 ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 23 ~~10-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- 24 ~~11-12.~~ "Outlet" means each place of business from which tobacco products are sold.
- 25 13. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
26 company, trust, or association however formed.
- 27 ~~12-14.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
28 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
29 consumers as tobacco to be smoked in a pipe.

1 ~~13-15.~~ "Place of business" means a place where tobacco products are sold or where tobacco
2 products are manufactured, fabricated, stored, or kept for purposes of sale or
3 consumption.

4 16. "Retailer" means a person engaged in the business of selling cigarettes, cigars, pipe
5 tobacco, electronic smoking devices, or other tobacco products to consumers.

6 17. "Sale" or "sell" applies to gifts, exchanges, and barter.

7 ~~14-18.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
8 placed in the mouth.

9 ~~15-19.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco,
10 electronic smoking devices, or other tobacco products for use or consumption in this
11 state.

12 ~~16-20.~~ "Use" means the exercise of any right or power incidental to the ownership or
13 possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other
14 tobacco products.

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

17 **57-36-02. Distributors and dealers to be licensed.**

18 1. Each person engaged in the business of selling cigarettes, cigarette papers, snuff,
19 cigars, electronic smoking devices, or tobacco in this state, including any distributor or
20 dealer, ~~must~~shall secure a license from the attorney general before engaging or
21 continuing to engage in business.

22 2. A separate application and license is required for each distributor at each outlet or
23 place of business within the state, and a separate dealer's license is required for each
24 retail outlet when a person owns or controls more than one place of business dealing
25 in cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco.
26 No retailer will be granted a distributor's license except a retailer who, in the usual
27 course of business, performed a distributor's or wholesaler's function for at least one
28 year prior to filing the license application. The application prescribed by the attorney
29 general must include the name and address of the applicant, the address and place of
30 business, the type of business, and other information as required for the proper
31 administration of this chapter. Each application for a wholesale or distributor's outlet

1 license must be accompanied by a fee of ~~twenty-five~~one hundred dollars and a surety
2 bond approved by the attorney general.

3 3. A separate application and license is required for each outlet or place of business
4 operated or maintained by a dealer in this state.

5 a. A dealer may not sell tobacco products purchased from a distributor not licensed
6 under this chapter.

7 b. A person issued a dealer's license under this chapter may not be issued a
8 distributor's license.

9 4. Each application for a dealer's outlet or place of business license must be
10 accompanied by a fee of ~~fifteen~~sixty dollars.

11 5. A license application prescribed by the attorney general must include the name and
12 address of the applicant, the address and place of business, the type of business, and
13 other information as required for the administration of this chapter.

14 6. A reinstatement fee of ~~fifty~~two hundred dollars is required in addition to the annual
15 license fee for each license renewal applied for after June thirtieth. The total
16 reinstatement fee may not exceed five hundred dollars for any one licensee in any
17 fiscal year. ~~A distributor's license does not authorize the holder to make retail sales.~~

18 7. Each license issued must be prominently displayed on the ~~premises~~place of business
19 or outlet covered by the license.

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

22 **57-36-04. Revocation of license - Penalty.**

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

29 **SECTION 4. AMENDMENT.** Section 57-36-05 of the North Dakota Century Code is
30 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, electronic
3 smoking devices, or tobacco in this state at wholesale or at retail unless a license has been
4 issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer
5 for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars,
6 electronic smoking devices, or tobacco 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, electronic smoking devices, or other tobacco
12 products 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 electronic smoking devices, or other tobacco products shall keep and preserve for ~~one~~
15 year~~three years~~ all invoices of cigarettes, cigarette papers, cigars, pipe tobacco,
16 electronic smoking devices, or other tobacco products purchased by the distributor
17 and shall permit the state tax commissioner, and assistants, authorized agents, or
18 representatives of the state tax commissioner, to inspect and examine all taxable
19 merchandise, invoices, receipts, books, papers, and memoranda as may be deemed
20 necessary by the state tax commissioner, and assistants, authorized agents, or
21 representatives of the state tax commissioner in determining the amount of the tax as
22 may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette
23 papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products as
24 a distributor shall keep a record of all sales made within the state showing the name
25 and address of the purchaser and the date of sale. For sales of other tobacco
26 products, the records must also include the net weight in ounces, as listed by the
27 manufacturer.
- 28 2. On or before the fifteenth day of each month, each licensed distributor, on such form
29 as the state tax commissioner shall prescribe, shall report to the tax commissioner all
30 purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, electronic
31 smoking devices, or other tobacco products made from or to any persons either within

1 or without this state during the preceding month. For sales of other tobacco products,
2 each licensed distributor shall also report to the tax commissioner the net weight in
3 ounces, as listed by the manufacturer. The tax levied by this chapter is payable
4 monthly and must be remitted to the tax commissioner by each licensed distributor on
5 or before the fifteenth day of the month following the monthly period.

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

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

16 **57-36-09.1. ~~Warehouse~~Outlet - Record of deliveries and shipments.**

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

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

27 **57-36-24. Exemptions.**

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

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

3 **57-36-25. Cigars and, pipe tobacco, and electronic smoking devices - Excise tax on**
4 **wholesale purchase price - Other tobacco products - Excise tax on weight - Penalty -**
5 **Reports - Collection - Allocation of revenue.**

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

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

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

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

29 4. Any person failing to file any prescribed form or return or to pay any tax within the time
30 required or permitted by this section is subject to a penalty of five percent of the
31 amount of tax due or ~~five~~twenty dollars, whichever is greater, plus interest of one

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

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

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

11 **57-36-26. Cigars, pipe tobacco, electronic smoking devices, and other tobacco**
12 **products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of**
13 **revenue.**

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

- 1 consolidation of the filing of a dealer's return when the dealer has more than one
2 location and thereby would be required to file more than one return.
- 3 2. If cigars, pipe tobacco, electronic smoking devices, or other tobacco products have
4 been subjected already to a tax by any other state in respect to their sale in an amount
5 less than the tax imposed by this section, the provisions of this section apply, but at a
6 rate measured by the difference only between the rate fixed in this section and the rate
7 by 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, electronic smoking
11 devices, or other tobacco products imposed by this state which is substantially similar
12 in effect to the 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~~twenty dollars or a sum equal
15 to 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, electronic smoking devices,**
27 **and other tobacco products - Reports - Remittances.**

- 28 1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco,
29 electronic smoking devices, and other tobacco products in this state, and upon those
30 consumers, at the 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, electronic smoking devices, or other
3 tobacco 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 electronic smoking devices, or other tobacco products for use or storage in this state,
7 upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not
8 been paid, shall file a return with the tax commissioner showing the quantity of such
9 products so acquired. For sales of other tobacco products, the return must also
10 include the net weight in ounces, as listed by the manufacturer. The return must be
11 made upon a form furnished and prescribed by the tax commissioner and must
12 contain such other information as the tax commissioner may require. The return must
13 be accompanied by 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, electronic smoking
2 devices, or other tobacco products accidentally, or intentionally, because of staleness
3 or other unfitness for sale, a credit or refund must be given to the wholesaler under the
4 terms 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, electronic smoking devices, or
12 other tobacco products in the possession of the person who violates any provision of
13 this chapter, or in the place of business of the person, may be confiscated by the tax
14 commissioner as provided under section 57-36-14 and forfeited to the state. Any
15 cigarette-making machine that is maintained or operated in violation of sections
16 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner
17 and forfeited to the state in accordance with chapter 29-31.1.