

HOUSE BILL NO. 1570

Introduced by

Representatives Steiner, McLeod, Nelson, S. Olson, Mitskog

Senators Bekkedahl, Boschee, Larson, Myrdal, Luick

1 A BILL for an Act to create and enact a new section to chapter 50-06 and two new sections to
2 chapter 57-36 of the North Dakota Century Code, relating to the creation of a tobacco tax
3 distribution behavioral health fund and the collection, transfer, and report of a tax on electronic
4 smoking devices and alternative tobacco products; to amend and reenact sections 57-36-01,
5 57-36-25, 57-36-26, 57-36-31, and 57-36-32 of the North Dakota Century Code, relating to the
6 tax imposed on cigarettes and other tobacco products; to provide a penalty; and to provide an
7 effective date.

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

9 **SECTION 1.** A new section to chapter 50-06 of the North Dakota Century Code is created
10 and enacted as follows:

11 **Tobacco tax distribution behavioral health fund.**

12 The tobacco tax distribution behavioral health fund is created as a special fund in the state
13 treasury. The fund consists of all tobacco tax collections deposited in the fund under sections 4
14 and 5 of this Act. Within the limits of legislative appropriations, the department shall use the
15 moneys in the fund to provide for depression and anxiety behavioral health services by the
16 regional human service centers. The moneys must be distributed to the human service centers
17 based upon the number of individuals served, and may be used to contract with providers in the
18 community to provide services under this section, with priority to those in financial need. The
19 department may adopt rules to administer the fund.

20 **SECTION 2. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **57-36-01. Definitions.**

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

- 1 1. "Alternative tobacco product" means a noncombustible product containing nicotine or
2 synthetic nicotine, intended for human consumption by chewing, absorbing, dissolving,
3 or any other means.
- 4 a. The term includes:
- 5 (1) Nicotine gels;
6 (2) Nicotine pouches; and
7 (3) Dissolvable tobacco products.
- 8 b. The term does not include products approved by the United States food and drug
9 administration for nicotine replacement therapy.
- 10 2. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
- 11 ~~2-3.~~ "Cigar" means any roll of tobacco wrapped in tobacco.
- 12 ~~3-4.~~ "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed
13 tobacco and encased in any material except tobacco. The term also means any
14 product of a cigarette-making machine.
- 15 ~~4-5.~~ "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 ~~5-6.~~ "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 ~~6-7.~~ "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.
- 25 ~~7-8.~~ "Distributor" includes any person engaged in the business of producing or
26 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking
27 devices, or other tobacco products, or importing into this state cigarettes, cigarette
28 papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products,
29 for the purpose of distribution and sale thereof to dealers and retailers. The term also
30 includes a dealer that fabricates, repackages, compounds, or mixes electronic
31 smoking devices for purposes of sale to a consumer.

- 1 ~~8-9.~~ "Electronic smoking device" means a device that may be used to deliver an
2 aerosolized, vaporized, or heated substance containing nicotine, regardless of
3 whether the nicotine is natural or synthetic, to an individual inhaling from the device,
4 and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and e-hookah. The
5 term includes any substance containing nicotine, regardless of whether the nicotine is
6 natural or synthetic, that may be aerosolized, vaporized, or heated by the device,
7 regardless of whether the device is sold separately. The term does not include:
- 8 a. A cigarette as defined in section 51-25-01;
9 b. A cigarette as defined in this section;
10 c. A drug, device, or combination product, as those terms are defined in the federal
11 Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved
12 for sale by the United States food and drug administration; or
13 d. A battery or battery charger when sold separately.
- 14 ~~9-10.~~ "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 15 ~~40-11.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 16 ~~44-12.~~ "Other tobacco products" means snuff and chewing tobacco.
- 17 ~~42-13.~~ "Outlet" means each place of business from which tobacco products are sold.
- 18 ~~43-14.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
19 company, trust, or association however formed.
- 20 ~~44-15.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
21 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
22 consumers as tobacco to be smoked in a pipe.
- 23 ~~45-16.~~ "Place of business" means a place where tobacco products are sold or where tobacco
24 products are manufactured, fabricated, stored, or kept for purposes of sale or
25 consumption.
- 26 ~~46-17.~~ "Retailer" means a person engaged in the business of selling cigarettes, cigars, pipe
27 tobacco, electronic smoking devices, or other tobacco products to consumers.
- 28 ~~47-18.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- 29 ~~48-19.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
30 placed in the mouth or nose.

1 ~~19-20.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco,
2 electronic smoking devices, or other tobacco products for use or consumption in this
3 state.

4 ~~20-21.~~ "Use" means the exercise of any right or power incidental to the ownership or
5 possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other
6 tobacco products.

7 **SECTION 3. AMENDMENT.** Section 57-36-25 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-36-25. Cigars and pipe tobacco - Excise tax on wholesale purchase price - Other**
10 **tobacco products - Excise tax on weight - Penalty - Reports - Collection -~~Allocation of~~**
11 **revenue.**

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

18 2. There is levied and assessed upon all other tobacco products sold in this state an
19 excise tax at the following rates:
20 a. Upon each can or package of snuff, ~~sixtyone dollar and ninty-six~~ sixtyone dollar and ninty-six cents per ounce
21 and a proportionate tax at the like rate on all fractional parts of an ounce.
22 b. On chewing tobacco, ~~sixteenfifty-two~~ sixtytwo cents per ounce and a proportionate tax at
23 the like rate on all fractional parts of an ounce.

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

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

1 suchthe returns accompanied with remittance shallmust be filed before the fifteenth
2 day of the month following the month for which the returns are filed.

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

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

14 **SECTION 4. AMENDMENT.** Section 57-36-26 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-36-26. Cigars, pipe tobacco, and other tobacco products - Excise tax payable by**
17 **dealers - Reports - Penalties - Collection -~~Allocation of revenue.~~**

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

1 ~~shall have the authority to~~may place any dealer on an annual remittance basis when in
2 the judgment of the tax commissioner the operations of the dealer merit that
3 remittance period. In addition, the tax commissioner ~~shall have the authority to~~may
4 permit the consolidation of the filing of a dealer's return when the dealer has more
5 than one location and thereby would be required to file more than one return.

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

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

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

27 **SECTION 5. AMENDMENT.** Section 57-36-31 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **57-36-31. Transfer and allocation of revenues - Appropriation.**

2 1. All moneys received by the tax commissioner under the provisions of this chapter must
3 be transmitted to the state treasurer at the end of each month and deposited in the
4 state treasury to the credit of the general fund, except as hereinafter provided.

5 2. All moneys received from the levy and assessment of one and one-half mills on each
6 of the classes of cigarettes provided in this chapter are appropriated and must be
7 distributed on or before the thirtieth day of June and the thirty-first day of December of
8 each year on a per capita basis to the incorporated cities for ~~such~~the purposes ~~as are~~
9 ~~now or may be hereafter~~ authorized by law, the allocation to be based upon the
10 population of each incorporated city according to the last official federal census, or the
11 census taken in accordance with the provisions of chapter 40-02 in the case of a city
12 incorporated subsequent to the last federal census, and warrants must be drawn
13 payable to the treasurers of such cities.

14 3. All moneys received from an amount equal to a ninety-eight cents tax levied and
15 assessed per ounce of snuff under section 57-36-25, a twenty-six cent tax levied and
16 assessed per ounce of chewing tobacco under section 57-36-25, a twenty-eight
17 percent tax levied and assessed on the wholesale purchase price of electronic
18 smoking devices under section 7 of this Act, and a twenty-eight percent tax levied and
19 assessed on the wholesale purchase price of alternative tobacco products under
20 section 8 of this Act must be deposited by the state treasurer in the tobacco tax
21 distribution behavioral health fund under section 1 of this Act.

22 **SECTION 6. AMENDMENT.** Section 57-36-32 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-36-32. Separate and additional tax on the sale of cigarettes - Collection -**
25 **Allocation of revenue - Tax avoidance prohibited.**

26 1. There is hereby levied and assessed and ~~there shall~~must be collected by the state tax
27 commissioner and paid to the state treasurer, ~~upon all~~on cigarettes sold in this state,
28 an additional tax, separate ~~and apart~~ from all other taxes, of seventeen mills on each
29 cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be,
30 collected, by use of appropriate stamps and under similar accounting procedures. ~~No~~A
31 person, firm, corporation, or limited liability company ~~shall~~may not transport or bring

1 or cause to be shipped into ~~the~~this state of North Dakota any cigarettes as provided
2 herein, other than for delivery to wholesalers in this state, without first paying the tax
3 ~~thereon~~under this subsection to the state tax commissioner. ~~All of the moneys-~~
4 ~~collected by the~~The state treasurer shall deposit the funds collected under this section
5 ~~shall be credited to~~subsection into the state general fund.

6 2. There is levied and assessed and must be collected by the state tax commissioner
7 and paid to the state treasurer, on cigarettes sold in this state, an additional tax,
8 separate from all other taxes, of fifty-four and one-half mills on each cigarette, to be
9 collected as existing taxes on cigarettes sold are, or may be, collected, by use of
10 appropriate stamps and under similar accounting procedures. A person, firm,
11 corporation, or limited liability company may not transport, bring, or cause to be
12 shipped into this state any cigarettes as provided under this subsection, other than for
13 delivery to wholesalers in this state, without first paying the tax under this subsection
14 to the state tax commissioner. The state treasurer shall deposit:

15 a. Fifty percent of the funds collected under this subsection into the tobacco tax
16 distribution behavioral health fund under section 1 of this Act; and

17 b. Fifty percent of the funds into the state general fund.

18 **SECTION 7.** A new section to chapter 57-36 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Electronic smoking device - Excise tax on wholesale purchase price - Amount of tax -**
21 **Penalty - Reports - Collection.**

22 1. There is levied and assessed upon all electronic smoking devices sold in this state an
23 excise tax at the rate of fifty-six percent of the wholesale purchase price at which
24 electronic smoking devices are purchased by distributors. For the purposes of this
25 section, "wholesale purchase price" means the established price for which a
26 manufacturer sells an electronic smoking device to a distributor exclusive of any
27 discount or other reduction.

28 2. The proceeds of the tax imposed under this section, together with the forms of return
29 and in accordance with the rules and regulations prescribed by the tax commissioner,
30 must be remitted to the tax commissioner by the distributor on a calendar quarterly
31 basis on or before the fifteenth day of the month following the quarterly period for

1 which paid. The tax commissioner may prescribe monthly returns upon the request of
2 the licensee distributor and the returns accompanied with remittance must be filed
3 before the fifteenth day of the month following the month for which the returns are
4 filed.

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 part of the penalty. The penalty must be paid to the tax
11 commissioner and disposed of in the same manner as are other receipts under this
12 chapter.

13 **SECTION 8.** A new section to chapter 57-36 of the North Dakota Century Code is created
14 and enacted as follows:

15 **Alternative tobacco product - Excise tax on wholesale purchase price - Amount of**
16 **tax - Penalty - Reports - Collection.**

- 17 1. There is levied and assessed upon all alternative tobacco products sold in this state
18 an excise tax at the rate of fifty-six percent of the wholesale purchase price at which
19 alternative tobacco products are purchased by distributors. For the purposes of this
20 section, "wholesale purchase price" means the established price for which a
21 manufacturer sells an alternative tobacco product to a distributor exclusive of any
22 discount or other reduction.
- 23 2. The proceeds of the tax imposed under this section, together with the forms of return
24 and in accordance with the rules adopted by the tax commissioner, must be remitted
25 to the tax commissioner by the distributor on a calendar quarterly basis on or before
26 the fifteenth day of the month following the quarterly period for which paid. The tax
27 commissioner may prescribe monthly returns upon the request of the licensee
28 distributor and the returns accompanied with remittance must be filed before the
29 fifteenth day of the month following the month for which the returns are filed.
- 30 3. 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

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 part of the penalty. The penalty must be paid to the tax
5 commissioner and disposed of in the same manner as are other receipts under this
6 chapter.

7 **SECTION 9. EFFECTIVE DATE.** Sections 3, 4, 6, 7, and 8 of this Act are effective for
8 taxable events occurring after June 30, 2025.