

Introduced by

Senators Hogan, Cleary

Representatives Foss, Nelson

1 A BILL for an Act to create and enact five new sections to chapter 57-36 of the North Dakota
2 Century Code, relating to a tax on cigars, other tobacco products, alternative tobacco products,
3 electronic smoking devices, and electronic smoking device substances and a tobacco tax
4 distribution fund; to amend and reenact section 57-36-01, subsection 1 of section 57-36-31, and
5 section 57-36-32 of the North Dakota Century Code, relating to the definition of alternative
6 tobacco products, transfer and allocation of tobacco products tax revenue and tax on cigarettes;
7 to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

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

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

11 **57-36-01. Definitions.**

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

- 13 1. "Alternative tobacco product" means a noncombustible product containing nicotine or
14 synthetic nicotine, intended for human consumption by chewing, absorbing, dissolving,
15 or any other means.
- 16 a. The term includes:
- 17 (1) Nicotine gels;
- 18 (2) Nicotine pouches; and
- 19 (3) Dissolvable tobacco products.
- 20 b. The term does not include products approved by the United States food and drug
21 administration for nicotine replacement therapy.
- 22 2. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
- 23 2-3. "Cigar" means any roll of tobacco wrapped in tobacco.

1 ~~3-4.~~ "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed
2 tobacco and encased in any material except tobacco. The term also means any
3 product of a cigarette-making machine.

4 ~~4-5.~~ "Cigarette-making machine" means a machine used for commercial purposes to
5 process tobacco into a roll or tube, formed or made from any material other than
6 tobacco, at a production rate of more than five rolls or tubes per minute.

7 ~~5-6.~~ "Consumer" means any person who has title to or possession of cigarettes, cigars,
8 pipe tobacco, electronic smoking devices, or other tobacco products in storage, for
9 use or other consumption in this state.

10 ~~6-7.~~ "Dealer" includes a retailer and any person other than a distributor who is engaged in
11 the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, electronic
12 smoking devices, or other tobacco products, or any product of a cigarette-making
13 machine.

14 ~~7-8.~~ "Distributor" includes any person engaged in the business of producing or
15 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking
16 devices, or other tobacco products, or importing into this state cigarettes, cigarette
17 papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products,
18 for the purpose of distribution and sale thereof to dealers and retailers. The term also
19 includes a dealer that fabricates, repackages, compounds, or mixes electronic
20 smoking devices for purposes of sale to a consumer.

21 ~~8-9.~~ "Electronic smoking device" means a device that may be used to deliver an
22 aerosolized, vaporized, or heated substance ~~containing~~that may contain nicotine,
23 regardless of whether the nicotine is natural or synthetic, to an individual inhaling from
24 the device, and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and
25 e-hookah. ~~The term includes any substance containing nicotine, regardless of whether~~
26 ~~the nicotine is natural or synthetic, that may be aerosolized, vaporized, or heated by~~
27 ~~the device, regardless of whether the device is sold separately.~~ The term does not
28 include:

- 29 a. A cigarette as defined in section 51-25-01;
30 b. A cigarette as defined in this section;

Sixty-ninth
Legislative Assembly

- 1 c. A drug, device, or combination product, as those terms are defined in the federal
2 Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved
3 for sale by the United States food and drug administration; or
4 d. A battery or battery charger when sold separately.
- 5 ~~9-10.~~ "Electronic smoking device substance" means any substance for use in an electronic
6 smoking device that may be aerosolized, vaporized, or heated. The term includes
7 substances that contain natural or synthetic nicotine.
- 8 11. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 9 ~~10-12.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 10 ~~11-13.~~ "Other tobacco products" means snuff and chewing tobacco.
- 11 ~~12-14.~~ "Outlet" means each place of business from which tobacco products are sold.
- 12 ~~13-15.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
13 company, trust, or association however formed.
- 14 ~~14-16.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
15 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
16 consumers as tobacco to be smoked in a pipe.
- 17 ~~15-17.~~ "Place of business" means a place where tobacco products are sold or where tobacco
18 products are manufactured, fabricated, stored, or kept for purposes of sale or
19 consumption.
- 20 ~~16-18.~~ "Retailer" means a person engaged in the business of selling cigarettes, cigars, pipe
21 tobacco, electronic smoking devices, or other tobacco products to consumers.
- 22 ~~17-19.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- 23 ~~18-20.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
24 placed in the mouth or nose.
- 25 ~~19-21.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco,
26 electronic smoking devices, or other tobacco products for use or consumption in this
27 state.
- 28 ~~20-22.~~ "Use" means the exercise of any right or power incidental to the ownership or
29 possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other
30 tobacco products.

1 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-36-31 of the North Dakota Century
2 Code is amended and reenacted as follows:

3 1. All moneys received by the tax commissioner under ~~the provisions of this chapter must~~
4 be transmitted to the state treasurer at the end of each month and deposited in the
5 state treasury to the credit of the general fund, except as ~~hereinafter otherwise~~
6 provided in this section, section 57-36-32, and sections 4, 5, 6, and 7 of this Act.

7 **SECTION 3. AMENDMENT.** Section 57-36-32 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **57-36-32. Separate and additional ~~tax~~taxes on the sale of cigarettes - Collection -**
10 **Allocation of revenue - Tax avoidance prohibited.**

11 1. There is hereby levied and assessed and ~~there shall~~must be collected by the state tax
12 commissioner and paid to the state treasurer, ~~upon all~~on cigarettes sold in this state,
13 an additional tax, separate ~~and apart~~ from all other taxes, of seventeen mills on each
14 cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be,
15 collected, by use of appropriate stamps and under similar accounting procedures. ~~No~~A
16 person, firm, corporation, or limited liability company ~~shall~~may not transport ~~or~~, bring,
17 or cause to be shipped into ~~the~~this state of North Dakota any cigarettes as provided
18 ~~herein~~in this section, other than for delivery to wholesalers in this state, without first
19 paying the tax ~~thereon~~under this subsection to the state tax commissioner. ~~All of the~~
20 ~~moneys collected by the~~The state treasurer shall transfer the funds collected under
21 ~~this section shall be credited~~subsection to the state general fund.

22 2. There is levied and assessed and must be collected by the state tax commissioner
23 and paid to the state treasurer, on cigarettes sold in this state, an additional tax,
24 separate from all other taxes, of twelve and one-half mills on each cigarette, to be
25 collected as existing taxes on cigarettes sold are, or may be, collected, by use of
26 appropriate stamps and under similar accounting procedures. A person, firm,
27 corporation, or limited liability company may not transport, bring, or cause to be
28 shipped into this state any cigarettes as provided under this subsection, other than for
29 delivery to wholesalers in this state, without first paying the tax under this subsection
30 to the state tax commissioner. The state treasurer shall transfer the funds collected
31 under this subsection to the tobacco tax distribution fund.

1 **SECTION 4.** A new section to chapter 57-36 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Separate and additional tax on the sale of cigars - Collection - Allocation of revenue -**
4 **Avoidance prohibited.**

5 There is levied and assessed and must be collected by the state tax commissioner and paid
6 to the state treasurer, on cigars sold in the state, an additional tax, separate from all other taxes,
7 of thirty-two percent of the wholesale purchase price at which the cigars are purchased by
8 distributors, to be collected as existing taxes on cigars sold are collected. For purposes of this
9 section, "wholesale purchase price" means the established price for which a manufacturer sells
10 cigars to a distributor exclusive of any discount or other reduction. The state treasurer shall
11 transfer the funds collected under this section to the tobacco tax distribution fund.

12 **SECTION 5.** A new section to chapter 57-36 of the North Dakota Century Code is created
13 and enacted as follows:

14 **Separate and additional tax on other tobacco products - Collection - Allocation of**
15 **revenue - Avoidance prohibited.**

16 There is levied and assessed and must be collected by the state tax commissioner and paid
17 to the state treasurer, on other tobacco products sold in the state, an additional tax, separate
18 from all other taxes, of twenty-eight percent of the wholesale purchase price at which other
19 tobacco products are purchased by distributors. For the purposes of this section, "wholesale
20 purchase price" means the established price for which a manufacturer sells other tobacco
21 products to a distributor exclusive of any discount or other reduction. The state treasurer shall
22 transfer the funds collected under this section to the tobacco tax distribution fund.

23 **SECTION 6.** A new section to chapter 57-36 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Separate and additional tax on alternative tobacco products - Collection - Allocation**
26 **of revenue - Avoidance prohibited.**

27 There is levied and assessed and must be collected by the state tax commissioner and paid
28 to the state treasurer, on alternative tobacco products sold in the state, an additional tax,
29 separate from all other taxes, of twenty-eight percent of the wholesale purchase price at which
30 alternative tobacco products are purchased by distributors. For the purposes of this section,
31 "wholesale purchase price" means the established price for which a manufacturer sells an

1 alternative tobacco product to a distributor exclusive of any discount or other reduction. The
2 state treasurer shall transfer the funds collected under this section to the tobacco tax
3 distribution fund.

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

6 **Separate and additional tax on electronic smoking devices and electronic smoking**
7 **device substances - Collection - Allocation of revenue - Avoidance prohibited.**

8 There is levied and assessed and must be collected by the state tax commissioner and paid
9 to the state treasurer, on electronic smoking devices and substances sold in the state for use in
10 electronic smoking devices, an additional tax, separate from all other taxes, of twenty-eight
11 percent of the wholesale purchase price at which electronic smoking devices and electronic
12 smoking device substances are purchased by distributors. For the purposes of this section,
13 "wholesale purchase price" means the established price for which a manufacturer sells an
14 electronic smoking device or electronic smoking device substance to a distributor exclusive of
15 any discount or other reduction. The state treasurer shall transfer the funds collected under this
16 section to the tobacco tax distribution fund.

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

19 **Tobacco tax distribution fund - Continuing appropriation.**

20 The tobacco tax distribution fund is created as a special fund in the state treasury into which
21 must be deposited any portion of tobacco tax collections designated by law to be deposited in
22 the fund. All moneys in the fund are appropriated on a continuing basis to the department of
23 health and human services for the purposes described in this section. Each month, the
24 department shall distribute one-half of the moneys in the fund as grants to local public health
25 units and the remaining moneys in the fund to organizations providing 988 crisis hotline
26 services.

27 **SECTION 9. EFFECTIVE DATE.** Sections 3, 4, 5, 6, and 7 of this Act are effective for
28 taxable events occurring after June 30, 2025.