

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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~~section
5 57-36-01, subsection 1 of section 57-36-02, and sections 57-36-25, 57-36-26, 57-36-31, and
6 57-36-32 of the North Dakota Century Code, relating to the tax imposed on cigarettes and other
7 tobacco products; to provide a penalty; and to provide an 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 46
14 and 57 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.

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

3 **57-36-01. Definitions.**

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

- 5 1. "Alternative tobacco product" means a noncombustible product containing nicotine or
6 synthetic nicotine, intended for human consumption by chewing, absorbing, dissolving,
7 or any other means.
- 8 a. The term includes:
- 9 (1) Nicotine gels;
- 10 (2) Nicotine pouches; and
- 11 (3) Dissolvable tobacco products.
- 12 b. The term does not include products approved by the United States food and drug
13 administration for nicotine replacement therapy.
- 14 2. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
- 15 ~~2-3.~~ "Cigar" means any roll of tobacco wrapped in tobacco.
- 16 ~~3-4.~~ "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed
17 tobacco and encased in any material except tobacco. The term also means any
18 product of a cigarette-making machine.
- 19 ~~4-5.~~ "Cigarette-making machine" means a machine used for commercial purposes to
20 process tobacco into a roll or tube, formed or made from any material other than
21 tobacco, at a production rate of more than five rolls or tubes per minute.
- 22 ~~5-6.~~ "Consumer" means any person who has title to or possession of cigarettes, cigars,
23 pipe tobacco, electronic smoking devices, or other tobacco products in storage, for
24 use or other consumption in this state.
- 25 ~~6-7.~~ "Dealer" includes a retailer and any person other than a distributor who is engaged in
26 the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, electronic
27 smoking devices, alternative tobacco products, or other tobacco products, or any
28 product of a cigarette-making machine.
- 29 ~~7-8.~~ "Distributor" includes any person engaged in the business of producing or
30 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking
31 devices, alternative tobacco products, or other tobacco products, or importing into this

1 state cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices,
2 alternative tobacco products, or other tobacco products, for the purpose of distribution
3 and sale thereof to dealers and retailers. The term also includes a dealer that
4 fabricates, repackages, compounds, or mixes electronic smoking devices for purposes
5 of sale to a consumer.

6 ~~8-9.~~ "Electronic smoking device" means a device that may be used to deliver an
7 aerosolized, vaporized, or heated substance containing nicotine, regardless of
8 whether the nicotine is natural or synthetic, to an individual inhaling from the device,
9 and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and e-hookah. The
10 term includes any substance containing nicotine, regardless of whether the nicotine is
11 natural or synthetic, that may be aerosolized, vaporized, or heated by the device,
12 regardless of whether the device is sold separately. The term does not include:

- 13 a. A cigarette as defined in section 51-25-01;
- 14 b. A cigarette as defined in this section;
- 15 c. A drug, device, or combination product, as those terms are defined in the federal
16 Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved
17 for sale by the United States food and drug administration; or
- 18 d. A battery or battery charger when sold separately.

19 ~~9-10.~~ "Licensed dealer" means a dealer licensed under the provisions of this chapter.

20 ~~40-11.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.

21 ~~44-12.~~ "Other tobacco products" means snuff and chewing tobacco.

22 ~~42-13.~~ "Outlet" means each place of business from which tobacco products are sold.

23 ~~43-14.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
24 company, trust, or association however formed.

25 ~~44-15.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
26 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
27 consumers as tobacco to be smoked in a pipe.

28 ~~45-16.~~ "Place of business" means a place where tobacco products are sold or where tobacco
29 products are manufactured, fabricated, stored, or kept for purposes of sale or
30 consumption.

1 ~~46:17.~~ "Retailer" means a person engaged in the business of selling cigarettes, cigars, pipe
2 tobacco, electronic smoking devices, alternative tobacco products, or other tobacco
3 products to consumers.

4 ~~47:18.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.

5 ~~48:19.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
6 placed in the mouth or nose.

7 ~~49:20.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco,
8 electronic smoking devices, or other tobacco products for use or consumption in this
9 state.

10 ~~20:21.~~ "Use" means the exercise of any right or power incidental to the ownership or
11 possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other
12 tobacco products.

13 **SECTION 3. AMENDMENT.** Subsection 1 of section 57-36-02 of the North Dakota Century
14 Code is amended and reenacted as follows:

- 15 1. Each person engaged in the business of selling cigarettes, cigarette papers, snuff,
16 cigars, electronic smoking devices, alternative tobacco products, or tobacco in this
17 state, including any distributor or dealer, shall secure a license from the attorney
18 general before engaging or continuing to engage in business.

19 **SECTION 4. AMENDMENT.** Section 57-36-25 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-36-25. Cigars and pipe tobacco - Excise tax on wholesale purchase price - Other**
22 **tobacco products - Excise tax on weight - Penalty - Reports - Collection -~~Allocation of~~**
23 **revenue.**

- 24 1. There is hereby levied and assessed upon all cigars and pipe tobacco sold in this
25 state an excise tax at the rate of twenty-eight percent of the wholesale purchase price
26 at which ~~such~~the cigars and pipe tobacco are purchased by distributors. For the
27 purposes of this section, the term "wholesale purchase price" ~~shall mean~~means the
28 established price for which a manufacturer sells cigars or pipe tobacco to a distributor
29 exclusive of any discount or other reduction.
- 30 2. There is levied and assessed upon all other tobacco products sold in this state an
31 excise tax at the following rates:

1 a. Upon each can or package of snuff, ~~sixtyone dollar and ninty-six~~ cents per ounce
2 and a proportionate tax at the like rate on all fractional parts of an ounce.

3 b. On chewing tobacco, ~~sixteenfifty-two~~ cents per ounce and a proportionate tax at
4 the like rate on all fractional parts of an ounce.

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

7 3. The proceeds of the taxes imposed under this section, together with ~~such~~the forms of
8 return and in accordance with ~~such~~the rules and regulations as the tax commissioner
9 may prescribe, shall be remitted to the tax commissioner by the distributor on a
10 calendar quarterly basis on or before the fifteenth day of the month following the
11 quarterly period for which paid. The tax commissioner ~~shall, however, have authority~~
12 ~~to~~may prescribe monthly returns upon the request of the licensee distributor and
13 ~~such~~the returns accompanied with remittance ~~shall~~must be filed before the fifteenth
14 day of the month following the month for which the returns are filed.

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

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

26 **SECTION 5. AMENDMENT.** Section 57-36-26 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **57-36-26. Cigars, pipe tobacco, and other tobacco products - Excise tax payable by**
29 **dealers - Reports - Penalties - Collection -~~Allocation of revenue.~~**

30 1. There is levied and assessed, upon all cigars and pipe tobacco purchased in another
31 state and brought into this state by a dealer for the purpose of sale at retail, an excise

1 tax at the rate of twenty-eight percent of the wholesale purchase price and, upon all
2 other tobacco products purchased in another state and brought into this state by a
3 dealer for the purpose of sale at retail, an excise tax at the rates indicated in section
4 57-36-25, at the time the products were brought into this state. For the purposes of
5 this section, ~~the term~~ "wholesale purchase price" means the established price for
6 which a manufacturer sells cigars or pipe tobacco to a distributor exclusive of any
7 discount or other reduction. However, the dealer may elect to report and remit the tax
8 on the cost price of the products to the dealer rather than on the wholesale purchase
9 price. The proceeds of the tax, together with the forms of return and in accordance
10 with any rules and regulations the tax commissioner may prescribe, must be remitted
11 to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day
12 of the month following the monthly period for which it is paid. The tax commissioner
13 ~~shall have the authority to~~ may place any dealer on an annual remittance basis when in
14 the judgment of the tax commissioner the operations of the dealer merit that
15 remittance period. In addition, the tax commissioner ~~shall have the authority to~~ may
16 permit the consolidation of the filing of a dealer's return when the dealer has more
17 than one location and thereby would be required to file more than one return.

18 2. If cigars, pipe tobacco, or other tobacco products have been subjected already to a tax
19 by any other state in respect to their sale in an amount less than the tax imposed by
20 this section, the provisions of this section apply, but at a rate measured by the
21 difference only between the rate fixed in this section and the rate by which the
22 previous tax upon the sale was computed. If the tax imposed in the other state is
23 twenty percent of the wholesale purchase price or more, then no tax is due on the
24 article. The provisions of this subsection apply only if the other state allows a tax credit
25 with respect to the excise tax on cigars, pipe tobacco, or other tobacco products
26 imposed by this state which is substantially similar in effect to the credit allowed by this
27 subsection.

28 3. Any person failing to file any prescribed forms of return or to pay any tax within the
29 time required by this section is subject to a penalty of five dollars or a sum equal to
30 five percent of the tax due, whichever is greater, plus one percent of the tax for each
31 month of delay or fraction thereof excepting the month within which the return was

1 required to be filed or the tax became due. The tax commissioner, if satisfied that the
2 delay was excusable, may waive all or any part of the penalty. The penalty must be
3 paid to the tax commissioner and disposed of in the same manner as are other
4 receipts under this chapter.

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

8 **SECTION 6. AMENDMENT.** Section 57-36-31 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-36-31. Transfer and allocation of revenues - Appropriation.**

11 1. All moneys received by the tax commissioner under the provisions of this chapter must
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, except as hereinafter provided.

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

23 3. All moneys received from an amount equal to a ninety-eight cents tax levied and
24 assessed per ounce of snuff under section 57-36-25, a twenty-six cent tax levied and
25 assessed per ounce of chewing tobacco under section 57-36-25, a twenty-eight
26 percent tax levied and assessed on the wholesale purchase price of electronic
27 smoking devices under section 78 of this Act, and a twenty-eight percent tax levied
28 and assessed on the wholesale purchase price of alternative tobacco products under
29 section 89 of this Act must be deposited by the state treasurer in the tobacco tax
30 distribution behavioral health fund under section 1 of this Act.

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

3 **57-36-32. Separate and additional tax on the sale of cigarettes - Collection -**
4 **Allocation of revenue - Tax avoidance prohibited.**

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

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

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

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

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

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

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

9 2. The proceeds of the tax imposed under this section, together with the forms of return
10 and in accordance with the rules and regulations prescribed by the tax commissioner,
11 must be remitted to the tax commissioner by the distributor on a calendar quarterly
12 basis on or before the fifteenth day of the month following the quarterly period for
13 which paid. The tax commissioner may prescribe monthly returns upon the request of
14 the licensee distributor and the returns accompanied with remittance must be filed
15 before the fifteenth day of the month following the month for which the returns are
16 filed.

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

25 **SECTION 9.** A new section to chapter 57-36 of the North Dakota Century Code is created
26 and enacted as follows:

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

29 1. There is levied and assessed upon all alternative tobacco products sold in this state
30 an excise tax at the rate of fifty-six percent of the wholesale purchase price at which
31 alternative tobacco products are purchased by distributors. For the purposes of this

1 section, "wholesale purchase price" means the established price for which a
2 manufacturer sells an alternative tobacco product to a distributor exclusive of any
3 discount or other reduction.

4 2. The proceeds of the tax imposed under this section, together with the forms of return
5 and in accordance with the rules adopted by the tax commissioner, must be remitted
6 to the tax commissioner by the distributor on a calendar quarterly basis on or before
7 the fifteenth day of the month following the quarterly period for which paid. The tax
8 commissioner may prescribe monthly returns upon the request of the licensee
9 distributor and the returns accompanied with remittance must be filed before the
10 fifteenth day of the month following the month for which the returns are filed.

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

19 **SECTION 10. EFFECTIVE DATE.** Sections 3, 4, 6, 7, and 8 of this ~~This~~ Act are ~~is~~ effective
20 for taxable events occurring after ~~June 30, 2025~~ December 31, 2025.