

Introduced by

Senator Cook

1 A BILL for an Act to create and enact chapter 57-39.10 of the North Dakota Century Code,  
2 relating to state-tribal agreements for the administration and collection of wholesale taxes on  
3 alcoholic beverages and wholesale taxes on tobacco products within the boundaries of the Fort  
4 Berthold Reservation, Lake Traverse Reservation, Spirit Lake Reservation, Standing Rock  
5 Reservation, or Turtle Mountain Reservation; to repeal chapter 57-39.8 of the North Dakota  
6 Century Code, relating to a state-tribal agreement with the Standing Rock Sioux Tribe; to  
7 provide a continuing appropriation; and to provide for application.

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

9 **SECTION 1.** Chapter 57-39.10 of the North Dakota Century Code is created and enacted  
10 as follows:

11 **57-39.10-01. Authority to enter state-tribal alcoholic beverages wholesale tax and**  
12 **tobacco products wholesale tax agreements.**

13 1. The governor, in consultation with the tax commissioner, may enter separate  
14 agreements on behalf of the state with the governing body of the Three Affiliated  
15 Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake  
16 Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle  
17 Mountain Band of Chippewa Indians. Each agreement must comply with this chapter  
18 relating to the collection, administration, enforcement, and allocation of the state  
19 alcoholic beverages wholesale taxes under chapters 5-01, 5-02, and 5-03 for sales of  
20 alcoholic beverages, including beer, wine, sparkling wine, and distilled spirits, for  
21 delivery to licensed retailers or sale directly to consumers located within the exterior  
22 boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse  
23 Reservation located in this state, the Spirit Lake Reservation, that portion of the  
24 Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.

1           The tax commissioner shall conduct a review of any proposed agreement under this  
2           chapter to determine if its provisions can be administered and enforced.  
3        2. The governor, in consultation with the tax commissioner, may enter separate  
4           agreements on behalf of the state with the governing body of the Three Affiliated  
5           Tribes of the Fort Berthold Reservation, Sisseton-Wahpeton Oyate of the Lake  
6           Traverse Reservation, Standing Rock Sioux Tribe, Spirit Lake Tribe, and Turtle  
7           Mountain Band of Chippewa Indians. Each agreement must comply with this chapter  
8           relating to the collection, administration, enforcement, and allocation of the state  
9           tobacco products wholesale taxes under chapter 57-36 for tobacco products sold by  
10          licensed wholesalers for delivery to licensed retailers or sold by licensed retailers  
11          directly to consumers within the exterior boundaries of the Fort Berthold Reservation,  
12          that portion of the Lake Traverse Reservation located in this state, the Spirit Lake  
13          Reservation, that portion of the Standing Rock Reservation located in this state, or the  
14          Turtle Mountain Reservation. The tax commissioner shall conduct a review of any  
15          proposed agreement under this chapter to determine if its provisions can be  
16          administered and enforced.

17        **57-39.10-02. Requirements for all state-tribal tax agreements.**

18        Any agreement entered under this chapter must comply with this section.

- 19        1. The agreement must include:
- 20           a. A statement that the parties to the agreement are not forfeiting any legal rights to  
21           apply each party's respective taxes by entering an agreement, except as  
22           specifically set forth in the agreement;
- 23           b. A statement recognizing the sovereign rights of the state and the tribe or tribes;  
24           and
- 25           c. A statement that:
- 26                (1) The rights of each party must be determined by the terms of the agreement  
27                with respect to the taxes subject to the agreement;
- 28                (2) Neither party may seek additional entitlement or seek to deny entitlement on  
29                any federal ground, including federal pre-emption, whether statutorily  
30                provided for or otherwise with respect to the taxes that are the subject of an  
31                agreement; and

- 1           (3) Both parties shall defend the agreement from attack by third parties.
- 2           2. Any tribally owned entity or other entity owned in whole or part by a tribal member,  
3           whether chartered under state law or tribal law, and operating within the boundaries of  
4           a reservation, is subject to the state's tax or taxes and regulatory requirements of the  
5           tax subject to an agreement.
- 6           3. The tax commissioner retains authority to collect, administer, and enforce the taxes  
7           subject to an agreement under this chapter, including the authority to audit, assess,  
8           refund, credit, or determine the exempt or nonexempt status of any transaction, for  
9           taxes collected within the boundaries of a reservation.
- 10          4. Any controversy or claim between the tribe or tribes and the state, arising out of or  
11          relating to an agreement under this chapter, is subject to binding arbitration in  
12          accordance with the processes and procedures provided in the agreement between  
13          the tribe or tribes and the state. Any issues concerning the jurisdiction of the state to  
14          impose a tax are expressly excluded from the scope of the arbitration.
- 15          5. An agreement under this chapter must give the tax commissioner, after consulting with  
16          the governor, and a tribe or tribes the authority to terminate an agreement with or  
17          without cause.
- 18          6. An agreement may begin no sooner than the first day of a calendar quarter which is at  
19          least ninety days after the agreement is signed by both parties. The tribe or tribes and  
20          the state must provide the initial population required by sections 57-39.10-03 and  
21          57-39.10-04 no fewer than sixty days before the effective date of the agreement.

22           **57-39.10-03. Alcoholic beverages wholesale tax agreement requirements.**

23           The governor may enter an alcoholic beverages wholesale tax agreement with a tribe or  
24           tribes if the agreement complies with section 57-39.10-02 and this section.

- 25           1. The taxes subject to an agreement under this section are the state's alcoholic  
26           beverages wholesale taxes under chapters 5-01, 5-02, and 5-03, as may be amended  
27           subsequently by the legislative assembly, for alcoholic beverages sold by licensed  
28           wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom  
29           licensees, and direct shippers, for delivery to licensed retailers or sale directly to  
30           consumers located within the exterior boundaries of the Fort Berthold Reservation,  
31           that portion of the Lake Traverse Reservation located in this state, the Spirit Lake

1           Reservation, that portion of the Standing Rock Reservation located in this state, or the  
2           Turtle Mountain Reservation.

3           2. A tribe or tribes shall impose taxes equal to the state's alcoholic beverages wholesale  
4           taxes on all sales of alcoholic beverages sold by licensed wholesalers, domestic  
5           wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct  
6           shippers, for delivery to all persons within the boundaries of the reservation.

7           3. Chapters 5-01, 5-02, and 5-03, and title 81 of the North Dakota Administrative Code  
8           govern the collection and administration of the taxes subject to an agreement under  
9           this section.

10          4. The amount of tax revenue allocated to the tribe pursuant to an agreement under this  
11          section must be equal to an amount determined by multiplying the enrolled  
12          membership of the tribe by the state alcohol revenue per capita. The state alcohol  
13          revenue per capita is the quarterly collections of the state's alcoholic beverages  
14          wholesale taxes designated for deposit in the state general fund divided by the state's  
15          total population as determined in the most recent actual or estimated census data  
16          published by the United States census bureau.

17          5. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership  
18          of the tribe must be certified to the state by September thirtieth of each year during the  
19          term of the agreement. The enrolled membership of the tribe must consist of the  
20          number of enrolled members of the tribe physically residing within the exterior  
21          boundaries of the portion of the tribe's reservation located in this state. The enrolled  
22          membership of the tribe must be based on the tribe's enrollment office records, the  
23          bureau of Indian affairs enrollment records, or other records maintained by the tribe.  
24          The previous year's certified enrollment number must be used if the tribe does not  
25          issue a certification by September thirtieth, unless the tribe demonstrates the certified  
26          enrollment number has increased or decreased. The manner in which the state and  
27          tribe resolve issues arising under this subsection must be specified in the agreement.

28          **57-39.10-04. Tobacco products wholesale tax agreement requirements.**

29          The governor may enter a tobacco products wholesale tax agreement with a tribe or tribes if  
30          the agreement complies with section 57-39.10-02 and this section.

- 1       1. The taxes subject to an agreement under this section are the state's tobacco products  
2       wholesale taxes under chapter 57-36, as may be amended subsequently by the  
3       legislative assembly, for tobacco products sold by licensed wholesalers for delivery to  
4       licensed retailers or sold by licensed retailers directly to consumers within the exterior  
5       boundaries of the Fort Berthold Reservation, that portion of the Lake Traverse  
6       Reservation located in this state, the Spirit Lake Reservation, that portion of the  
7       Standing Rock Reservation located in this state, or the Turtle Mountain Reservation.
- 8       2. A tribe or tribes shall impose taxes equal to the state's tobacco products wholesale  
9       taxes on all tobacco products sold by licensed wholesalers for delivery to licensed  
10      retailers or sold by licensed retailers directly to customers within the boundaries of the  
11      reservation.
- 12      3. Chapters 57-36 and title 81 of the North Dakota Administrative Code govern the  
13      administration of the taxes subject to an agreement under this section.
- 14      4. The amount of tax revenue allocated to the tribe pursuant to an agreement under this  
15      section must be equal to an amount determined by multiplying the enrolled  
16      membership of the tribe by the state tobacco revenue per capita. The state tobacco  
17      revenue per capita is the quarterly collections of the state's tobacco products  
18      wholesale taxes designated for deposit in the state general fund divided by the state's  
19      total population as determined in the most recent actual or estimated census data  
20      published by the United States census bureau.
- 21      5. Except as provided in subsection 6 of section 57-39.10-02, the enrolled membership  
22      of the tribe must be certified to the state by September thirtieth of each year during the  
23      term of the agreement. The enrolled membership of the tribe must consist of the  
24      number of enrolled members of the tribe physically residing within the exterior  
25      boundaries of the portion of the tribe's reservation located in this state. The enrolled  
26      membership of the tribe must be based on the tribe's enrollment office records, the  
27      bureau of Indian affairs enrollment records, or other records maintained by the tribe.  
28      The previous year's certified enrollment number must be used if the tribe does not  
29      issue a certification by September thirtieth, unless the tribe demonstrates the certified  
30      enrollment number has increased or decreased. The manner in which the state and  
31      tribe resolve issues arising under this subsection must be specified in the agreement.

1       **57-39.10-05. Inapplicability of chapter 54-40.2.**

2       Chapter 54-40.2 does not apply to an agreement entered under this chapter.

3       **57-39.10-06. Alcoholic beverages wholesale tax revenue allocation and distribution -**  
4       **Refunds - Continuing appropriation.**

5       1.   The tax commissioner shall certify and transfer to the state treasurer for deposit in the  
6       tribal allocation fund, a special fund created in the state treasury, tax revenues  
7       allocated to a tribe or tribes under subsection 4 of section 57-39.10-03. Tax revenues  
8       collected under section 57-39.10-03 are provided as a standing and continuing  
9       appropriation to the state treasurer for distribution on a quarterly basis.

10      2.   Refunds of the tax imposed under chapters 5-01, 5-02 and 5-03 which are subject to  
11      an agreement under section 57-39.10-03 must be paid from the state general fund  
12      and are provided to the state treasurer as a standing and continuing appropriation.

13      3.   The tax commissioner shall determine the reservation of the tribe or tribes to which the  
14      refund paid under subsection 2 is attributable. The refund, including interest at the rate  
15      prescribed in section 5-03-06, must be reimbursed to the state general fund from the  
16      first available moneys deposited in the tribal allocation fund on behalf of the tribe or  
17      tribes to which the refund is attributable.

18      **57-39.10-07. Tobacco products wholesale tax revenue allocation and distribution -**  
19      **Refunds - Continuing appropriation.**

20      1.   The tax commissioner shall certify and transfer to the state treasurer for deposit in the  
21      tribal allocation fund, a special fund created in the state treasury, tax revenues  
22      allocated to a tribe or tribes under subsection 4 of section 57-39.10-04. Tax revenues  
23      collected under section 57-39.10-04 are provided as a standing and continuing  
24      appropriation to the state treasurer for distribution on a quarterly basis.

25      2.   Refunds of the tax imposed under chapter 57-36 which are subject to an agreement  
26      under section 57-39.10-04 must be paid from the general fund and are provided to the  
27      state treasurer as a standing and continuing appropriation.

28      3.   The tax commissioner shall determine the reservation of the tribe or tribes to which the  
29      refund paid under subsection 2 is attributable. The refund must be reimbursed to the  
30      state general fund from the first available moneys deposited in the tribal allocation  
31      fund on behalf of the tribe or tribes to which the refund is attributable.

- 1       **SECTION 2. REPEAL.** Chapter 57-39.8 of the North Dakota Century Code is repealed.
- 2       **SECTION 3. APPLICATION.** Section 1 of this Act applies to agreements entered after
- 3       July 31, 2019.