

Introduced by

1 A BILL for an Act to create and enact three new sections to chapter 57-36 of the North Dakota
2 Century Code, relating to the taxation of e-liquid; to amend and reenact sections 57-36-01,
3 57-36-02, 57-36-04, 57-36-05, 57-36-09, 57-36-09.1, subsection 2 of section 57-36-29, and
4 subsection 2 of section 57-36-33 of the North Dakota Century Code, relating to the taxation of
5 e-liquid; to provide a penalty; to provide an effective date; and to provide an expiration date.

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

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

9 **57-36-01. Definitions.**

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

- 11 1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
- 12 2. "Cigar" means any roll of tobacco wrapped in tobacco.
- 13 3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed
14 tobacco and encased in any material except tobacco. "Cigarette" also means any
15 product of a cigarette-making machine.
- 16 4. "Cigarette-making machine" means a machine used for commercial purposes to
17 process tobacco into a roll or tube, formed or made from any material other than
18 tobacco, at a production rate of more than five rolls or tubes per minute.
- 19 5. "Consumer" means any person who has title to or possession of cigarettes, cigars,
20 pipe tobacco, e-liquid, or other tobacco products in storage, for use or other
21 consumption in this state.
- 22 6. "Dealer" includes any person other than a distributor who is engaged in the business
23 of selling cigarettes, cigarette papers, cigars, pipe tobacco, e-liquid, or other tobacco
24 products, or any product of a cigarette-making machine.

- 1 7. "Distributor" includes any person engaged in the business of producing or
2 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, e-liquid, or other
3 tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe
4 tobacco, e-liquid, or other tobacco products, for the purpose of distribution and sale
5 thereof to dealers and retailers.
- 6 8. "E-liquid" means a consumable liquid substance containing nicotine which produces a
7 vapor or aerosol for inhalation when used in an electronic product including an
8 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term does not include
9 drugs, devices, or combination products approved for sale by the United States food
10 and drug administration, as those terms are defined in the Federal Food, Drug and
11 Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
- 12 9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 13 ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 14 ~~10-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- 15 ~~11-12.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
16 company, trust, or association however formed.
- 17 ~~12-13.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
18 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
19 consumers as tobacco to be smoked in a pipe.
- 20 ~~13-14.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- 21 ~~14-15.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
22 placed in the mouth.
- 23 ~~15-16.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, e-liquid,
24 or other tobacco products for use or consumption in this state.
- 25 ~~16-17.~~ "Use" means the exercise of any right or power incidental to the ownership or
26 possession of cigarettes, cigars, pipe tobacco, e-liquid, or other tobacco products.

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

29 **57-36-02. Distributors and dealers to be licensed.**

30 Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars,
31 e-liquid, or tobacco in this state, including any distributor or dealer, must secure a license from

1 the attorney general before engaging or continuing to engage in business. A separate
2 application and license is required for each distributor at each outlet or place of business within
3 the state, and a separate dealer's license is required for each retail outlet when a person owns
4 or controls more than one place of business dealing in cigarettes, cigarette papers, snuff,
5 cigars, e-liquid, or tobacco. No retailer will be granted a distributor's license except a retailer
6 who, in the usual course of business, performed a distributor's or wholesaler's function for at
7 least one year prior to filing the license application. The application prescribed by the attorney
8 general must include the name and address of the applicant, the address and place of
9 business, the type of business, and other information as required for the proper administration
10 of this chapter. Each application for a wholesale or distributor's outlet license must be
11 accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney
12 general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen
13 dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for
14 each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed
15 five hundred dollars for any one licensee in any fiscal year. A distributor's license does not
16 authorize the holder to make retail sales. Each license issued must be prominently displayed on
17 the premises covered by the license.

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

20 **57-36-04. Revocation of license - Penalty.**

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

27 **SECTION 4. AMENDMENT.** Section 57-36-05 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **57-36-05. Unlawful to sell without license.**

30 A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, e-liquid, or
31 tobacco in this state at wholesale or at retail unless a license has been issued to that dealer or

1 distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess
2 with the intent to sell, any cigarettes, cigarette papers, snuff, cigars, e-liquid, or tobacco without
3 such license.

4 **SECTION 5. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-36-09. Records to be kept by distributors and reports made - Penalty.**

7 Distributors shall keep records and make reports relating to purchases and sales of
8 cigarettes, cigarette papers, cigars, pipe tobacco, e-liquid, or other tobacco products made by
9 them, and must be punished for failure so to do, as follows:

- 10 1. Each distributor ~~who shall dispose~~that disposes of cigarettes, cigarette papers, cigars,
11 pipe tobacco, e-liquid, or other tobacco products shall keep and preserve for one year
12 all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, e-liquid, or other
13 tobacco products purchased by the distributor and shall permit the state tax
14 commissioner, and assistants, authorized agents, or representatives of the state tax
15 commissioner, to inspect and examine all taxable merchandise, invoices, receipts,
16 books, papers, and memoranda as may be deemed necessary by the state tax
17 commissioner, and assistants, authorized agents, or representatives of the state tax
18 commissioner in determining the amount of the tax as may be yet due. Each person
19 selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco,
20 e-liquid, or other tobacco products as a distributor shall keep a record of all sales
21 made within the state showing the name and address of the purchaser and the date of
22 sale. For sales of other tobacco products, the records must also include the net weight
23 in ounces, as listed by the manufacturer. For sales of e-liquid, the records also must
24 include the volume in milliliters, as listed by the manufacturer.
- 25 2. On or before the fifteenth day of each month, each licensed distributor, on such form
26 as the state tax commissioner shall prescribe, shall report to the tax commissioner all
27 purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, e-liquid, or
28 other tobacco products made from or to any persons either within or without this state
29 during the preceding month. For sales of other tobacco products, each licensed
30 distributor shall also report to the tax commissioner the net weight in ounces, as listed
31 by the manufacturer. For sales of e-liquid, the records also must include the volume in

1 milliliters, as listed by the manufacturer. The tax levied by this chapter is payable
2 monthly and must be remitted to the tax commissioner by each licensed distributor on
3 or before the fifteenth day of the month following the monthly period.

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

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

14 **57-36-09.1. Warehouse - Record of deliveries and shipments.**

15 Records of all deliveries of shipments of cigarettes and snuff from a licensed public
16 warehouse to persons within this state must be kept by the warehouse and be available to the
17 tax commissioner for inspection. ~~They~~The records must show the name and address of the
18 consignee, the date, the quantity of cigarettes, snuff, cigars, e-liquid, or other tobacco products
19 delivered, and such other information as the tax commissioner may require. These records must
20 be preserved for one year from the date of delivery of the cigarettes, snuff, cigars, e-liquid, or
21 other tobacco products.

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

24 **E-liquid - Excise tax - Reports - Remittances - Penalty.**

25 1. There is levied and assessed upon all e-liquid purchased by distributors in this state
26 an excise tax at the rate of _____ cents per milliliter of e-liquid and a proportionate tax
27 at the like rate on all fractional parts of a milliliter. This tax applies regardless of
28 whether the e-liquid is purchased with an electronic smoking device. The tax on
29 e-liquid must be imposed on the volume of the solution as listed by the manufacturer.
30 Distributors shall report and remit the tax imposed in this section in the manner
31 prescribed in section 57-36-09.

- 1 2. There is levied and assessed upon e-liquid purchased by a dealer in this state for the
2 purposes of sale at retail a tax at the rate indicated in subsection 1 if the dealer
3 purchases e-liquid on which the tax imposed under subsection 1 has not been paid.
4 Each dealer shall report and remit the tax imposed by this section in the manner
5 prescribed for distributors in section 57-36-09 and are subject to the penalties
6 prescribed in that section for failing to file a required return or pay the tax.

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

9 **Consumer's use tax - E-liquid - Reports - Remittances - Penalty.**

- 10 1. A tax is imposed upon the use or storage by consumers of e-liquid in this state, and
11 upon those consumers, at the rates indicated in section 7 of this Act.
12 2. The tax imposed by this section does not apply if the tax imposed by section 7 of this
13 Act has been paid.
14 3. On or before the tenth day of each calendar quarter, every consumer who, during the
15 preceding calendar quarter, has acquired title to or possession of e-liquid for use or
16 storage in this state, upon which products the tax imposed by section 7 of this Act has
17 not been paid, shall file a return with the tax commissioner showing the quantity of
18 e-liquid acquired. The return also must include the volume in milliliters, as listed by the
19 manufacturer. The return must be made upon a form furnished and prescribed by the
20 tax commissioner and must contain any other information the tax commissioner may
21 require. The return must include payment for the full unpaid tax liability shown on the
22 return.
23 4. As soon as practicable after any return is filed, the tax commissioner shall examine the
24 return and make any corrections necessary according to the tax commissioner's best
25 judgment and information.
26 5. If any consumer required to pay the tax levied by this section fails to file a return or
27 remit the tax as required, the tax commissioner shall make an assessment of tax
28 against the consumer according to the tax commissioner's best judgment and
29 information.

1 6. All provisions of this chapter relating to the correction of returns, deficiency
2 assessments, protests, hearings, interest and penalties, and collection of taxes apply
3 to consumers under this section.

4 **SECTION 9. AMENDMENT.** Subsection 2 of section 57-36-29 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, e-liquid, or other
7 tobacco products accidentally, or intentionally, because of staleness or other unfitness
8 for sale, a credit or refund must be given to the wholesaler under the terms and
9 conditions prescribed by the tax commissioner.

10 **SECTION 10. AMENDMENT.** Subsection 2 of section 57-36-33 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 2. All cigarettes, cigarette papers, cigars, pipe tobacco, e-liquid, or other tobacco
13 products in the possession of the person who violates any provision of this chapter, or
14 in the place of business of the person, may be confiscated by the tax commissioner as
15 provided under section 57-36-14 and forfeited to the state. Any cigarette-making
16 machine that is maintained or operated in violation of sections 57-36-05.3, 57-36-05.4,
17 or 57-36-06.1 must be confiscated by the tax commissioner and forfeited to the state
18 in accordance with chapter 29-31.1.

19 **SECTION 11.** A new section to chapter 57-36 of the North Dakota Century Code is created
20 and enacted as follows:

21 **E-liquid - Pre-existing inventory tax.**

22 1. Pre-existing inventories of e-liquid are subject to the tax imposed in section 7 of this
23 Act. The inventory tax must be reported and paid, on a form and in the manner
24 prescribed by the tax commissioner, by all dealers and distributors on or before
25 February 1, 2022.
26 2. Any person failing to timely file the return or to pay the tax due is subject to a penalty
27 of five percent of the amount of tax due or five dollars, whichever is greater, plus
28 interest of one percent of the tax per month or fraction of a month of delay except the
29 first month after the return or the tax became due. The tax commissioner, if satisfied
30 the delay was excusable, may waive all or any part of the penalty. All moneys received
31 by the tax commissioner under this section must be transmitted to the state treasurer

1 at the end of each month and deposited in the state treasury to the credit of the
2 general fund.
3 3. For purposes of this section, "pre-existing inventory" means an inventory of e-liquid
4 located in this state as of January 1, 2022, and held by a dealer or distributor for sale,
5 handling, or distribution in this state.

6 **SECTION 12. EFFECTIVE DATE.** This Act is effective for taxable events occurring after
7 December 31, 2021.

8 **SECTION 13. EXPIRATION DATE.** Section 11 of this Act is effective through December 31,
9 2022, and is thereafter ineffective but its expiration does not extinguish any tax obligation or
10 accrual of penalties under that section.

11 **NOTE:** This bill draft contains blanks that must be filled in before introduction.