

HOUSE BILL NO. 1386

Introduced by

Representatives Adams, Boe, Boschee, Guggisberg, Longmuir, Satrom, Schauer, Skroch
Senators Bakke, Kreun

1 A BILL for an Act to amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05,
2 57-36-09, 57-36-09.1, 57-36-24, 57-36-25, 57-36-26, 57-36-28, 57-36-29, and 57-36-33 of the
3 North Dakota Century Code, relating to the imposition of tax on electronic smoking devices; and
4 to provide a penalty.

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

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

8 **57-36-01. Definitions.**

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

- 10 1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
- 11 2. "Cigar" means any roll of tobacco wrapped in tobacco.
- 12 3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed
13 tobacco and encased in any material except tobacco. "Cigarette" also means any
14 product of a cigarette-making machine.
- 15 4. "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. "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. "Dealer" includes any person other than a distributor who is engaged in the business
22 of selling cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking
23 devices, or other tobacco 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, electronic smoking
3 devices, or other tobacco products, or importing into this state cigarettes, cigarette
4 papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products,
5 for the purpose of distribution and sale thereof to dealers and retailers.
- 6 8. "Electronic smoking device" means any electronic product that delivers nicotine or
7 other substances to the individual inhaling from the device, including an electronic
8 cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term includes any component,
9 part, or accessory of the product, and any substance that may be aerosolized or
10 vaporized by the device, regardless of whether sold separately. The term does not
11 include:
- 12 a. Drugs, devices, or combination products approved for sale by the United States
13 food and drug administration, as those terms are defined in the Federal Food,
14 Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.];
- 15 b. Cigarettes as defined in subsection 4 of section 51-25-01;
- 16 c. Cigarettes as defined in subsection 3 of section 57-36-01; or
- 17 d. A battery or battery charger when sold separately.
- 18 9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 19 ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 20 ~~10-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- 21 ~~11-12.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
22 company, trust, or association however formed.
- 23 ~~12-13.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
24 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
25 consumers as tobacco to be smoked in a pipe.
- 26 ~~13-14.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- 27 ~~14-15.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
28 placed in the mouth.
- 29 ~~15-16.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco,
30 electronic smoking devices, or other tobacco products for use or consumption in this
31 state.

1 ~~16-17.~~ "Use" means the exercise of any right or power incidental to the ownership or
2 possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other
3 tobacco products.

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

6 **57-36-02. Distributors and dealers to be licensed.**

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

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

28 **57-36-04. Revocation of license - Penalty.**

29 The attorney general may revoke the license of any dealer or distributor for failure to comply
30 with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax
31 commissioner or the attorney general. When a license has been legally revoked, no license

1 may be issued again to the licensee for a period of one year thereafter. A person may not sell
2 any cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco after that
3 person's license has been revoked as provided in this chapter.

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

6 **57-36-05. Unlawful to sell without license.**

7 A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, electronic
8 smoking devices, or tobacco in this state at wholesale or at retail unless a license has been
9 issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer
10 for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars,
11 electronic smoking devices, or tobacco without such license.

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

14 **57-36-09. Records to be kept by distributors and reports made - Penalty.**

15 Distributors shall keep records and make reports relating to purchases and sales of
16 cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco
17 products made by them, and must be punished for failure so to do, as follows:

- 18 1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco,
19 electronic smoking devices, or other tobacco products shall keep and preserve for one
20 year all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, electronic
21 smoking devices, or other tobacco products purchased by the distributor and shall
22 permit the state tax commissioner, and assistants, authorized agents, or
23 representatives of the state tax commissioner, to inspect and examine all taxable
24 merchandise, invoices, receipts, books, papers, and memoranda as may be deemed
25 necessary by the state tax commissioner, and assistants, authorized agents, or
26 representatives of the state tax commissioner in determining the amount of the tax as
27 may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette
28 papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products as
29 a distributor shall keep a record of all sales made within the state showing the name
30 and address of the purchaser and the date of sale. For sales of other tobacco

1 products, the records must also include the net weight in ounces, as listed by the
2 manufacturer.

3 2. On or before the fifteenth day of each month, each licensed distributor, on such form
4 as the state tax commissioner shall prescribe, shall report to the tax commissioner all
5 purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, electronic
6 smoking devices, or other tobacco products made from or to any persons either within
7 or without this state during the preceding month. For sales of other tobacco products,
8 each licensed distributor shall also report to the tax commissioner the net weight in
9 ounces, as listed by the manufacturer. The tax levied by this chapter is payable
10 monthly and must be remitted to the tax commissioner by each licensed distributor on
11 or before the fifteenth day of the month following the monthly period.

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

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

22 **57-36-09.1. Warehouse - Record of deliveries and shipments.**

23 Records of all deliveries of shipments of cigarettes and snuff from a licensed public
24 warehouse to persons within this state must be kept by the warehouse and be available to the
25 tax commissioner for inspection. They must show the name and address of the consignee, the
26 date, the quantity of cigarettes, snuff, cigars, electronic smoking devices, or other tobacco
27 products delivered, and such other information as the tax commissioner may require. These
28 records must be preserved for one year from the date of delivery of the cigarettes, snuff, cigars,
29 electronic smoking devices, or other tobacco products.

30 **SECTION 7. AMENDMENT.** Section 57-36-24 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **57-36-24. Exemptions.**

2 All gift cigarettes, snuff, cigars, electronic smoking devices, and other tobacco products, not
3 for resale, which are given to the North Dakota veterans' home or the North Dakota state
4 hospital for distribution to the occupants thereof, are exempt from the excise taxes levied under
5 this chapter.

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

8 **57-36-25. Cigars and, pipe tobacco, and electronic smoking devices - Excise tax on**
9 **wholesale purchase price - Other tobacco products - Excise tax on weight - Penalty -**
10 **Reports - Collection - Allocation of revenue.**

11 1. There is hereby levied and assessed upon all cigars ~~and,~~ pipe tobacco, and electronic
12 smoking devices sold in this state an excise tax at the rate of twenty-eight percent of
13 the wholesale purchase price at which ~~such~~the cigars and, pipe tobacco, and
14 electronic smoking devices are purchased by distributors. For the purposes of this
15 section, the term "wholesale purchase price" ~~shall mean~~means the established price
16 for which a manufacturer sells cigars ~~or,~~ pipe tobacco, or electronic smoking devices
17 to a distributor 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, sixty cents per ounce and a proportionate tax
21 at the like rate on all fractional parts of an ounce.
22 b. On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like
23 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 forms of
27 return and in accordance with such rules and regulations as the tax commissioner may
28 prescribe, shall be remitted to the tax commissioner by the distributor on a calendar
29 quarterly basis on or before the fifteenth day of the month following the quarterly
30 period for which paid. The tax commissioner shall, however, have authority to
31 prescribe monthly returns upon the request of the licensee distributor and such returns

1 accompanied with remittance shall be filed before the fifteenth day of the month
2 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 9. 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, electronic smoking devices, and other tobacco**
17 **products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of**
18 **revenue.**

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

1 commissioner by the dealer on a monthly basis on or before the fifteenth day of the
2 month following the monthly period for which it is paid. The tax commissioner shall
3 have the authority to place any dealer on an annual remittance basis when in the
4 judgment of the tax commissioner the operations of the dealer merit that remittance
5 period. In addition, the tax commissioner shall have the authority to permit the
6 consolidation of the filing of a dealer's return when the dealer has more than one
7 location and thereby would be required to file more than one return.

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

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

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

29 **SECTION 10. AMENDMENT.** Section 57-36-28 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **57-36-28. Consumer's use tax - Cigars, pipe tobacco, electronic smoking devices,**
2 **and other tobacco products - Reports - Remittances.**

- 3 1. A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco,
4 electronic smoking devices, and other tobacco products in this state, and upon those
5 consumers, at the rates indicated in section 57-36-25.
- 6 2. This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been
7 paid and it does not apply to cigars, pipe tobacco, electronic smoking devices, or other
8 tobacco products exempt under section 57-36-24.
- 9 3. On or before the tenth day of each calendar quarter, every consumer who, during the
10 preceding calendar quarter, has acquired title to or possession of cigars, pipe tobacco,
11 electronic smoking devices, or other tobacco products for use or storage in this state,
12 upon which products the tax imposed by either section 57-36-25 or 57-36-26 has not
13 been paid, shall file a return with the tax commissioner showing the quantity of such
14 products so acquired. For sales of other tobacco products, the return must also
15 include the net weight in ounces, as listed by the manufacturer. The return must be
16 made upon a form furnished and prescribed by the tax commissioner and must
17 contain such other information as the tax commissioner may require. The return must
18 be accompanied by a remittance for the full unpaid tax liability shown by it.
- 19 4. As soon as practicable after any return is filed, the tax commissioner shall examine the
20 return and correct it, if necessary, according to the tax commissioner's best judgment
21 and information.
- 22 5. If any consumer required to pay the tax levied by this section fails to file a return or
23 remit the tax as required, the tax commissioner shall make an assessment of tax
24 against the consumer according to the tax commissioner's best judgment and
25 information.
- 26 6. All of the provisions of this chapter relating to corrections of returns, deficiency
27 assessments, protests, hearings, interest and penalties, and collections of taxes apply
28 to consumers under this section.

29 **SECTION 11. AMENDMENT.** Section 57-36-29 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **57-36-29. Correction of errors.**

2 1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has
3 been paid which was not due under the provisions of this chapter, then such amount
4 becomes due under this chapter, and the amount must be credited or refunded to
5 such person or firm by the tax commissioner.

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

10 **SECTION 12. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-36-33. Penalties for violation of chapter.**

13 Except as otherwise provided in this chapter:

14 1. Any person who violates any provision of this chapter is guilty of a class A
15 misdemeanor.

16 2. All cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or
17 other tobacco products in the possession of the person who violates any provision of
18 this chapter, or in the place of business of the person, may be confiscated by the tax
19 commissioner as provided under section 57-36-14 and forfeited to the state. Any
20 cigarette-making machine that is maintained or operated in violation of sections
21 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner
22 and forfeited to the state in accordance with chapter 29-31.1.