

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2189

Introduced by

Senators Bekkedahl, Oban, K. Roers

Representatives Keiser, Klemin, Mitskog

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, and 57-36-33 of the North Dakota Century Code, relating to licensing
3 requirements for electronic smoking device dealers and distributors; to provide for a legislative
4 management study; and 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"~~The term also means
14 any 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 a retailer and any person other than a distributor who is engaged in
22 the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, electronic
23 smoking devices, or other tobacco products, or any product of a cigarette-making
24 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. The term also
6 includes a dealer that fabricates, repackages, compounds, or mixes electronic
7 smoking devices for purposes of sale to a consumer.
- 8 8. "Electronic smoking device" means a device that may be used to deliver an
9 aerosolized, vaporized, or heated substance containing nicotine, regardless of
10 whether the nicotine is natural or synthetic, to an individual inhaling from the device,
11 and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and e-hookah. The
12 term includes any substance containing nicotine, regardless of whether the nicotine is
13 natural or synthetic, that may be aerosolized, vaporized, or heated by the device,
14 regardless of whether the device is sold separately. The term does not include:
- 15 a. A cigarette as defined in section 51-25-01;
16 b. A cigarette as defined in this section;
17 c. A drug, device, or combination product, as those terms are defined in the federal
18 Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved
19 for sale by the United States food and drug administration; or
20 d. A battery or battery charger when sold separately.
- 21 9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 22 ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 23 ~~10-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- 24 ~~11-12.~~ "Outlet" means each place of business from which tobacco products are sold.
- 25 13. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
26 company, trust, or association however formed.
- 27 ~~12-14.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
28 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
29 consumers as tobacco to be smoked in a pipe.

1 ~~13-15.~~ "Place of business" means a place where tobacco products are sold or where tobacco
2 products are manufactured, fabricated, stored, or kept for purposes of sale or
3 consumption.

4 16. "Retailer" means a person engaged in the business of selling cigarettes, cigars, pipe
5 tobacco, electronic smoking devices, or other tobacco products to consumers.

6 17. "Sale" or "sell" applies to gifts, exchanges, and barter.

7 ~~14-18.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
8 placed in the mouth.

9 ~~15-19.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco,
10 electronic smoking devices, or other tobacco products for use or consumption in this
11 state.

12 ~~16-20.~~ "Use" means the exercise of any right or power incidental to the ownership or
13 possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other
14 tobacco products.

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

17 **57-36-02. Distributors and dealers to be licensed.**

18 1. Each person engaged in the business of selling cigarettes, cigarette papers, snuff,
19 cigars, electronic smoking devices, or tobacco in this state, including any distributor or
20 dealer, ~~must~~shall secure a license from the attorney general before engaging or
21 continuing to engage in business.

22 2. A separate application and license is required for each distributor at each outlet or
23 place of business within the state, and a separate dealer's license is required for each
24 retail outlet when a person owns or controls more than one place of business dealing
25 in cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco.
26 ~~No retailer will be granted a distributor's license except a retailer who, in the usual~~
27 ~~course of business, performed a distributor's or wholesaler's function for at least one-~~
28 ~~year prior to filing the license application.~~ The application prescribed by the attorney
29 general must include the name and address of the applicant, the address and place of
30 business, the type of business, and other information as required for the proper
31 administration of this chapter. Each application for a wholesale or distributor's outlet

1 license must be accompanied by a fee of twenty-five dollars and a surety bond
2 approved by the attorney general.

3 3. A separate application and license is required for each outlet or place of business
4 operated or maintained by a dealer in this state. A dealer may not sell tobacco
5 products purchased from a distributor not licensed under this chapter.

6 4. Each application for a dealer's outlet or place of business license must be
7 accompanied by a fee of fifteen dollars.

8 5. A license application prescribed by the attorney general must include the name and
9 address of the applicant, the address and place of business, the type of business, and
10 other information as required for the administration of this chapter.

11 6. A reinstatement fee of fifty dollars is required in addition to the annual license fee for
12 each license renewal applied for after June thirtieth. The total reinstatement fee may
13 not exceed five hundred dollars for any one licensee in any fiscal year. A distributor's
14 license does not authorize the holder to make retail sales.

15 7. Each license issued must be prominently displayed on the premises place of business
16 or outlet covered by the license.

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

19 **57-36-04. Revocation of license - Penalty.**

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

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

28 **57-36-05. Unlawful to sell without license.**

29 A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, electronic
30 smoking devices, or tobacco in this state at wholesale or at retail unless a license has been
31 issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer

1 for sale, or possess with the intent to sell, any cigarettes, cigarette papers, snuff, cigars,
2 electronic smoking devices, or tobacco without such license.

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

5 **57-36-09. Records to be kept by distributors and reports made - Penalty.**

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

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

1 monthly and must be remitted to the tax commissioner by each licensed distributor on
2 or before the fifteenth day of the month following the monthly period.

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

13 **57-36-09.1. WarehouseOutlet - Record of deliveries and shipments.**

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

22 **SECTION 7. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-36-33. Penalties for violation of chapter.**

25 Except as otherwise provided in this chapter:

- 26 1. Any person who violates any provision of this chapter is guilty of a class A
27 misdemeanor.
- 28 2. All cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or
29 other tobacco products in the possession of the person who violates any provision of
30 this chapter, or in the place of business of the person, may be confiscated by the tax
31 commissioner as provided under section 57-36-14 and forfeited to the state. Any

1 cigarette-making machine that is maintained or operated in violation of sections
2 57-36-05.3, 57-36-05.4, or 57-36-06.1 must be confiscated by the tax commissioner
3 and forfeited to the state in accordance with chapter 29-31.1.

4 **SECTION 8. LEGISLATIVE MANAGEMENT STUDY - REDUCED HARM NICOTINE**

5 **PRODUCTS.** During the 2021-22 interim, the legislative management shall consider studying
6 reduced harm nicotine products. The study must include a review of "modified risk tobacco
7 products," as defined in section 387(k) of the federal Food, Drug, and Cosmetic Act [21 U.S.C.
8 387(k)], and a review of products that should be deemed reduced harm nicotine products based
9 on the product's potential for reducing tobacco-related diseases and the product's benefit to the
10 population as a whole, including benefits to both current and potential tobacco users. The study
11 also must evaluate how a reduction in the tax rate on reduced harm nicotine products might
12 benefit public health by encouraging the use of reduced harm nicotine products, rather than the
13 use of other products that potentially are more harmful. The legislative management shall report
14 its findings and recommendations, together with any legislation necessary to implement the
15 recommendations, to the sixty-eighth legislative assembly.