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Sixty-third
Legislative Assembly
of North Dakota

**FIRST ENGROSSMENT**
**with House Amendments**
**ENGROSSED SENATE BILL NO. 2106**

Introduced by

Finance and Taxation Committee

(At the request of the Tax Commissioner)

A BILL for an Act to create and enact sections 57-36-05.3, 57-36-05.4, and 57-36-06.1 of the North Dakota Century Code, relating to the operation of roll-your-own cigarette-making machines; to amend and reenact sections 57-36-01 and 57-36-33 of the North Dakota Century Code, relating to the definitions of cigarette and roll-your-own cigarette-making machine for tobacco products tax purposes; to provide a penalty; and to provide an effective date.

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

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

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

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

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
2. "Cigar" means any roll of tobacco wrapped in tobacco.
3. "Cigarette" means any roll for smoking made wholly or in part of tobacco <u>or processed tobacco</u> and encased in any material except tobacco. <u>"Cigarette" also means any product of a cigarette-making machine.</u>
4. <u>"Cigarette-making machine" means a machine used for commercial purposes to process tobacco into a roll or tube, formed or made from any material other than tobacco, at a production rate of more than five rolls or tubes per minute.</u>
5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, or other tobacco products in storage, for use or other consumption in this state.

~~5.~~<u>6.</u> "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products<u>, or any product of a cigarette-making machine</u>.

~~6.~~7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.

~~7.~~8. "Licensed dealer" means a dealer licensed under the provisions of this chapter.

~~8.~~9. "Licensed distributor" means a distributor licensed under the provisions of this chapter.

~~9.~~10. "Other tobacco products" means snuff and chewing tobacco.

~~10.~~11. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.

~~11.~~12. "Pipe tobacco" means any processed tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

~~12.~~13. "Sale" or "sell" applies to gifts, exchanges, and barter.

~~13.~~14. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.

~~14.~~15. "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other tobacco products for use or consumption in this state.

~~15.~~16. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, or other tobacco products.

**SECTION 2.** Section 57-36-05.3 of the North Dakota Century Code is created and enacted as follows:

**57-36-05.3. Use of cigarette-making machines - When allowed.**

A person may not maintain or operate in this state a cigarette-making machine unless that person:

1. Has a valid federal permit as a tobacco product manufacturer issued under 26 U.S.C. 5713; or
2. Uses the machine exclusively for personal purposes. A cigarette-making machine may be considered used exclusively for personal purposes only if the product resulting from the operation of the machine is consumed by the individual who owns the machine or

by other persons whose consumption of the product is incidental to the owner's personal use of the machine.

**SECTION 3.** Section 57-36-05.4 of the North Dakota Century Code is created and enacted as follows:

**57-36-05.4. Certain cigarette-making machines - Registration requirements.**

The following requirements apply to any cigarette-making machine:

1. A person may not maintain or operate a cigarette-making machine in this state unless the machine has been registered with the attorney general in the form and manner as prescribed by the attorney general. The person registering a machine under this section shall certify under penalties of perjury that all statements in the registration and in any attachments to the registration are true, accurate, and complete.
2. The registration expires three years from the date the machine is registered with the attorney general and must be renewed as provided under subsection 1.
3. The person registering the machine shall attach to the registration a copy of a valid federal permit issued to the person under 26 U.S.C. 5713 or an affidavit indicating that the machine will be used exclusively for personal purposes as described in section 57-36-05.3.
4. The registration required under this section immediately terminates if the federal permit is declared invalid, surrendered, or revoked, or any statement in the affidavit ceases to be true, correct, or complete.

**SECTION 4.** Section 57-36-06.1 of the North Dakota Century Code is created and enacted as follows:

**57-36-06.1. Cigarette-making machines - Requirements.**

A person operating or maintaining a cigarette-making machine who is a tobacco product manufacturer under Public Law 112-141 [126 Stat. 914; 26 U.S.C. 5702 et seq.] shall:

1. Maintain on the machine, in good working order, a tamper-proof counting device that records the number of all rolls or tubes processed on the machine.
2. Provide the tax commissioner access to the machine and its counting device at all reasonable times for verification and other tax administration purposes.
3. Pay any taxes required under chapter 57-36.

4. Comply with the provisions of chapter 51-25 pertaining to all cigarettes produced by the machine.
5. Comply with the ignition propensity requirements under chapter 18-13 with respect to all cigarettes produced by the machine.
6. Use only federal tax-paid roll-your-own tobacco or tobacco exempt from federal tax under 26 U.S.C. 5704(b).

**SECTION 5. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

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

Except as otherwise provided in this chapter~~, any~~:

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

**SECTION 6. EFFECTIVE DATE.** This Act becomes effective July 1, 2013.