

Introduced by

Senators Bekkedahl, Kannianen, Oehlke

Representatives Keiser, J. Nelson, Sanford

1 A BILL ~~for an Act to amend and reenact subsection 4 of section 51-32-04, sections 57-36-01,~~
2 ~~57-36-02, 57-36-03, 57-36-04, 57-36-05, 57-36-05.1, 57-36-09, 57-36-09.1, 57-36-14, 57-36-24,~~
3 ~~57-36-25, 57-36-26, 57-36-28, 57-36-29, 57-36-31, and 57-36-33 of the North Dakota Century~~
4 ~~Code, relating to tobacco product remote sale disclosure requirements and the excise tax on~~
5 ~~cigarettes and tobacco products; to repeal sections 57-36-06, 57-36-27, and 57-36-32 of the~~
6 ~~North Dakota Century Code, relating to taxation of cigarettes; to provide a penalty; and to~~
7 ~~provide an effective date.~~ for an Act to provide for a legislative management study of the taxation
8 of liquid nicotine and electronic smoking devices.

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

10 ~~— **SECTION 1. AMENDMENT.** Subsection 4 of section 51-32-04 of the North Dakota Century~~
11 ~~Code is amended and reenacted as follows: —~~
12 ~~— 4. — A prominent and clearly legible statement that cigarette sales are subject to tax under~~
13 ~~sections 57-36-06 and 57-36-32 section 57-36-25, 57-36-26, or 57-36-28, and an~~
14 ~~explanation of how the tax has been, or is to be, paid with respect to the delivery sale.~~
15 ~~— **SECTION 2. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is~~
16 ~~amended and reenacted as follows:~~
17 ~~— **57-36-01. Definitions.**~~
18 ~~— As used in this chapter, unless the context or subject matter otherwise requires:~~
19 ~~— 1. — "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.~~
20 ~~— 2. — "Cigar" means any roll of tobacco wrapped in tobacco.~~
21 ~~— 3. — "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed~~
22 ~~tobacco and encased in any material except tobacco. "Cigarette" The term also means~~
23 ~~any product of a cigarette-making machine.~~

- 1 ~~4. "Cigarette-making machine" means a machine used for commercial purposes to~~
2 ~~process tobacco into a roll or tube, formed or made from any material other than~~
3 ~~tobacco, at a production rate of more than five rolls or tubes per minute.~~
- 4 ~~5. "Consumer" means any person who has title to or possession of cigarettes, cigars,~~
5 ~~pipe tobacco, or other tobacco products in storage, for use or other consumption in~~
6 ~~this state.~~
- 7 ~~6. "Dealer" includes any person other than a distributor who is engaged in the business~~
8 ~~of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products,~~
9 ~~or any product of a cigarette-making machine.~~
- 10 ~~7. "Distributor" includes any person engaged in the business of producing or~~
11 ~~manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco~~
12 ~~products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco,~~
13 ~~or other tobacco products, for the purpose of distribution and sale thereof to dealers~~
14 ~~and retailers.~~
- 15 ~~8. "Electronic smoking device" means any device that may be used to deliver any~~
16 ~~aerosolized or vaporized substance, regardless of whether the substance contains~~
17 ~~nicotine, to the individual inhaling from the device, and includes an e-cigarette, e-cigar,~~
18 ~~e-pipe, vape pen, and e-hookah. The term includes any component, part, or accessory~~
19 ~~of the device, and any substance that may be aerosolized or vaporized by the device,~~
20 ~~regardless of whether any of these are sold separately. The term does not include:~~
- 21 ~~a. A cigarette as defined in section 51-25-01;~~
22 ~~b. A cigarette as defined in this section;~~
23 ~~c. A drug, device, or combination product, as those terms are defined in the federal~~
24 ~~Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved~~
25 ~~for sale by the United States food and drug administration; or~~
26 ~~d. A battery or battery charger if sold separately.~~
- 27 ~~9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.~~
- 28 ~~9.10. "Licensed distributor" means a distributor licensed under the provisions of this chapter.~~
- 29 ~~10. "Other tobacco products" means snuff and chewing tobacco.~~
- 30 ~~11. "Outlet" means each place of business from which tobacco products are sold.~~

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

3 ~~12.13.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
4 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
5 consumers as tobacco to be smoked in a pipe.

6 ~~13.14.~~ "Place of business" means a place where tobacco products are sold or where tobacco
7 products are manufactured, fabricated, stored, or kept for the purpose of sale or
8 consumption.

9 ~~15.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.

10 ~~14.16.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
11 placed in the mouth.

12 ~~15.17.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other
13 tobacco products for use or consumption in this state.

14 ~~16.18.~~ "Tobacco product" means any product that is made from or derived from tobacco, or
15 that contains nicotine whether natural or synthetic, and is intended for human
16 consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed,
17 dissolved, inhaled, or ingested by any other means. The term includes a cigarette,
18 cigar, pipe tobacco, chewing tobacco, snuff, snus, an electronic smoking device, and a
19 nicotine liquid container as defined in section 12.1-31-03.2. The term does not include
20 a drug, device, or combination product, as those terms are defined in the federal Food,
21 Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved for sale by
22 the United States food and drug administration.

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

25 ~~20.~~ "Wholesale purchase price" means the price at which a distributor purchases tobacco
26 products. The term includes the applicable federal excise tax, freight charges, and
27 packing costs, regardless of whether those costs were included in the purchase price.

28 ~~SECTION 3. AMENDMENT.~~ Section 57-36-02 of the North Dakota Century Code is
29 amended and reenacted as follows:

~~57-36-02. Distributors and dealers to be licensed.~~

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

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

~~a. A distributor's license does not authorize the distributor to make retail sales.~~

~~b. A distributor may not be granted a dealer's license unless the distributor has possessed a distributor's license issued under this chapter for at least one year before filing an application for a dealer's license.~~

~~c. Notwithstanding subdivision b, a person that can demonstrate to the satisfaction of the attorney general that the person has been engaged, in the normal course of business, in the sale of electronic smoking devices before July 1, 2018, may be granted a dealer's license.~~

~~d. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general.~~

~~3. A separate application and license is required for each outlet or place of business operated or maintained by a dealer in this state.~~

~~a. A dealer may not sell any tobacco products purchased from a distributor not licensed under this chapter.~~

1 ~~_____ b. A person issued a dealer's license under this chapter may not be issued a~~
2 ~~_____ distributor's license.~~

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

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

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

12 ~~_____ 7. Each license issued must be prominently displayed on the premises place of business~~
13 ~~_____ or outlet covered by the license.~~

14 ~~_____ **SECTION 4. AMENDMENT.** Section 57-36-03 of the North Dakota Century Code is~~
15 ~~_____ amended and reenacted as follows:~~

16 ~~_____ **57-36-03. License.**~~

17 ~~_____ Each license issued under the provisions of this chapter is valid until the first thirtieth day of~~
18 ~~_____ July subsequent to June after the date of issuance unless sooner revoked by the attorney~~
19 ~~_____ general or unless the business with respect to which such the license was issued is transferred,~~
20 ~~_____ in either of which cases the holder of the license shall return it immediately to the attorney~~
21 ~~_____ general. The license issued is annual and runs from July first of each year to June thirtieth of~~
22 ~~_____ the following year.~~

23 ~~_____ **SECTION 5. AMENDMENT.** Section 57-36-04 of the North Dakota Century Code is~~
24 ~~_____ amended and reenacted as follows:~~

25 ~~_____ **57-36-04. Revocation of license -- Penalty.**~~

26 ~~_____ The attorney general may revoke the license of any dealer or distributor for failure to comply~~
27 ~~_____ with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax~~
28 ~~_____ commissioner or the attorney general. When a license has been legally revoked, no license~~
29 ~~_____ may be issued again to the licensee for a period of one year thereafter, or any other state or~~
30 ~~_____ federal law applicable to the sale of tobacco products. A person may not sell any cigarettes,~~
31 ~~_____ cigarette papers, snuff, cigars, or tobacco afterproducts while that person's license has been is~~

1 ~~revoked as provided in this chapter. A new license may not be issued to a dealer or distributor~~
2 ~~for one year following the revocation of a previous license.~~

3 ~~— **SECTION 6. AMENDMENT.** Section 57-36-05 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~— **57-36-05. Unlawful to sell without license.**~~

6 ~~— 1. A dealer or distributorperson may not sell, offer for sale, or possess with the intent to~~
7 ~~sell, cigarettes, cigarette papers, snuff, cigars, or tobacco products in this state at~~
8 ~~wholesale or at retail unless a licensethe person has been issued to that dealer or~~
9 ~~distributor asa dealer's license as prescribed by this chapter, and a:~~

10 ~~— 2. A person may not manufacture, distribute, produce, fabricate, import, sell, offer for sale~~
11 ~~at wholesale, or possess with the intent to sell at wholesale, any cigarettes, cigarette~~
12 ~~papers, snuff, cigars, or tobacco without suchproducts in this state unless the person~~
13 ~~has been issued a distributor's license as prescribed by this chapter.~~

14 ~~— **SECTION 7. AMENDMENT.** Section 57-36-05.1 of the North Dakota Century Code is~~
15 ~~amended and reenacted as follows:~~

16 ~~— **57-36-05.1. Sale of imported cigarettestobacco products - When prohibited.**~~

17 ~~— A dealer, distributor, or other person may not sell or distribute in this state any tobacco~~
18 ~~product previously exported from the United States.~~

19 ~~— **SECTION 8. AMENDMENT.** Section 57-36-09 of the North Dakota Century Code is~~
20 ~~amended and reenacted as follows:~~

21 ~~— **57-36-09. Records to be kept by distributors and reports made - Penalty.**~~

22 ~~— Distributors~~

23 ~~— 1. A distributor shall keep records and make reports relating to purchases and sales of~~
24 ~~cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products made by~~
25 ~~them, and must be punished for failure so to do, as follows:~~

26 ~~— 1. the distributor. A distributor that does not comply with the requirements in this section~~
27 ~~is subject to the penalties imposed in subsection 5.~~

28 ~~— 2. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco,~~
29 ~~or other tobacco products shall keep and preserve at each licensed place of business~~
30 ~~or outlet complete and accurate records for that place of business or outlet for one~~
31 ~~yearthree years. The records must include all invoices of cigarettes, cigarette papers,~~

1 cigars, pipe tobacco, or other tobacco products ~~held, purchased, manufactured,~~
2 ~~fabricated, or brought in or caused to be brought in from outside the state by the~~
3 ~~distributor and. The distributor shall permit the state tax commissioner, and assistants,~~
4 ~~authorized agents, or representatives of the state tax commissioner, to inspect and~~
5 ~~examine all taxable merchandise, invoices, receipts, books, papers, and memoranda~~
6 ~~as may be deemed records deemed necessary by the state tax commissioner, and~~
7 ~~assistants, authorized agents, or representatives of the state tax commissioner in~~
8 ~~determining the amount of the tax as may be yet remaining due. Each person selling or~~
9 ~~otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, or other~~
10 ~~tobacco products as a distributor shall keep a record of all sales or other disposition of~~
11 ~~tobacco products made within the state showing the name and address of the~~
12 ~~purchaser and or recipient, the date of sale or disposition of the tobacco products, and~~
13 ~~the wholesale purchase price per unit. For sales of other tobacco products, the~~
14 ~~records must also include the net weight in ounces, as listed by the manufacturer.~~

15 ~~2.3.~~ On or before the fifteenth day of each month, each licensed distributor, on such form
16 ~~as forms prescribed by the state tax commissioner shall prescribe, shall report to the~~
17 ~~tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe~~
18 ~~tobacco, or other tobacco products made from or to any persons either within or~~
19 ~~without this state during the preceding month. For sales of other tobacco products,~~
20 ~~each licensed distributor shall also report to the tax commissioner the net weight in~~
21 ~~ounces, as listed by the manufacturer the wholesale purchase price and quantity of~~
22 ~~each tobacco product produced, fabricated, or manufactured in this state or brought or~~
23 ~~caused to be brought into this state for sale during the preceding month.~~

24 ~~4.~~ The tax levied by this chapter is payable monthly and must be remitted to the tax
25 ~~commissioner by each licensed distributor on or before the fifteenth day of the month~~
26 ~~following the monthly period.~~

27 ~~3.5.~~ Any person failing to file any prescribed form or return or to pay any tax within the time
28 ~~required or permitted by this section is subject to a penalty of five percent of the~~
29 ~~amount of tax due or five dollars, whichever is greater, plus interest of one percent of~~
30 ~~the tax per month or fraction of a month of delay except the first month after the return~~
31 ~~or the tax became due. The tax commissioner, if satisfied that the delay was~~

1 excusable, may waive all or any part of the penalty. The penalty must be paid to the
2 tax commissioner and disposed of in the same manner as are other receipts under this
3 chapter.

4 ~~— SECTION 9. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is~~
5 ~~amended and reenacted as follows:~~

6 ~~— 57-36-09.1. Warehouse -- Record of deliveries and shipments.~~

7 ~~— Records of all deliveries of shipments of cigarettes and snuff tobacco products from a~~
8 ~~licensed public warehouse outlet or place of business to persons within this state must be kept~~
9 ~~by the warehouse and be available to the tax commissioner for inspection. They~~The records
10 ~~must show the name and address of the consignee, the date, the quantity and wholesale~~
11 ~~purchase price of cigarettes, snuff, cigars, or other tobacco products delivered, and such any~~
12 ~~other information as required by the tax commissioner may require. These records must be~~
13 ~~preserved for one year~~three years ~~from the date of delivery of the cigarettes, snuff, cigars, or~~
14 ~~other tobacco products.~~

15 ~~— SECTION 10. AMENDMENT. Section 57-36-14 of the North Dakota Century Code is~~
16 ~~amended and reenacted as follows:~~

17 ~~— 57-36-14. Procedure in case of seizure -- Determination -- Judgment.~~

18 ~~— The procedure in case of seizure of cigarettes, equipment, or any other product~~tobacco
19 ~~products taxed pursuant to this chapter must be as follows:~~

20 ~~— 1. — Upon~~Within two days after ~~the seizure of any cigarettes and within two days thereafter~~
21 ~~tobacco products, the officer making such~~the ~~seizure shall deliver an inventory of the~~
22 ~~property seized to the person from whom such~~the ~~seizure was made, if known, and~~
23 ~~shall file a copy thereof~~of the inventory ~~with the tax commissioner.~~

24 ~~— 2. — Within ten days after the date of the service of such~~the ~~inventory, the person from~~
25 ~~whom the seizure was made, or any other person claiming an interest in the property~~
26 ~~seized, may file a demand for a judicial determination of the question as to whether~~
27 ~~such~~the ~~property was, or lawfully is, subject to seizure and forfeiture. Thereupon the~~
28 ~~tax commissioner, within~~Within thirty days after filing the demand for a judicial
29 ~~determination, the tax commissioner shall institute an action in the district court of the~~
30 ~~county where such~~the ~~seizure was made to determine the issue of forfeiture. Such~~The
31 ~~action must be brought in the name of the state of North Dakota and must be~~

1 prosecuted by the state's attorney, the tax commissioner, or the attorney general. The
2 district court shall hear suchthe action as a court case and shall try and determine the
3 issues of law and fact involved.

4 ~~3.~~ In caseself a judgment of forfeiture is entered, the tax commissioner, unless the
5 judgment is stayed pending an appeal to the supreme court, as soon as convenient,
6 shall destroy the forfeited property unless the judgment is stayed pending an appeal.

7 ~~4.~~ In case a demand for a judicial determination is made and no action is commenced as
8 provided in this section, suchthe property must be released by the tax commissioner
9 and redelivered to the person entitled thereto to the property.

10 ~~5.~~ In the event that no demand for judicial determination is made, the seized property
11 must be deemed forfeited to the state by operation of law, and the tax commissioner
12 shall destroy the sameproperty.

13 ~~6.~~ In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or
14 other means of transportation pursuant to the provisions of this chapter, the officer
15 making the seizure shall file an inventory, and upon a Within thirty days after a
16 demand for a judicial determination as provided in this section, the tax commissioner,
17 within thirty days thereafter, shall commence an action in the district court of the
18 county where suchthe seizure was made to declare a forfeiture of suchthe vehicle or
19 other means of transportation, and suchthe action must be heard and determined as
20 other forfeiture actions instituted under this chapter.

21 ~~7.~~ Wheneverif the tax commissioner is satisfied that any person from whom property is
22 seized was acting in good faith and without intent to evade the revenue provisions of
23 this chapter, the tax commissioner shall release the property seized without further
24 legal proceedings.

25 ~~**SECTION 11. AMENDMENT.**~~ Section 57-36-24 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 ~~**57-36-24. Exemptions.**~~

28 ~~All gift cigarettes, snuff, cigars, and other tobacco products, not for resale, which are given~~
29 ~~to the North Dakota veterans' home or the North Dakota state hospital for distribution to the~~
30 ~~occupants thereof, are exempt from the excise taxes levied under this chapter.~~

1 ~~SECTION 12. AMENDMENT.~~ Section 57-36-25 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 ~~57-36-25. Cigars and pipe tobacco~~Tobacco products ~~Excise tax on wholesale~~
4 ~~purchase price~~ ~~Other tobacco products~~ ~~Excise tax on weight~~ ~~Penalty~~ ~~Reports~~
5 ~~Collection~~ ~~Allocation of revenue.~~

6 ~~1.~~ There is hereby levied and assessed upon all cigars and pipe tobacco products sold in
7 this state an excise tax at the rate of twenty-eight percent of the wholesale purchase
8 price at which such cigars and pipe ~~the tobacco products~~ are purchased by distributors.
9 For the purposes of this section, the term "wholesale purchase price" shall
10 mean ~~means~~ the established price for which a manufacturer sells cigars or pipe
11 tobacco products to a distributor exclusive of any discount or other reduction. The tax
12 imposed by this section is imposed at the time the distributor:

13 ~~a.~~ Brings or causes to be brought into the state from outside the state, tobacco
14 products for sale;

15 ~~b.~~ Makes, manufactures, or fabricates tobacco products in this state for sale in this
16 state; or

17 ~~c.~~ Ships or transports tobacco products to dealers in this state, to be sold by those
18 dealers.

19 ~~2.~~ There is levied and assessed upon all other tobacco products sold in this state an
20 excise tax at the following rates:

21 ~~a.~~ Upon each can or package of snuff, sixty cents per ounce and a proportionate tax
22 at the like rate on all fractional parts of an ounce.

23 ~~b.~~ On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like
24 rate on all fractional parts of an ounce.

25 For purposes of this subsection, the tax on other tobacco products is computed based
26 on the net weight as listed by the manufacturer ~~For tobacco products a retailer~~
27 ~~combines or mixes with any other product, the excise tax must be paid by the retailer~~
28 ~~at a rate of twenty-eight percent of the price at which the retailer sells the combined or~~
29 ~~mixed product to a consumer at the point of sale, exclusive of any discount or~~
30 ~~reduction.~~

1 ~~3. The proceeds of the taxes imposed under this section, together with such~~the forms of
2 ~~return and in accordance with such~~the rules and regulations as prescribed by the tax
3 ~~commissioner may prescribe, shall, must~~ be remitted to the tax commissioner by the
4 distributor on a calendar quarterly basis on or before the fifteenth day of the month
5 following the quarterly period for which paid. The tax commissioner shall, however,
6 have authority to prescribe monthly returns upon the request of the licensee distributor
7 and ~~such~~the returns accompanied with remittance shall ~~shall~~must be filed before the
8 fifteenth day of the month following the month for which the returns are filed.

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

17 ~~5. All moneys received by the tax commissioner under the provisions of this section~~
18 ~~shall must~~ be transmitted to the state treasurer at the end of each month and deposited
19 in the state treasury to the credit of the general fund.

20 ~~**SECTION 13. AMENDMENT.** Section 57-36-26 of the North Dakota Century Code is~~
21 ~~amended and reenacted as follows:~~

22 ~~**57-36-26. Cigars, pipe tobacco, and other tobacco**~~**Tobacco products - Excise tax**
23 ~~**payable by dealers - Reports - Penalties - Collection - Allocation of revenue.**~~

24 ~~1. There is levied and assessed, upon all cigars and pipe tobacco~~products purchased in
25 another state and brought into this state by a dealer for the purpose of sale at retail,
26 an excise tax at the rate of twenty-eight percent of the wholesale purchase price and,
27 upon all other tobacco products purchased in another state and ~~provided in section~~
28 ~~57-36-25, at the time the products are~~ brought into this state by a dealer for the
29 purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the
30 time the products were brought into this state. For the purposes of this section, the
31 term "wholesale purchase price" means the established price for which a manufacturer

1 sells cigars or pipe tobacco to a distributor exclusive of any discount or other
2 reduction. However, the dealer may elect to report and remit the tax on the cost price
3 of the products to the dealer rather than on the wholesale purchase price. The
4 proceeds of the tax, together with the forms of return and in accordance with any rules
5 and regulations the tax commissioner may prescribe, must be remitted to the tax
6 commissioner by the dealer on a monthly basis on or before the fifteenth day of the
7 month following the monthly period for which it is paid. The tax commissioner shall
8 have the authority to place any dealer on an annual remittance basis when in the
9 judgment of the tax commissioner the operations of the dealer merit that remittance
10 period. In addition, ~~the~~The tax commissioner shall have the authority to ~~may~~ permit the
11 consolidation of the filing of a dealer's return when ~~if~~ the dealer has more than one
12 location and thereby would be required to file more than one return.

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

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

1 — ~~4.~~ All moneys received by the tax commissioner under the provisions of this section must
2 be transmitted to the state treasurer at the end of each month and deposited in the
3 state treasury to the credit of the general fund.

4 — **SECTION 14. AMENDMENT.** Section 57-36-28 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 — ~~57-36-28. Consumer's use tax -- Cigars, pipe tobacco, and other tobacco~~Tobacco
7 products -- Reports -- Remittances.

8 — ~~1.~~ A tax is imposed upon the use or storage by consumers of cigars, pipe tobacco, and
9 other tobacco products in this state, and upon those consumers, at the rates indicated
10 in section 57-36-25.

11 — ~~2.~~ This tax does not apply if the tax imposed by section 57-36-25 or 57-36-26 has been
12 paid and it does not apply to cigars, pipe tobacco, or other tobacco products exempt
13 under section 57-36-24.

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 cigars, pipe tobacco,
16 or other tobacco products for use or storage in this state, upon which products the tax
17 imposed by either section 57-36-25 or 57-36-26 has not been paid, shall file a return
18 with the tax commissioner showing the quantity of such the products so acquired. For
19 sales of other tobacco products, the return must also include the net weight in ounces,
20 as listed by the manufacturer. The return must be made upon a form furnished and
21 prescribed by the tax commissioner and must contain such other information as the
22 tax commissioner may require. The return must be accompanied by a remittance for
23 the full unpaid tax liability shown by it the return.

24 — ~~4.~~ As soon as practicable after any return is filed, the tax commissioner shall examine the
25 return and correct it, if necessary, according to the tax commissioner's best judgment
26 and information.

27 — ~~5.~~ If any consumer required to pay the tax levied by this section fails to file a return or
28 remit the tax as required, the tax commissioner shall make an assessment of tax
29 against the consumer according to the tax commissioner's best judgment and
30 information.

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

4 — **SECTION 15. AMENDMENT.** Section 57-36-29 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 — **57-36-29. Correction of errors.**

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

11 — 2. Whenever a distributor destroys cigarettes, cigars, pipe tobacco, or other tobacco
12 products accidentally, or intentionally, because of staleness or other unfitness for sale,
13 a credit or refund must be given to the wholesaler distributor under the terms and
14 conditions prescribed by the tax commissioner.

15 — **SECTION 16. AMENDMENT.** Section 57-36-31 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 — **57-36-31. Transfer and allocation of revenues – Appropriation.**

18 — 1. All moneys received by the tax commissioner under the provisions of this chapter must
19 be transmitted to the state treasurer at the end of each month and deposited in the
20 state treasury to the credit of the general fund, except as hereinafter provided.

21 — 2. All moneys received from the levy and assessment of one and one-half mills on each
22 of the classes of cigarettes provided in One percent of all moneys received by the tax
23 commissioner under the provisions of this chapter are appropriated and must be
24 distributed on or before the thirtieth day of June and the thirty-first day of December of
25 each year on a per capita basis to the incorporated cities for such ~~the~~ purposes as are
26 now or may be hereafter authorized by law, the allocation to be based upon the
27 population of each incorporated city according to the last official federal census, or the
28 census taken in accordance with the provisions of chapter 40-02 in the case of a city
29 incorporated subsequent to the last federal census, and warrants must be drawn
30 payable to the treasurers of such ~~those~~ cities.

1 ~~2. All remaining moneys must be transmitted to the state treasurer at the end of each~~
2 ~~month and deposited in the state treasury to the credit of the general fund.~~

3 ~~SECTION 17. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~57-36-33. Penalties for violation of chapter.~~

6 ~~Except as otherwise provided in this chapter:~~

7 ~~1. Any person who violates any provision of this chapter is guilty of a class A~~
8 ~~misdemeanor.~~

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

16 ~~SECTION 18. REPEAL. Sections 57-36-06, 57-36-27, and 57-36-32 of the North Dakota~~
17 ~~Century Code are repealed.~~

18 ~~SECTION 19. EFFECTIVE DATE. This Act is effective for taxable events occurring after~~
19 ~~June 30, 2019.~~

20 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TAXATION OF LIQUID NICOTINE**
21 **AND ELECTRONIC SMOKING DEVICES.** During the 2019-20 interim, the legislative
22 management shall consider studying the feasibility and desirability of applying an alternative or
23 additional tax on liquid nicotine and electronic smoking devices. The study must include
24 consideration of the current method of taxation applied to these products, the methods of
25 taxation applied in other states, and the fiscal impact of applying an alternative or additional
26 method of taxation. The legislative management shall report its findings and recommendations,
27 together with any legislation required to implement the recommendations, to the sixty-seventh
28 legislative assembly.