

Sixty-sixth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2193

Introduced by

Senators Wardner, Bekkedahl, Meyer

Representatives Lefor, Schreiber-Beck, Zubke

1 A BILL for an Act to amend and reenact sections 40-57.3-01, 40-57.3-01.1, and 40-57.3-02,  
2 subsections 21, 22, and 23 of section 57-39.2-01, subdivision e of subsection 1 of section  
3 57-39.2-02.1, and subsection 22 of section 57-39.2-04 of the North Dakota Century Code,  
4 relating to city lodging and restaurant tax and visitors' committee membership and references to  
5 tourist court accommodations.

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

7 **SECTION 1. AMENDMENT.** Section 40-57.3-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **40-57.3-01. City lodging tax - Imposition - Amount - Disposition.**

10 The governing body of any city ~~may~~, by ordinance, may impose a city tax, not to exceed two  
11 percent, upon the gross receipts of retailers on the leasing or renting of hotel, motel, or ~~tourist-~~  
12 ~~court~~other accommodations within the city for periods of ~~less~~fewer than thirty consecutive  
13 calendar days or one month. The tax imposed by this section ~~shall~~must be in addition to the  
14 state sales tax on rental accommodations provided in chapter 57-39.2 and any city ~~which~~that  
15 imposes the tax upon gross receipts described in this section shall deposit all proceeds in the  
16 city visitors' promotion fund. Moneys deposited in the city visitors' promotion fund ~~shall~~must be  
17 spent only as provided in this chapter. This chapter applies to all cities and does not limit the  
18 authority of a home rule city to levy any taxes authorized by other provisions of law.

19 **SECTION 2. AMENDMENT.** Section 40-57.3-01.1 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **40-57.3-01.1. City lodging and restaurant tax - Imposition - Amount - Disposition -**  
22 **Referral.**

23 In addition to the tax under section 40-57.3-01, the governing body of any city ~~may~~, by  
24 ordinance, may impose a city tax, at a rate not to exceed one percent, upon the gross receipts

1 of retailers on the leasing or renting of hotel, motel, or ~~tourist court~~other accommodations within  
2 the city for periods of ~~less~~fewer than thirty consecutive calendar days or one month and upon  
3 the gross receipts of a restaurant from any sales of prepared food or beverages, not including  
4 alcoholic beverages for consumption off the premises where purchased, which are subject to  
5 state sales taxes. For purposes of this section, "restaurant" means any place where food is  
6 prepared and intended for individual portion service for consumption on or off the premises and  
7 "prepared" includes heating prepackaged food. Accommodations, food, and beverages may all,  
8 each, or in any combination be ~~subjected~~subject to the tax under this section, if all items in any  
9 category which are taxable under state law are taxable, except as otherwise provided in this  
10 section. The tax imposed under this section is in addition to state sales taxes on rental  
11 accommodations and restaurant sales and any city ~~which~~that imposes the tax under this section  
12 shall deposit all proceeds in the city visitors' promotion capital construction fund. Moneys  
13 deposited in the city visitors' promotion capital construction fund ~~shall~~must be spent only as  
14 provided in this chapter. An ordinance adopted under this section may not become effective  
15 sooner than sixty days after it is adopted by the governing body of the city. The provisions of  
16 chapter 40-12 with regard to referral of ordinances apply to an ordinance adopted under this  
17 section except that a petition to refer an ordinance adopted under this section must be  
18 presented to the governing body of the municipality before four p.m. on the sixty-fourth day after  
19 the ordinance described in the petition was adopted by the governing body of the municipality.  
20 Revenues from a tax imposed under this section may not be pledged under section 40-57.3-03  
21 to payment of bonds or evidences of indebtedness until after the time has passed for filing a  
22 referral petition against an ordinance under this section or, if a referral petition is filed, until after  
23 the referral petition has been submitted to the vote of the electors of the municipality.

24 **SECTION 3. AMENDMENT.** Section 40-57.3-02 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **40-57.3-02. City visitors' promotion fund - City visitors' promotion capital**  
27 **construction fund - Visitors' committee - Establishment - Purpose.**

28 The governing body of any city ~~which~~that imposes a city tax pursuant to section 40-57.3-01,  
29 40-57.3-01.1, or 40-57.3-01.2 ~~shall~~, as appropriate, shall establish a city visitors' promotion  
30 fund; and a city visitors' promotion capital construction fund; ~~and a visitors' committee. The~~  
31 ~~visitors' committee. The local destination marketing organization or visitors' committee shall~~

1 serve as an advisory committee to the city governing body in administering the proceeds from  
2 the taxes available to the city under this chapter. The moneys in the visitors' promotion fund  
3 must be used generally to promote, encourage, and attract visitors to come to the city and use  
4 the travel and tourism facilities within the city. The moneys in the visitors' promotion capital  
5 construction fund must be used generally for tourism or the purchase, equipping, improving,  
6 construction, maintenance, repair, and acquisition of buildings or property consistent with visitor  
7 attraction or promotion. The advisory committee shall consist of five members appointed by the  
8 governing body of the city consists of the local destination marketing organization or the visitors'  
9 committee. These appointees shall serve without compensation, except for reimbursement for  
10 necessary expenses. Committee members shall serve for a term of four years, except that two  
11 of those initially appointed must be appointed for an initial term of two years. Vacancies must be  
12 filled in the same manner as the initial appointment. The committee shall elect a chairperson  
13 and vice chairperson from among its members to serve for a term of two years.

14 **SECTION 4. AMENDMENT.** Subsections 21, 22, and 23 of section 57-39.2-01 of the North  
15 Dakota Century Code are amended and reenacted as follows:

16 21. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other  
17 than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale,  
18 including the leasing or renting, to a consumer or to any person for any purpose, other  
19 than for processing or for resale, of tangible personal property; the sale of steam, gas,  
20 and communication service, excluding internet access service, to retail consumers or  
21 users; the sale of vulcanizing, recapping, and retreading services for tires; the  
22 ordering, selecting, or aiding a customer to select any goods, wares, or merchandise  
23 from any price list or catalog, which the customer might order, or be ordered for such  
24 customer to be shipped directly to such customer; the sale or furnishing of hotel,  
25 motel, or ~~tourist court~~ other accommodations, tickets, or admissions to any place of  
26 amusement, athletic event, or place of entertainment; and the sales of magazines and  
27 other periodicals. By the term "processing" is meant any tangible personal property,  
28 including containers which it is intended, by means of fabrication, compounding,  
29 manufacturing, producing, or germination shall become an integral or an ingredient or  
30 component part of other tangible personal property intended to be sold ultimately at  
31 retail. The sale of an item of tangible personal property for the purpose of

1 incorporating it in or attaching it to real property must be considered as a sale of  
2 tangible personal property for a purpose other than for processing; the delivery of  
3 possession within the state of North Dakota of tangible personal property by a  
4 wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota  
5 retail sales tax permit or to a person who by contract incorporates such tangible  
6 personal property into, or attaches it to, real property situated in another state may not  
7 be considered a taxable sale if such delivery of possession would not be treated as a  
8 taxable sale in that state. As used in this subsection, the word "consumer" includes  
9 any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar  
10 institution that furnishes services to any patient or occupant. The sale of an item of  
11 tangible personal property to a person under a finance leasing agreement over the  
12 term of which the property will be substantially consumed must be considered a retail  
13 sale if the purchaser elects to treat it as such by paying or causing the transferor to  
14 pay the sales tax thereon to the commissioner on or before the last day on which  
15 payments may be made without penalty as provided in section 57-39.2-12.

16 22. "Retailer" or "seller" includes every person engaged in the business of leasing or  
17 renting hotel, motel, or ~~tourist court~~other accommodations, and every person engaged  
18 in the business of selling tangible goods, wares, or merchandise at retail, or furnishing  
19 of steam, gas, and communication services, excluding internet access service, or  
20 tickets or admissions to places of amusement, entertainment, and athletic events, or  
21 magazines or other periodicals; and includes any person as herein defined who by  
22 contract or otherwise agrees to furnish for a consideration a totally or partially finished  
23 product consisting in whole or in part of tangible personal property subject to the sales  
24 tax herein provided, and all items of tangible personal property entering into the  
25 performance of such contract as a component part of the product agreed to be  
26 furnished under said contract shall be subject to the sales tax herein provided and the  
27 sales tax thereon shall be collected by the contractor from the person for whom the  
28 contract has been performed in addition to the contract price agreed upon, and shall  
29 be remitted to the state in the manner provided in this chapter; and shall include the  
30 state or any municipality furnishing steam, gas, or communication service to members  
31 of the public in its proprietary capacity. For the purpose of this chapter, retailer shall

1           also include every clerk, auctioneer, agent, or factor selling tangible personal property  
2           owned by any other retailer. A retailer also includes every person who engages in  
3           regular or systematic solicitation of a consumer market in this state by the distribution  
4           of catalogs, periodicals, advertising fliers, or other advertising, or by means of print,  
5           radio or television media, by mail, telegraphy, telephone, computer database, cable,  
6           optic, microwave, or other communication system.

7        23. "Sale" means any transfer of title or possession, exchange or barter, conditional or  
8           otherwise, in any manner or by any means whatever, for a consideration, and includes  
9           the furnishing or service of steam, gas, or communication, excluding internet access  
10          service, the furnishing of hotel, motel, or ~~tourist court~~other accommodations, the  
11          furnishing of tickets or admissions to any place of amusement, athletic event, or place  
12          of entertainment, and sales of magazines and other periodicals. Provided, the words  
13          "magazines and other periodicals" as used in this subsection do not include  
14          newspapers nor magazines or periodicals that are furnished free by a nonprofit  
15          corporation or organization to its members or because of payment by its members of  
16          membership fees or dues.

17        **SECTION 5. AMENDMENT.** Subdivision e of subsection 1 of section 57-39.2-02.1 of the  
18        North Dakota Century Code is amended and reenacted as follows:

19           e.    The leasing or renting of a hotel or motel room or ~~tourist court~~other  
20           accommodations.

21        **SECTION 6. AMENDMENT.** Subsection 22 of section 57-39.2-04 of the North Dakota  
22        Century Code is amended and reenacted as follows:

23        22.    Gross receipts from the leasing or renting of manufactured homes, modular living  
24           units, or sectional homes, whether or not placed on a permanent foundation, for  
25           residential housing for periods of thirty or more consecutive days and the gross  
26           receipts from the leasing or renting of a hotel or motel room or ~~tourist court~~other  
27           accommodations occupied by the same person or persons for residential housing for  
28           periods of thirty or more consecutive days.