

SENATE BILL NO. 2190

Introduced by

Senators Bekkedahl, Oban, K. Roers

Representatives Keiser, Klemin, Mitskog

1 A BILL for an Act to create and enact a new section to chapter 57-36 of the North Dakota
2 Century Code, relating to tobacco product shipping; to amend and reenact sections 57-36-01
3 and 57-36-33 of the North Dakota Century Code, relating to the definition of tobacco products;
4 to repeal chapter 51-32 of the North Dakota Century Code, relating to remote sales of tobacco
5 products; and to provide a penalty.

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

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

9 **57-36-01. Definitions.**

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

- 11 1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
- 12 2. "Cigar" means any roll of tobacco wrapped in tobacco.
- 13 3. "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed
14 tobacco and encased in any material except tobacco. ~~"Cigarette"~~The term also means
15 any product of a cigarette-making machine.
- 16 4. "Cigarette-making machine" means a machine used for commercial purposes to
17 process tobacco into a roll or tube, formed or made from any material other than
18 tobacco, at a production rate of more than five rolls or tubes per minute.
- 19 5. "Consumer" means any person who has title to or possession of cigarettes, cigars,
20 pipe tobacco, or other tobacco products in storage, for use or other consumption in
21 this state.
- 22 6. "Dealer" includes any person other than a distributor who is engaged in the business
23 of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products,
24 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, or other tobacco
3 products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco,
4 or other tobacco products, for the purpose of distribution and sale thereof to dealers
5 and retailers.
- 6 8. "Electronic smoking device" means a device that may be used to deliver an
7 aerosolized, vaporized, or heated substance containing nicotine, regardless of
8 whether the nicotine is natural or synthetic, to an individual inhaling from the device,
9 and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and e-hookah. The
10 term includes any substance containing nicotine, regardless of whether the nicotine is
11 natural or synthetic, that may be aerosolized, vaporized, or heated by the device,
12 regardless of whether the device is sold separately. The term does not include:
- 13 a. A cigarette as defined in section 51-25-01;
14 b. A cigarette as defined in this section;
15 c. A drug, device, or combination product, as those terms are defined in the federal
16 Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved
17 for sale by the United States food and drug administration; or
18 d. A battery or battery charger when sold separately.
- 19 9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 20 ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 21 ~~40-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- 22 ~~44-12.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
23 company, trust, or association however formed.
- 24 ~~42-13.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
25 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
26 consumers as tobacco to be smoked in a pipe.
- 27 ~~43-14.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- 28 ~~44-15.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
29 placed in the mouth.
- 30 ~~45-16.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other
31 tobacco products for use or consumption in this state.

1 ~~16-17.~~ "Tobacco product" means any product that is made from or derived from tobacco, or
2 that contains nicotine whether natural or synthetic, and is intended for human
3 consumption or is likely to be consumed, whether aerosolized, vaporized, smoked,
4 heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means. The
5 term includes a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, an
6 electronic smoking device, and a nicotine liquid container as defined in section
7 12.1-31-03.2. The term does not include a drug, device, or combination product, as
8 those terms are defined in the federal Food, Drug, and Cosmetic Act [52 Stat. 1040;
9 21 U.S.C. 301 et seq.], approved for sale by the United States food and drug
10 administration.

11 18. "Use" means the exercise of any right or power incidental to the ownership or
12 possession of cigarettes, cigars, pipe tobacco, or other tobacco products.

13 **SECTION 2.** A new section to chapter 57-36 of the North Dakota Century Code is created
14 and enacted as follows:

15 **Shipping tobacco products to consumers prohibited.**

16 The shipping of tobacco products to any consumer in the state is prohibited, whether the
17 seller is located within or outside the state. The sale of tobacco products to any consumer in this
18 state only may be made by face-to-face over-the-counter retail sales transactions.

19 **SECTION 3. AMENDMENT.** Section 57-36-33 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **57-36-33. Penalties for violation of chapter.**

22 Except as otherwise provided in this chapter:

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

1 **SECTION 4. REPEAL.** Chapter 51-32 of the North Dakota Century Code is repealed.