

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.

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- 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 ~~10-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- 22 ~~11-12.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
23 company, trust, or association however formed.
- 24 ~~12-13.~~ "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 ~~13-14.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.
- 28 ~~14-15.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
29 placed in the mouth.
- 30 ~~15-16.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other
31 tobacco products for use or consumption in this state.

1 46-17. "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. **This section**
19 **does not apply to cigar sales.**

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

22 **57-36-33. Penalties for violation of chapter.**

23 Except as otherwise provided in this chapter:

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

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1 must be confiscated by the tax commissioner and forfeited to the state in accordance
2 with chapter 29-31.1.

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 REPEAL.** Chapter 51-32 of the North Dakota Century Code is repealed.

Senate Industry Business and Labor Committee
SB 2190
January 20, 2021

Honorable Chairman Klein and Committee Members:

Good morning. I am Senator Brad Bekkedahl and I am the prime sponsor of SB 2190. Although I will defer to some of the folks who helped work on this bill to answer specific questions you may have about this bill's details, I want to take a moment to explain my support for SB 2190.

Background

When North Dakota's youth are asked about how they get their tobacco products, particularly electronic smoking devices, they often respond that they "get them on the internet."

What the Bill Does

SB 2189 does two things. First, the bill defines "tobacco products" to include electronic smoking devices. Second, the bill prohibits the shipping of tobacco products to any consumer in the state and requires that all sales must be made by face-to-face retail sales transactions.

Why I Support the Bill

This bill is about public health and stopping a lifetime of addiction and tobacco related disease before it starts. In North Dakota, over 33.1% of high school students report using e-cigarettes, 8.3% report using cigarettes, and 7.4% report using cigars.¹

¹ https://www.tobaccofreekids.org/problem/toll-us/north_dakota

Internet retailers of tobacco products often skirt laws designed to prevent brick-and-mortar retailers from selling to young people. While many online retailers claim to verify age by checking customers' IDs at purchase and delivery, effective compliance monitoring and enforcement is difficult.² Moreover, studies indicate that these age-verification systems are largely ineffective at curtailing youth access to tobacco products via the internet.³

Conclusion

A complete prohibition on all internet sales of tobacco products to consumers would be an effective way to substantially prevent such sales and protect the public health gains accomplished by age-of-sale laws. Therefore, I ask that you give SB 2190 a "Do Pass" recommendation and I will stand for questions.

² In a recent lawsuit filed by the state of California against Juul Labs, Inc., the state alleged that Juul's online age-verification processes contain significant flaws and failed to minimize sales to underage persons. According to the state, it allowed hundreds of thousands of tobacco product sales and deliveries to fictitious persons and addresses, some of whom may have been underage California residents, including deliveries to "Beer Can," "Patricia Juul," "John JUUL Kordahl," and "?zge FIRAT." These flaws, according to the state's Complaint, resulted from the company's intentional decisions, which prioritized maximizing the pass rate for the age-verification process over minimizing underage sales. Complaint at 41-63, *State of California v. Juul Labs, Inc.* (Cal. Super. Ct. Nov. 18, 2019), [https://oag.ca.gov/system/files/ attachments/press-docs/91186258.pdf](https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf).

³ Rebecca Williams et al., *Cigarette Sales to Minors via the Internet: How the Story has Changed in the Wake of Federal Regulation*, 26 *Tobacco Control* 415-20 (2016); Rebecca Williams et al., U. North Carolina, *Response to Advance Notice of Proposed Rulemaking on Non-Face-to-Face Sale and Distribution of Tobacco Products and Advertising, Promotion, and Marketing of Tobacco Products*, Docket No. FDA-2011-N-0467 (Feb. 14, 2012), <https://www.regulations.gov/#!documentDetail;D=FDA-2011-N-0467-0100>.