

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1412
(Representatives Mitskog, Nelson)
(Senator Bekkedahl)

AN ACT to amend and reenact sections 57-36-01, 57-36-02, 57-36-04, 57-36-05, 57-36-09, and 57-36-09.1 of the North Dakota Century Code, relating to licensing requirements and the sale of electronic smoking devices; and to provide a penalty.

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 or processed tobacco and encased in any material except tobacco. ~~"Cigarette"~~The term also means any product of a cigarette-making machine.
4. "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.
5. "Consumer" means any person who has title to or possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products in storage, for use or other consumption in this state.
6. "Dealer" includes a retailer and any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, or any product of a cigarette-making machine.
7. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers. The term also includes a dealer that fabricates, repackages, compounds, or mixes electronic smoking devices for purposes of sale to a consumer.
8. "Electronic smoking device" means a device that may be used to deliver an aerosolized, vaporized, or heated substance containing nicotine, regardless of whether the nicotine is natural or synthetic, to an individual inhaling from the device, and includes an electronic cigarette, e-cigar, e-pipe, vape pen, and e-hookah. The term includes any substance containing nicotine, regardless of whether the nicotine is natural or synthetic, that may be aerosolized, vaporized, or heated by the device, regardless of whether the device is sold separately. The term does not include:
 - a. A cigarette as defined in section 51-25-01;

- b. A cigarette as defined in this section;
 - c. A drug, device, or combination product, as those terms are defined in the federal Food, Drug, and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.], approved for sale by the United States food and drug administration; or
 - d. A battery or battery charger when sold separately.
9. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- ~~9-10.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- ~~10-11.~~ "Other tobacco products" means snuff and chewing tobacco.
- ~~11-12.~~ "Outlet" means each place of business from which tobacco products are sold.
13. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.
- ~~12-14.~~ "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.
- ~~13-15.~~ "Place of business" means a place where tobacco products are sold or where tobacco products are manufactured, fabricated, stored, or kept for purposes of sale or consumption.
16. "Retailer" means a person engaged in the business of selling cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products to consumers.
17. "Sale" or "sell" applies to gifts, exchanges, and barter.
- ~~14-18.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.
- ~~15-19.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products for use or consumption in this state.
- ~~16-20.~~ "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, cigars, pipe tobacco, electronic smoking devices, or other tobacco products.

SECTION 2. AMENDMENT. Section 57-36-02 of the North Dakota Century Code is 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, electronic smoking devices, or tobacco 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 tobacco products purchased from a distributor not licensed under this chapter.
 - b. A person issued a dealer's license under this chapter may not be issued a distributor's license.
4. Each application for a dealer's outlet or place of business license must be accompanied by a fee of fifteen dollars.
5. A license 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 administration of this chapter.
6. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. ~~A distributor's license does not authorize the holder to make retail sales.~~
7. Each license issued must be prominently displayed on the ~~premises~~place of business or outlet covered by the license.

SECTION 3. AMENDMENT. Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

57-36-04. Revocation of license - Penalty.

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco after that person's license has been revoked as provided in this chapter.

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

57-36-05. Unlawful to sell without license.

A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco in this state at wholesale or at retail unless a license has been issued to that dealer or distributor as prescribed by this chapter, and a person may not sell, offer for sale, or possess with the

intent to sell, any cigarettes, cigarette papers, snuff, cigars, electronic smoking devices, or tobacco without such license.

SECTION 5. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty.

Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products shall keep and preserve for ~~one year~~three years all invoices of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, cigars, pipe tobacco, electronic smoking devices, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 6. AMENDMENT. Section 57-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.1. WarehouseOutlet - Record of deliveries and shipments.

Records of all deliveries of shipments of cigarettes and, snuff, cigars, electronic smoking devices, or other tobacco products from a licensed ~~public warehouseoutlet~~ to persons within this state must be kept by the ~~warehouseoutlet~~ and be available to the tax commissioner for inspection. They must show the name and address of the consignee, the date, the quantity and purchase price of cigarettes, snuff, cigars, electronic smoking devices, or other tobacco products delivered, and such other information as the tax commissioner may require. These records must be preserved for ~~one year~~three years from the date of delivery of the cigarettes, snuff, cigars, electronic smoking devices, or other tobacco products.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1412.

House Vote: Yeas 58 Nays 35 Absent 1

Senate Vote: Yeas 42 Nays 5 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State