

**FIRST ENGROSSMENT
with House Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2159

Introduced by

Transportation Committee

(At the request of the Department of Transportation)

1 A BILL for an Act to create and enact a new section to title 39 of the North Dakota Century
2 Code, relating to rest area vending machine permits from the department of transportation.

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

4 **SECTION 1. Permits for vending machines at rest areas.** A vending machine that
5 allows access to a tobacco product may not be placed or remain upon a rest area, and any
6 other vending machine may not be placed or remain upon a rest area under the supervision of
7 the director without a permit from the director. The director shall charge a fee for the issuance
8 of a vending machine permit. The amount of the permit fee must relate to the department's
9 actual cost of administration, annual review, and enforcement of the permit process, but may
10 not exceed twenty-five dollars annually. The permit process may not be affected by the content
11 of a publication. The director shall require permittees to comply with appropriate
12 indemnification, insurance, and other risk management provisions of the permit. Vending
13 machines must be secured in a manner that prevents tipping and moving, deters theft, and
14 leaves state property undamaged. Plexiglass, safety glass, or other shatter resistant materials
15 must be employed in windows or displays. All vending machines must be sufficiently enclosed
16 to prevent the distributed product from inadvertently being removed or blown from the machine
17 or weathered by the elements. Stolen or damaged vending machines do not result in liability to
18 the department and must be repaired, restored, or replaced within thirty calendar days. All
19 cash boxes and accesses to cash boxes must be metal and securely locked in place. All
20 vending machines must be placed in a well-lighted area visible from the rest area roadway. All
21 vending machines must be placed on a route allowing parallel access by motorized or standard
22 wheelchairs, with at least sixty-six inches [1676.400 millimeters] of clear width. A vending
23 machine may not have a component or function used by the public which requires more than
24 five pounds [2.268 kilograms] of force to be applied. The height of controls, doors, or access

1 points necessary for use by the public may not exceed sixty inches [1524 millimeters]. The
2 director may determine the maximum number of vending machine placements at a given rest
3 area. Priority must be given to vending machines placed pursuant to the Randolph Sheppard
4 Act [Pub. L. 74-732; 49 Stat. 1559; 20 U.S.C. 107], as administered by the vocational
5 rehabilitation division of the department of human services under section 50-06.1-13. When,
6 after allowing for the placement of vending machines pursuant to the Randolph Sheppard Act,
7 [Pub. L. 74-732; 49 Stat. 1559; 20 U.S.C. 107], the director determines that the number of
8 permit applications for a particular rest area would exceed the remaining available space or
9 would prevent compliance with this section or other law, the director shall grant permits by
10 means of a lottery, with permits allocated pro rata according to the number of applications for
11 each type. The permittee is solely responsible to ensure that any trash, wrapping, boxes, or
12 debris, generated when stocking or servicing vending machines is not left on or at the rest area.
13 The permittee is solely responsible for all installation, maintenance, replacement, inspection,
14 access area cleaning, and stocking of vending machines. Vandalism and graffiti on vending
15 machines must be repaired or removed within fourteen days of written notice by the director.
16 The permittee must inspect and stock vending machines as needed, but at least monthly, to
17 provide adequate service to the public. Vending machines removed for repair or for other
18 reasons must be restored or replaced by the permittee within thirty days. Vending machines in
19 violation of this section or any other applicable law may be removed by the director fourteen
20 days after notice of violation is provided and without liability to the director. Vending machines
21 judged by the director to pose a risk to safety may be removed immediately without liability to
22 the director and without prior notice to the permittee. The director shall retain any removed
23 vending machines for thirty days to allow retrieval by the permittee, after compensation to the
24 director for removal costs. The director may dispose of or sell machines not retrieved within
25 thirty days of removal, but removal costs must be satisfied only to the extent of proceeds
26 received by the director. The director has a cause of action to recover any deficiency,
27 attorneys' fees, and litigation expenses. The director, upon the determination that a rest area
28 must be closed for a period of greater than thirty days, may order the permittee, at the
29 permittee's expense, to remove all vending machines in a manner that does not damage state
30 property, or remove all product and money and place upon the vending machine a prominent
31 notice that all product and money have been removed. Should the director determine that

1 removal of vending machines is necessary to conduct repairs, construction, surveys, or other
2 duties of the department, the permittee, at the permittee's expense, shall remove all vending
3 machines in a manner that does not damage state property, upon fourteen days' notice. The
4 current address and phone number where customer service or business is conducted by the
5 permittee must be legibly and prominently posted upon the vending machine. The director
6 shall cancel the permit should the permittee remove vending machines, except as provided in
7 this section. The cost of any removal must be borne by the permittee. The permittee, at the
8 permittee's own expense, must restore the site the machine formerly occupied to the
9 satisfaction of the director. For purposes of this section, "vending machine" means any device
10 that allows access to a newspaper, magazine, beverage, concession, or other item for public
11 consumption or use. For purposes of this section, "permittee" means any person or
12 organization, including any corporation, partnership, firm, or any other legal entity capable of
13 owning property and transacting business, which has applied for a permit under this chapter.
14 For purposes of this section, "notice" consists of a written communication and must be deemed
15 to have occurred within seventy-two hours of mailing, if mailed within North Dakota, or one
16 hundred twenty hours of mailing, if mailed outside North Dakota. "Notice" to a vendor of the
17 condition of a vending machine also occurs if a period of time greater than the required
18 inspection interval for the vending machines has passed.