

HOUSE BILL NO. 1186

Introduced by

Representatives K. Koppelman, Delmore, Hogan, Kasper, Mock, Nathe, Sukut, Thoreson
Senators Armstrong, Hogue, Nelson

1 A BILL for an Act to amend and reenact sections 12.1-31-03, 12.1-31-03.1, subsection 19 of
2 section 27-20-02, and section 51-32-01 of the North Dakota Century Code, relating to the sale
3 to minors and use by minors of vapor products or alternative nicotine products; and to provide a
4 penalty.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-31-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-31-03. Sale of tobacco, vapor products, or alternative nicotine products to**
9 **minors and use by minors prohibited.**

10 1. a. It is an infraction for any person to sell or furnish to a minor, or procure for a
11 minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in
12 which it may be utilized for smoking or chewing, vapor products, or alternative
13 nicotine products. As used in this ~~subsection~~subdivision, "sell" includes
14 dispensing from a vending machine under the control of the actor.

15 b. It is an infraction for any person to display or offer for sale cigarettes, cigarette
16 papers, cigars, snuff, or tobacco in any other form which it may be utilized for
17 smoking or chewing, vapor products or alternative nicotine products through a
18 self-service display. This subdivision does not apply to a:

19 (1) Vending machine or other coin-operated machine that is permitted under
20 section 12.1-31-03.1; or

21 (2) Self-service display that is located in a tobacco specialty store.

22 2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes,
23 cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized
24 for smoking or chewing, vapor products, or alternative nicotine products. However, an

1 individual under eighteen years of age may purchase and possess tobacco, vapor
2 products, or alternative nicotine products as part of a compliance survey program
3 when acting with the permission of the individual's parent or guardian and while acting
4 under the supervision of any law enforcement authority. A state agency, city, county,
5 board of health, tobacco, vapor products, or alternative nicotine products retailer, or
6 association of tobacco, vapor products, or alternative nicotine products retailers may
7 also conduct compliance surveys, after coordination with the appropriate local law
8 enforcement authority.

9 3. It is a noncriminal offense for a minor to present or offer to another individual a
10 purported proof of age which is false, fraudulent, or not actually the minor's own proof
11 of age, for the purpose of attempting to purchase or possess cigarettes, cigars,
12 cigarette papers, snuff, or tobacco in any other form in which it may be utilized for
13 smoking or chewing, vapor products, or alternative nicotine products.

14 4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco,
15 vapor products, or alternative nicotine products to minors and use of tobacco, vapor
16 products, or alternative nicotine products by minors which includes prohibitions in
17 addition to those in subsection 1, 2, or 3. Any ordinance or resolution adopted must
18 include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and
19 must provide for a fee of not less than twenty-five dollars for a minor fourteen years of
20 age or older who has been charged with an offense under subsection 2 or 3. The
21 failure to post a required bond or pay an assessed fee by an individual found to have
22 violated the ordinance or resolution is punishable as a contempt of court, except a
23 minor may not be imprisoned for the contempt.

24 5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must
25 pay a fee of twenty-five dollars.

26 a. Any individual who has been cited for a violation of subsection 2 or 3 may appear
27 before a court of competent jurisdiction and pay the fee by the time scheduled for
28 a hearing, or if bond has been posted, may forfeit the bond by not appearing at
29 the scheduled time. An individual appearing at the time scheduled in the citation
30 may make a statement in explanation of that individual's action and the judge
31 may waive, reduce, or suspend the fee or bond, or both. If the individual cited

- 1 follows the procedures of this subdivision, that individual has admitted the
2 violation and has waived the right to a hearing on the issue of commission of the
3 violation. The bond required to secure appearance before the court must be
4 identical to the fee. This subdivision does not allow a citing officer to receive the
5 fee or bond.
- 6 b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow
7 the procedures provided under subdivision a, that individual may request a
8 hearing on the issue of the commission of the violation cited. The hearing must
9 be held at the time scheduled in the citation or at some future time, not to exceed
10 ninety days later, set at that first appearance. At the time of a request for a
11 hearing on the issue on commission of the violation, the individual cited shall
12 deposit with the court an appearance bond equal to the fee for the violation cited.
- 13 c. The failure to post bond or to pay an assessed fee is punishable as a contempt of
14 court, except a minor may not be imprisoned for the contempt.
- 15 6. The prosecution must prove the commission of a cited violation under subsection 2 or
16 3 by a preponderance of the evidence.
- 17 7. A law enforcement officer that cites a minor for violation of this section shall mail a
18 notice of the violation to the parent or legal guardian of the minor within ten days of the
19 citation.
- 20 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced
21 by the court to a sanction or order designed to ensure compliance with the payment of
22 the fee or fine or to an alternative sentence or sanction including community service.
- 23 9. As used in this section:
- 24 a. "Alternative nicotine product" means any noncombustible product containing
25 nicotine that is intended for human consumption, whether chewed, absorbed,
26 dissolved, or ingested by any other means. The term does not include any
27 cigarette, cigar, snuff, or tobacco in any other form in which it may be utilized for
28 smoking or chewing, any vapor product, or any product regulated as a drug or
29 device by the United States Food and Drug Administration under chapter V of the
30 federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.]

- 1 b. "Self-service display" means a display that contains cigarettes, cigarette papers,
2 cigars, snuff, or tobacco in any other form which it may be utilized for smoking or
3 chewing, vapor products, or alternative nicotine products and is located in an
4 area that is openly accessible to the retailer's customers, and from which
5 customers can readily access those products without the assistance of a
6 salesperson. A display case that holds those products behind locked doors does
7 not constitute a self-service display.
- 8 c. "Tobacco specialty store" means a retail store that:
- 9 (1) Derives at least seventy-five percent of its revenue from the sale of
10 cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in
11 which it may be utilized for smoking or chewing, vapor products, or
12 alternative nicotine products; and
- 13 (2) Does not permit minors to enter the premises unless accompanied by a
14 parent or legal guardian.
- 15 d. "Vapor product" means any noncombustible product containing nicotine which
16 employs a heating element, power source, electronic circuit, or other electronic,
17 chemical or mechanical means, regardless of shape or size, which can be used
18 to produce vapor from nicotine in a solution or other form. The term includes any
19 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar
20 product or device and any vapor cartridge or other container of nicotine in a
21 solution or other form that is intended to be used with or in an electronic
22 cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or
23 device. The term does not include any product regulated as a drug or device by
24 the United States Food and Drug Administration under chapter V of the federal
25 Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].

26 **SECTION 2. AMENDMENT.** Section 12.1-31-03.1 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **12.1-31-03.1. Vending machines prohibited - Penalty.**

- 29 1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
30 snuff, or tobacco in any other form in which it may be utilized for smoking or chewing,

1 vapor products, or alternative nicotine products through a vending machine, except as
2 provided in subsection 2.

3 2. Subsection 1 does not apply to:

4 a. A vending machine that is located in an area in which minors are not permitted
5 access; or

6 b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or
7 tobacco in any other form in which it may be utilized for smoking or chewing,
8 vapor products, or alternative nicotine products through the operation of a device
9 that requires a salesperson to control the dispensation of such product.

10 3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
11 snuff, or tobacco in any other form in which it may be utilized for smoking or chewing,
12 vapor products, or alternative nicotine products through any vending machine, if those
13 products are placed together with any nontobacco product, other than matches, in the
14 vending machine.

15 4. As used in this section, "vapor products" and "alternative nicotine products" have the
16 same meaning as in section 12.1-31-03.

17 **SECTION 3. AMENDMENT.** Subsection 19 of section 27-20-02 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 19. "Unruly child" means a child who:

20 a. Is habitually and without justification truant from school;

21 b. Is habitually disobedient of the reasonable and lawful commands of the child's
22 parent, guardian, or other custodian and is ungovernable or who is willfully in a
23 situation dangerous or injurious to the health, safety, or morals of the child or
24 others;

25 c. Has committed an offense applicable only to a child, except for an offense
26 committed by a minor fourteen years of age or older under subsection 2 of
27 section 12.1-31-03 or an equivalent local ordinance or resolution;

28 d. Has committed an offense in violation of section 5-01-08; or

29 e. Is under the age of fourteen years and has purchased, possessed, smoked, or
30 used tobacco or tobacco-related products, vapor products, or alternative nicotine
31 products in violation of subsection 2 of section 12.1-31-03; and

1 f. In any of the foregoing instances is in need of treatment or rehabilitation.

2 g. As used in this subsection, "vapor products" and "alternative nicotine products"
3 have the same meaning as in section 12.1-31-03.

4 **SECTION 4. AMENDMENT.** Section 51-32-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **51-32-01. Prohibited acts regarding sale of tobacco products, vapor products, or**
7 **alternative nicotine products to minors.**

8 1. It is unlawful for any person in the business of selling tobacco products to take an
9 order for a tobacco product, other than from a person who is in the business of selling
10 tobacco products, through the mail or through any telecommunications means,
11 including by telephone, facsimile, or the internet, if in providing for the sale or delivery
12 of the product pursuant to the order, the person mails the product or ships the product
13 by carrier, and the person fails to comply with each of the following procedures:

14 1. a. Before mailing or shipping the product, the person receives from the individual
15 who places the order the following:

16 a. (1) A copy of a valid government-issued document that provides the name,
17 address, and date of birth of the individual; and

18 b. (2) A signed statement from the individual providing a certification that the
19 individual:

20 (+) (a) Is a smoker of legal minimum purchase age in the state;

21 (-) (b) Has selected an option on the statement as to whether the individual
22 wants to receive mailings from a tobacco company; and

23 (-) (c) Understands that providing false information may constitute a violation
24 of law.

25 2. b. Before mailing or shipping the product, the person:

26 a. (1) Verifies the date of birth or age of the individual against a commercially
27 available database; or

28 b. (2) Obtains a photocopy or other image of the valid, government-issued
29 identification stating the date of birth or age of the individual placing the
30 order.

- 1 database that is regularly used by business or governmental entities for the
2 purpose of age and identity verification; and
3 b. Uses a method of mailing, shipping, or delivery which requires an individual of
4 legal minimum purchase age to sign for delivery before the vapor product or
5 alternative nicotine product is released to the purchaser.
6 3. As used in subsection 2, "vapor products" and "alternative nicotine products" have the
7 same meaning as in section 12.1-31-03.