

**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 create and enact section 12.1-31-03.2 of the North Dakota Century Code,  
2 relating to child-resistant packaging for liquid nicotine containers; to amend and reenact  
3 sections 12.1-31-03, 12.1-31-03.1, subsection 19 of section 27-20-02, and section 51-32-01 of  
4 the North Dakota Century Code, relating to the sale to minors and use by minors of ~~vapor-~~  
5 ~~products~~electronic smoking devices or alternative nicotine products; ~~and~~ to provide a penalty;  
6 and to provide an expiration date.

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

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

10 **12.1-31-03. Sale of tobacco, ~~vapor products~~electronic smoking devices, or alternative**  
11 **nicotine products to minors and use by minors prohibited.**

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

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

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

- 1                   (2) Self-service display that is located in a tobacco specialty store.
- 2           2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes,  
3           cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized  
4           for smoking or chewing, ~~vapor products~~electronic smoking devices, or alternative  
5           nicotine products. However, an individual under eighteen years of age may purchase  
6           and possess tobacco, ~~vapor products~~electronic smoking devices, or alternative  
7           nicotine products as part of a compliance survey program when acting with the  
8           permission of the individual's parent or guardian and while acting under the  
9           supervision of any law enforcement authority. A state agency, city, county, board of  
10          health, tobacco, ~~vapor products~~electronic smoking devices, or alternative nicotine  
11          products retailer, or association of tobacco, ~~vapor products~~electronic smoking devices,  
12          or alternative nicotine products retailers may also conduct compliance surveys, after  
13          coordination with the appropriate local law enforcement authority.
- 14          3. It is a noncriminal offense for a minor to present or offer to another individual a  
15          purported proof of age which is false, fraudulent, or not actually the minor's own proof  
16          of age, for the purpose of attempting to purchase or possess cigarettes, cigars,  
17          cigarette papers, snuff, or tobacco in any other form in which it may be utilized for  
18          smoking or chewing, ~~vapor products~~electronic smoking devices, or alternative nicotine  
19          products.
- 20          4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco,  
21          ~~vapor products~~electronic smoking devices, or alternative nicotine products to minors  
22          and use of tobacco, ~~vapor products~~electronic smoking devices, or alternative nicotine  
23          products by minors which includes prohibitions in addition to those in subsection 1, 2,  
24          or 3. Any ordinance or resolution adopted must include provisions deeming a violation  
25          of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than  
26          twenty-five dollars for a minor fourteen years of age or older who has been charged  
27          with an offense under subsection 2 or 3. The failure to post a required bond or pay an  
28          assessed fee by an individual found to have violated the ordinance or resolution is  
29          punishable as a contempt of court, except a minor may not be imprisoned for the  
30          contempt.

- 1           5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must  
2           pay a fee of twenty-five dollars.
- 3           a. Any individual who has been cited for a violation of subsection 2 or 3 may appear  
4           before a court of competent jurisdiction and pay the fee by the time scheduled for  
5           a hearing, or if bond has been posted, may forfeit the bond by not appearing at  
6           the scheduled time. An individual appearing at the time scheduled in the citation  
7           may make a statement in explanation of that individual's action and the judge  
8           may waive, reduce, or suspend the fee or bond, or both. If the individual cited  
9           follows the procedures of this subdivision, that individual has admitted the  
10          violation and has waived the right to a hearing on the issue of commission of the  
11          violation. The bond required to secure appearance before the court must be  
12          identical to the fee. This subdivision does not allow a citing officer to receive the  
13          fee or bond.
- 14          b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow  
15          the procedures provided under subdivision a, that individual may request a  
16          hearing on the issue of the commission of the violation cited. The hearing must  
17          be held at the time scheduled in the citation or at some future time, not to exceed  
18          ninety days later, set at that first appearance. At the time of a request for a  
19          hearing on the issue on commission of the violation, the individual cited shall  
20          deposit with the court an appearance bond equal to the fee for the violation cited.
- 21          c. The failure to post bond or to pay an assessed fee is punishable as a contempt of  
22          court, except a minor may not be imprisoned for the contempt.
- 23          6. The prosecution must prove the commission of a cited violation under subsection 2 or  
24          3 by a preponderance of the evidence.
- 25          7. A law enforcement officer that cites a minor for violation of this section shall mail a  
26          notice of the violation to the parent or legal guardian of the minor within ten days of the  
27          citation.
- 28          8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced  
29          by the court to a sanction or order designed to ensure compliance with the payment of  
30          the fee or fine or to an alternative sentence or sanction including community service.
- 31          9. As used in this section:

1           a. "Alternative nicotine product" means any noncombustible product containing  
2           nicotine that is intended for human consumption, whether chewed, absorbed,  
3           dissolved, or ingested by any other means. The term does not include any  
4           cigarette, cigar, snuff, or tobacco in any other form in which it may be utilized for  
5           smoking or chewing, any ~~vapor product~~electronic smoking device, or any product  
6           regulated as a drug or device by the United States Food and Drug Administration  
7           under chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et  
8           seq.]

9           b. "Electronic smoking device" means any electronic product that delivers nicotine  
10          or other substances to the individual inhaling from the device, including, an  
11          electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking  
12          device includes any component, part, or accessory of such a product, whether or  
13          not sold separately. Electronic smoking device does not include drugs, devices,  
14          or combination products approved for sale by the United States food and drug  
15          administration, as those terms are defined in the federal Food, Drug and  
16          Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

17          c. "Self-service display" means a display that contains cigarettes, cigarette papers,  
18          cigars, snuff, or tobacco in any other form which it may be utilized for smoking or  
19          chewing, ~~vapor products~~electronic smoking devices, or alternative nicotine  
20          products and is located in an area that is openly accessible to the retailer's  
21          customers, and from which customers can readily access those products without  
22          the assistance of a salesperson. A display case that holds those products behind  
23          locked doors does not constitute a self-service display.

24          e.d. "Tobacco specialty store" means a retail store that:

- 25           (1) Derives at least seventy-five percent of its revenue from the sale of  
26           cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in  
27           which it may be utilized for smoking or chewing, ~~vapor products~~electronic  
28           smoking devices, or alternative nicotine products; and  
29           (2) Does not permit minors to enter the premises unless accompanied by a  
30           parent or legal guardian.

1 ~~d. "Vapor product" means any noncombustible product containing nicotine which~~  
2 ~~employs a heating element, power source, electronic circuit, or other electronic,~~  
3 ~~chemical or mechanical means, regardless of shape or size, which can be used~~  
4 ~~to produce vapor from nicotine in a solution or other form. The term includes any~~  
5 ~~electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar~~  
6 ~~product or device and any vapor cartridge or other container of nicotine in a~~  
7 ~~solution or other form that is intended to be used with or in an electronic~~  
8 ~~cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or~~  
9 ~~device. The term does not include any product regulated as a drug or device by~~  
10 ~~the United States Food and Drug Administration under chapter V of the federal~~  
11 ~~Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].~~

12 e. "Vending machine" means a machine, appliance, or other mechanical device  
13 operated by currency, token, debit card, credit card, or other means of payment  
14 that is designed or used for vending purposes, including machines or devices  
15 that use remote control locking mechanisms.

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

18 **12.1-31-03.1. Vending machines prohibited - Penalty.**

- 19 1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,  
20 snuff, or tobacco in any other form in which it may be utilized for smoking or chewing,  
21 ~~vapor products~~electronic smoking devices, or alternative nicotine products through a  
22 vending machine, except as provided in subsection 2.
- 23 2. Subsection 1 does not apply to:
- 24 a. A vending machine that is located in an area in which minors are not permitted  
25 access; or
- 26 b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or  
27 tobacco in any other form in which it may be utilized for smoking or chewing,  
28 ~~vapor products~~electronic smoking devices, or alternative nicotine products  
29 through the operation of a device that requires a salesperson to control the  
30 dispensation of such product.

- 1           3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,  
2           snuff, or tobacco in any other form in which it may be utilized for smoking or chewing,  
3           ~~vapor products~~electronic smoking devices, or alternative nicotine products through any  
4           vending machine, if those products are placed together with any nontobacco product,  
5           other than matches, in the vending machine.
- 6           4. As used in this section, "~~vapor products~~" "electronic smoking devices" and "alternative  
7           nicotine products" have the same meaning as in section 12.1-31-03.

8           **SECTION 3.** Section 12.1-31-03.2 of the North Dakota Century Code is created and  
9 enacted as follows:

10           **12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for**  
11 **liquid nicotine containers.**

- 12           1. Any nicotine liquid container that is sold at retail in this state must satisfy the  
13 child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section  
14 15(b)(1), when tested in accordance with the method described in title 16, CFR, part  
15 1700, section 20.
- 16           2. As used in this section, "nicotine liquid container" means a bottle or other container of  
17 a liquid or other substance containing nicotine in which the liquid or substance is sold,  
18 marketed, or intended for use in an electronic smoking device. The term does not  
19 include a liquid or other substance containing nicotine in a cartridge that is sold,  
20 marketed, or intended for use in an electronic smoking device, provided that the  
21 cartridge is prefilled and sealed by the manufacturer and not intended to be opened by  
22 the consumer.
- 23           3. Any person that engages in retail sales of liquid nicotine containers in violation of this  
24 section is subject to a civil penalty of not more than five hundred dollars for each  
25 separate violation of this section, to be recovered by any enforcement authority  
26 designated by the city or political subdivision in which the violation occurred.

27           **SECTION 4. AMENDMENT.** Subsection 19 of section 27-20-02 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29           19. "Unruly child" means a child who:  
30           a. Is habitually and without justification truant from school;

- 1           b. Is habitually disobedient of the reasonable and lawful commands of the child's  
2           parent, guardian, or other custodian and is ungovernable or who is willfully in a  
3           situation dangerous or injurious to the health, safety, or morals of the child or  
4           others;
- 5           c. Has committed an offense applicable only to a child, except for an offense  
6           committed by a minor fourteen years of age or older under subsection 2 of  
7           section 12.1-31-03 or an equivalent local ordinance or resolution;
- 8           d. Has committed an offense in violation of section 5-01-08; or
- 9           e. Is under the age of fourteen years and has purchased, possessed, smoked, or  
10          used tobacco or tobacco-related products, ~~vapor products~~ electronic smoking  
11          devices, or alternative nicotine products in violation of subsection 2 of section  
12          12.1-31-03; and
- 13          f. In any of the foregoing instances is in need of treatment or rehabilitation.
- 14          g. As used in this subsection, "~~vapor products~~" "electronic smoking devices" and  
15          "alternative nicotine products" have the same meaning as in section 12.1-31-03.

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

18           **51-32-01. Prohibited acts regarding sale of tobacco products, ~~vapor~~**  
19          **~~products~~ electronic smoking devices, or alternative nicotine products to minors.**

- 20           1. It is unlawful for any person in the business of selling tobacco products to take an  
21           order for a tobacco product, other than from a person who is in the business of selling  
22           tobacco products, through the mail or through any telecommunications means,  
23           including by telephone, facsimile, or the internet, if in providing for the sale or delivery  
24           of the product pursuant to the order, the person mails the product or ships the product  
25           by carrier, and the person fails to comply with each of the following procedures:
- 26           4. a. Before mailing or shipping the product, the person receives from the individual  
27           who places the order the following:
- 28           a. (1) A copy of a valid government-issued document that provides the name,  
29           address, and date of birth of the individual; and
- 30           b. (2) A signed statement from the individual providing a certification that the  
31           individual:

- 1                   (1) (a) Is a smoker of legal minimum purchase age in the state;
- 2                   (2) (b) Has selected an option on the statement as to whether the individual
- 3                                   wants to receive mailings from a tobacco company; and
- 4                   (3) (c) Understands that providing false information may constitute a violation
- 5                                   of law.
- 6       2. b. Before mailing or shipping the product, the person:
- 7           a. (1) Verifies the date of birth or age of the individual against a commercially
- 8                                   available database; or
- 9           b. (2) Obtains a photocopy or other image of the valid, government-issued
- 10                                   identification stating the date of birth or age of the individual placing the
- 11                                   order.
- 12       3. c. Before mailing or shipping the product, the person provides to the prospective
- 13                                   purchaser, by electronic mail or other means, a notice that meets the
- 14                                   requirements of section ~~51-30-04~~51-32-04.
- 15       4. d. In the case of an order for a product pursuant to an advertisement on the
- 16                                   internet, the person receives payment by credit card, debit card, or check for the
- 17                                   order before mailing or shipping the product.
- 18       5. ~~a-e.~~ (1) The person employs a method of mailing or shipping the product requiring
- 19                                   that the individual purchasing the product:
- 20                   (1) (a) Be the addressee;
- 21                   (2) (b) Have an individual of legal minimum purchase age sign for delivery of
- 22                                   the package; and
- 23                   (3) (c) If the individual appears to the carrier making the delivery to be under
- 24                                   twenty-seven years of age, take delivery of the package only after
- 25                                   producing valid government-issued identification that bears a
- 26                                   photograph of the individual, indicates that the individual is not under
- 27                                   the legal age to purchase cigarettes, and indicates that the individual
- 28                                   is not younger than the age indicated on the government-issued
- 29                                   document.
- 30       b. (2) The bill of lading clearly states the requirements in subdivision a and
- 31                                   specifies that state law requires compliance with the requirements.



1       6-   f.   The person notifies the carrier for the mailing or shipping, in writing, of the age of  
2                    the addressee as indicated by the government-issued document.

3       2.   It is unlawful for any person in the business of selling ~~vapor products~~electronic  
4                    smoking devices or alternative nicotine products to take an order for ~~a vapor-~~  
5                    productan electronic smoking device or alternative nicotine product, other than from a  
6                    person who is in the business of selling ~~vapor products~~electronic smoking devices or  
7                    alternative nicotine products through the mail or through any telecommunications  
8                    means, including by telephone, facsimile, or the internet, if in providing for the sale or  
9                    delivery of the product pursuant to the order, the person mails the product or ships the  
10                   product by carrier, and the person fails to comply with each of the following  
11                    procedures:

12        a.   Before the sale of the ~~vapor product~~electronic smoking device or alternative  
13                    nicotine product verifies the purchaser is at least eighteen years of age through a  
14                    commercially available database that is regularly used by business or  
15                    governmental entities for the purpose of age and identity verification; and

16        b.   Uses a method of mailing, shipping, or delivery which requires an individual of  
17                    legal minimum purchase age to sign for delivery before the ~~vapor-~~  
18                    productelectronic smoking device or alternative nicotine product is released to  
19                    the purchaser.

20        3.   As used in subsection 2, "~~vapor products~~" "electronic smoking devices" and "alternative  
21                    nicotine products" have the same meaning as in section 12.1-31-03.

22        **SECTION 6. EXPIRATION DATE.** Section 3 of this Act is effective until the date the  
23        attorney general certifies to the legislative council that final regulations issued by the United  
24        States food and drug administration or another federal agency are in effect which mandate  
25        child-resistant effectiveness standards for liquid nicotine containers, and after that date is  
26        ineffective.