

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED 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 electronic
5 smoking devices or alternative nicotine products; to provide a penalty; and to provide an
6 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, electronic smoking devices, or alternative nicotine**
11 **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, electronic smoking devices, or
15 alternative nicotine products. As used in this ~~subsection~~subdivision, "sell"
16 includes dispensing from a vending machine under the control of the actor.
- 17 b. It is an infraction for any person to display or offer for sale cigarettes, cigarette
18 papers, cigars, snuff, or tobacco in any other form in which it may be utilized for
19 smoking or chewing, electronic smoking devices, or alternative nicotine products
20 through a self-service display. This subdivision does not apply to a:
- 21 (1) Vending machine or other coin-operated machine that is permitted under
22 section 12.1-31-03.1; or
- 23 (2) Self-service display that is located in a tobacco specialty store.

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

1 the scheduled time. An individual appearing at the time scheduled in the citation
2 may make a statement in explanation of that individual's action and the judge
3 may waive, reduce, or suspend the fee or bond, or both. If the individual cited
4 follows the procedures of this subdivision, that individual has admitted the
5 violation and has waived the right to a hearing on the issue of commission of the
6 violation. The bond required to secure appearance before the court must be
7 identical to the fee. This subdivision does not allow a citing officer to receive the
8 fee or bond.

9 b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow
10 the procedures provided under subdivision a, that individual may request a
11 hearing on the issue of the commission of the violation cited. The hearing must
12 be held at the time scheduled in the citation or at some future time, not to exceed
13 ninety days later, set at that first appearance. At the time of a request for a
14 hearing on the issue on commission of the violation, the individual cited shall
15 deposit with the court an appearance bond equal to the fee for the violation cited.

16 c. The failure to post bond or to pay an assessed fee is punishable as a contempt of
17 court, except a minor may not be imprisoned for the contempt.

18 6. The prosecution must prove the commission of a cited violation under subsection 2 or
19 3 by a preponderance of the evidence.

20 7. A law enforcement officer that cites a minor for violation of this section shall mail a
21 notice of the violation to the parent or legal guardian of the minor within ten days of the
22 citation.

23 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced
24 by the court to a sanction or order designed to ensure compliance with the payment of
25 the fee or fine or to an alternative sentence or sanction including community service.

26 9. As used in this section:

27 a. "Alternative nicotine product" means any noncombustible product containing
28 nicotine that is intended for human consumption, whether chewed, absorbed,
29 dissolved, or ingested by any other means. The term does not include any
30 cigarette, cigar, snuff, or tobacco in any other form in which it may be utilized for
31 smoking or chewing, any electronic smoking device, or any product regulated as

1 a drug or device by the United States Food and Drug Administration under
2 chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.]

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

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

18 d. "Tobacco specialty store" means a retail store that:

19 (1) Derives at least seventy-five percent of its revenue from the sale of
20 cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in
21 which it may be utilized for smoking or chewing, electronic smoking devices,
22 or alternative nicotine products; and

23 (2) Does not permit minors to enter the premises unless accompanied by a
24 parent or legal guardian.

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

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

1 **12.1-31-03.1. Vending machines prohibited - Penalty.**

- 2 1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
3 snuff, or tobacco in any other form in which it may be utilized for smoking or chewing,
4 electronic smoking devices, or alternative nicotine products through a vending
5 machine, except as provided in subsection 2.
- 6 2. Subsection 1 does not apply to:
- 7 a. A vending machine that is located in an area in which minors are not permitted
8 access; or
- 9 b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or
10 tobacco in any other form in which it may be utilized for smoking or chewing,
11 electronic smoking devices, or alternative nicotine products through the operation
12 of a device that requires a salesperson to control the dispensation of such
13 product.
- 14 3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
15 snuff, or tobacco in any other form in which it may be utilized for smoking or chewing,
16 electronic smoking devices, or alternative nicotine products through any vending
17 machine, if those products are placed together with any nontobacco product, other
18 than matches, in the vending machine.
- 19 4. As used in this section, "electronic smoking devices" and "alternative nicotine
20 products" have the same meaning as in section 12.1-31-03.

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

23 **12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for**
24 **liquid nicotine containers.**

- 25 1. Any nicotine liquid container that is sold at retail in this state must satisfy the
26 child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section
27 15(b)(1), when tested in accordance with the method described in title 16, CFR, part
28 1700, section 20.
- 29 2. As used in this section, "nicotine liquid container" means a bottle or other container of
30 a liquid or other substance containing nicotine in which the liquid or substance is sold,
31 marketed, or intended for use in an electronic smoking device. The term does not

1 include a liquid or other substance containing nicotine in a cartridge that is sold,
2 marketed, or intended for use in an electronic smoking device, provided that the
3 cartridge is prefilled and sealed by the manufacturer and not intended to be opened by
4 the consumer.

5 3. Any person that engages in retail sales of liquid nicotine containers in violation of this
6 section is subject to a civil penalty of not more than five hundred dollars for each
7 separate violation of this section, to be recovered by any enforcement authority
8 designated by the city or political subdivision in which the violation occurred.

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

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

- 12 a. Is habitually and without justification truant from school;
- 13 b. Is habitually disobedient of the reasonable and lawful commands of the child's
14 parent, guardian, or other custodian and is ungovernable or who is willfully in a
15 situation dangerous or injurious to the health, safety, or morals of the child or
16 others;
- 17 c. Has committed an offense applicable only to a child, except for an offense
18 committed by a minor fourteen years of age or older under subsection 2 of
19 section 12.1-31-03 or an equivalent local ordinance or resolution;
- 20 d. Has committed an offense in violation of section 5-01-08; or
- 21 e. Is under the age of fourteen years and has purchased, possessed, smoked, or
22 used tobacco or tobacco-related products, electronic smoking devices, or
23 alternative nicotine products in violation of subsection 2 of section 12.1-31-03;
24 and
- 25 f. In any of the foregoing instances is in need of treatment or rehabilitation.
- 26 g. As used in this subsection, "electronic smoking devices" and "alternative nicotine
27 products" have the same meaning as in section 12.1-31-03.

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

1 **51-32-01. Prohibited acts regarding sale of tobacco products, electronic smoking**
2 **devices, or alternative nicotine products to minors.**

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

- 9 1. a. Before mailing or shipping the product, the person receives from the individual
10 who places the order the following:
- 11 a. (1) A copy of a valid government-issued document that provides the name,
12 address, and date of birth of the individual; and
- 13 b. (2) A signed statement from the individual providing a certification that the
14 individual:
- 15 (1) (a) Is a smoker of legal minimum purchase age in the state;
16 (2) (b) Has selected an option on the statement as to whether the individual
17 wants to receive mailings from a tobacco company; and
- 18 (3) (c) Understands that providing false information may constitute a violation
19 of law.

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

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

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

26 3. c. Before mailing or shipping the product, the person provides to the prospective
27 purchaser, by electronic mail or other means, a notice that meets the
28 requirements of section ~~51-30-04~~51-32-04.

29 4. d. In the case of an order for a product pursuant to an advertisement on the
30 internet, the person receives payment by credit card, debit card, or check for the
31 order before mailing or shipping the product.

- 1 ~~5.~~ a-e. (1) The person employs a method of mailing or shipping the product requiring
2 that the individual purchasing the product:
- 3 (1) (a) Be the addressee;
- 4 (2) (b) Have an individual of legal minimum purchase age sign for delivery of
5 the package; and
- 6 (3) (c) If the individual appears to the carrier making the delivery to be under
7 twenty-seven years of age, take delivery of the package only after
8 producing valid government-issued identification that bears a
9 photograph of the individual, indicates that the individual is not under
10 the legal age to purchase cigarettes, and indicates that the individual
11 is not younger than the age indicated on the government-issued
12 document.
- 13 ~~b.~~ (2) The bill of lading clearly states the requirements in subdivision a and
14 specifies that state law requires compliance with the requirements.
- 15 ~~6.~~ f. The person notifies the carrier for the mailing or shipping, in writing, of the age of
16 the addressee as indicated by the government-issued document.
- 17 2. It is unlawful for any person in the business of selling electronic smoking devices or
18 alternative nicotine products to take an order for an electronic smoking device or
19 alternative nicotine product, other than from a person who is in the business of selling
20 electronic smoking devices or alternative nicotine products through the mail or through
21 any telecommunications means, including by telephone, facsimile, or the internet, if in
22 providing for the sale or delivery of the product pursuant to the order, the person mails
23 the product or ships the product by carrier, and the person fails to comply with each of
24 the following procedures:
- 25 a. Before the sale of the electronic smoking device or alternative nicotine product
26 verifies the purchaser is at least eighteen years of age through a commercially
27 available database that is regularly used by business or governmental entities for
28 the purpose of age and identity verification; and
- 29 b. Uses a method of mailing, shipping, or delivery which requires an individual of
30 legal minimum purchase age to sign for delivery before the electronic smoking
31 device or alternative nicotine product is released to the purchaser.

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

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