

HOUSE BILL NO. 1174

Introduced by

Representative Grosz

1 A BILL for an Act to prohibit use, sale, and distribution of tobacco; to amend and reenact
2 subsections 2 and 3 of section 12-47-21, section 12.1-31-03, subsection 11 of section
3 19-03.4-02, subsection 3 of section 23-38-02, and sections 43-04-43, 47-22-09, 57-39.2-03.2,
4 and 57-40.2-03.2 of the North Dakota Century Code, relating to tobacco; to repeal chapters
5 51-25 and 57-36 of the North Dakota Century Code, relating to tobacco sales and taxes; and to
6 provide penalties.

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

8 **SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 12-47-21 of the North
9 Dakota Century Code are amended and reenacted as follows:

- 10 2. It is unlawful for a penitentiary inmate to possess any controlled substance except
11 in accordance with the prescription or orders of a licensed physician. It is unlawful
12 for a penitentiary inmate to possess alcohol or alcoholic beverages. It is unlawful
13 for a penitentiary inmate to possess any tobacco except when the warden has
14 authorized possession of tobacco for religious purposes ~~or when on authorized~~
15 ~~release from the penitentiary.~~ Any penitentiary inmate who violates this subsection
16 with respect to:
- 17 a. Possession of a controlled substance is guilty of a class B felony.
 - 18 b. Possession of alcohol or alcoholic beverages is guilty of a class A
19 misdemeanor.
 - 20 c. Possession of tobacco is guilty of a class B misdemeanor.
- 21 3. It is unlawful for any person to willfully deliver alcohol or alcoholic beverages to a
22 penitentiary inmate. It is unlawful for any person to willfully deliver tobacco to an
23 inmate except when the warden has authorized delivery of tobacco for religious

purposes ~~or when the inmate is on an authorized release from the penitentiary.~~

Any person who violates this subsection by:

- a. Delivery of alcohol or alcoholic beverages to a penitentiary inmate is guilty of a class A misdemeanor.
- b. Delivery of tobacco to a penitentiary inmate is guilty of a class ~~B~~ A misdemeanor.

SECTION 2. AMENDMENT. Section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale Possession of tobacco ~~to~~ by minors and ~~use by~~ minors prohibited.

- ~~1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.~~
2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. ~~However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.~~
- ~~3. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which includes prohibitions in addition to those in subsection 1 or 2. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 a noncriminal violation and must provide for a fee of not less than twenty five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2. The failure to post a required bond or pay an assessed fee by an individual found to~~

~~have violated the ordinance or resolution is punishable as a contempt of court,
except a minor may not be imprisoned for the contempt.~~

~~4.~~ A minor fourteen years of age or older found to have violated this subsection 2 must pay a fee of twenty-five dollars.

a. Any individual who has been cited for a violation of this subsection 2 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.

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

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

~~5.~~ 2. The prosecution must prove the commission of a cited violation under subsection 2 1 by a preponderance of the evidence.

~~6.~~ 3. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.

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

SECTION 3. AMENDMENT. Subsection 11 of section 19-03.4-02 of the North Dakota Century Code is amended and reenacted as follows:

11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, ~~for example, a licensed distributor or dealer of tobacco products.~~

SECTION 4. Tobacco use, sale, and distribution prohibited - Exceptions - Penalty.
It is a class B misdemeanor to use tobacco in this state. It is a class A misdemeanor to sell or distribute tobacco in this state. This section does not apply to the use of tobacco for religious purposes.

SECTION 5. AMENDMENT. Subsection 3 of section 23-38-02 of the North Dakota Century Code is amended and reenacted as follows:

3. The state department of health, with the committee's involvement, shall provide assistance to:
- a. Evaluate programs;
 - b. Promote media advocacy by working with statewide media associations;
 - c. ~~Implement smoke-free policies by involving antitobacco groups in promoting the need for smoke-free public buildings;~~
 - d. Work to reduce minors' access to tobacco in all communities;
 - e. ~~d.~~ Facilitate the coordination of program components with the local level;
 - f. ~~e.~~ Involve state agencies, law enforcement, and local government in the administration and management of the program; and
 - g. ~~f.~~ Assist the state in screening and implementing the grants.

SECTION 6. AMENDMENT. Section 43-04-43 of the North Dakota Century Code is amended and reenacted as follows:

43-04-43. Barber shop - Regulations. No person may use for the purpose of practicing barbering any room or place which also is used for:

1. Residential purposes; or

2. Any business purpose other than the sale of hair tonics, lotions, creams, cutlery, toilet articles, ~~cigars, tobacco~~, candies in original package, and such other commodities as are used and sold in barber shops, unless a substantial partition of ceiling height separates the portion used for residential or business purposes from the room used for barbering. A barber shop may be operated in conjunction with a beauty shop, shoe shining parlor, or agency for the reception and delivery of laundry without the separation thereof by a partition of ceiling height.

SECTION 7. AMENDMENT. Section 47-22-09 of the North Dakota Century Code is amended and reenacted as follows:

47-22-09. Classification. The following general classes of goods are established for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a trademark may include any or all goods upon which the trademark is actually being used.

The said classes are as follows:

1. Raw or partly prepared materials.
2. Receptacles.
3. Baggage, animal equipment, portfolios, and pocketbooks.
4. Abrasives and polishing materials.
5. Adhesives.
6. Chemicals and chemical compositions.
7. Cordage.
8. ~~Smokers' articles, not including tobacco products.~~
9. Explosives, firearms, equipments, and projectiles.
- ~~40.~~ 9. Fertilizers.
- ~~41.~~ 10. Inks and inking materials.
- ~~42.~~ 11. Construction materials.
- ~~43.~~ 12. Hardware and plumbing and steam-fitting supplies.
- ~~44.~~ 13. Metals and metal castings and forgings.
- ~~45.~~ 14. Oils and greases.
- ~~46.~~ 15. Paints and painters' materials.
- ~~47.~~ 16. Tobacco products.

Fifty-eighth
Legislative Assembly

- | | | |
|----|---------------------------|---|
| 1 | 48. <u>17.</u> | Medicines and pharmaceutical preparations. |
| 2 | 49. <u>18.</u> | Vehicles. |
| 3 | 20. <u>19.</u> | Linoleum and oiled cloth. |
| 4 | 24. <u>20.</u> | Electrical apparatus, machines, and supplies. |
| 5 | 22. <u>21.</u> | Games, toys, and sporting goods. |
| 6 | 23. <u>22.</u> | Cutlery, machinery, and tools, and parts thereof. |
| 7 | 24. <u>23.</u> | Laundry appliances and machines. |
| 8 | 25. <u>24.</u> | Locks and safes. |
| 9 | 26. <u>25.</u> | Measuring and scientific appliances. |
| 10 | 27. <u>26.</u> | Horological instruments. |
| 11 | 28. <u>27.</u> | Jewelry and precious-metal ware. |
| 12 | 29. <u>28.</u> | Brooms, brushes, and dusters. |
| 13 | 30. <u>29.</u> | Crockery, earthenware, and porcelain. |
| 14 | 31. <u>30.</u> | Filters and refrigerators. |
| 15 | 32. <u>31.</u> | Furniture and upholstery. |
| 16 | 33. <u>32.</u> | Glassware. |
| 17 | 34. <u>33.</u> | Heating, lighting, and ventilating apparatus. |
| 18 | 35. <u>34.</u> | Belting, hose, machinery packing, and nonmetallic tires. |
| 19 | 36. <u>35.</u> | Musical instruments and supplies. |
| 20 | 37. <u>36.</u> | Paper and stationery. |
| 21 | 38. <u>37.</u> | Prints and publications. |
| 22 | 39. <u>38.</u> | Clothing. |
| 23 | 40. <u>39.</u> | Fancy goods, furnishings, and notions. |
| 24 | 41. <u>40.</u> | Canes, parasols, and umbrellas. |
| 25 | 42. <u>41.</u> | Knitted, netted, and textile fabrics, and substitutes therefor. |
| 26 | 43. <u>42.</u> | Thread and yarn. |
| 27 | 44. <u>43.</u> | Dental, medical, and surgical appliances. |
| 28 | 45. <u>44.</u> | Soft drinks and carbonated waters. |
| 29 | 46. <u>45.</u> | Foods and ingredients of foods. |
| 30 | 47. <u>46.</u> | Wines. |
| 31 | 48. <u>47.</u> | Malt beverages and liquors. |

- 1 ~~49.~~ 48. Distilled alcoholic liquors.
2 ~~50.~~ 49. Merchandise not otherwise classified.
3 ~~51.~~ 50. Cosmetics and toilet preparations.
4 ~~52.~~ 51. Detergents and soaps.

5 **SECTION 8. AMENDMENT.** Section 57-39.2-03.2 of the North Dakota Century Code
6 is amended and reenacted as follows:

7 **57-39.2-03.2. Sales tax on alcoholic beverages and tobacco products.**

8 Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the
9 gross receipts of retailers from all sales at retail of alcoholic beverages as defined in section
10 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for
11 consumption on the premises or through off-sale outlets for consumption off the premises, ~~and~~
12 ~~cigarettes, cigars, and other tobacco products,~~ provided that gross receipts from the sale
13 thereof means and includes any other taxes imposed on such merchandise or its use or on the
14 retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax
15 of seven percent on the gross receipts of retailers from all sales at retail of alcoholic beverages,
16 which is in lieu of and not in addition to any other tax imposed by this chapter.

17 **SECTION 9. AMENDMENT.** Section 57-40.2-03.2 of the North Dakota Century Code
18 is amended and reenacted as follows:

19 **57-40.2-03.2. Use tax on alcoholic beverages and tobacco products.**

20 Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the
21 storage, use, or consumption in this state of alcoholic beverages as defined in section 5-01-01,
22 whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption
23 on the premises or through off-sale outlets for consumption off the premises, ~~and cigarettes,~~
24 ~~cigars, and other tobacco products,~~ provided that gross receipts from the sale thereof mean and
25 include any other taxes imposed on such merchandise or its use or on the retail or other sale
26 thereof. Notwithstanding any other provision of law, there is imposed a tax of seven percent on
27 the storage, use, or consumption in this state of alcoholic beverages, which is in lieu of and not
28 in addition to any other tax imposed by this chapter.

29 **SECTION 10. REPEAL.** Chapters 51-25 and 57-36 of the North Dakota Century Code
30 are repealed.