

HOUSE BILL NO. 1171

Introduced by

Representatives DeKrey, Haas

1 A BILL for an Act to amend and reenact section 12.1-31-03 of the North Dakota Century Code,
2 relating to the sale of tobacco to individuals under the age of twenty-one and the use of tobacco
3 by minors; to provide a penalty; and to provide for application.

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

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

7 **12.1-31-03. Sale of tobacco to ~~minors~~ individuals under twenty-one years of age**
8 **and use by minors prohibited.**

9 1. a. It is an infraction for any person to sell to an individual under twenty-one years
10 of age cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form
11 in which it may be utilized for smoking or chewing.

12 b. 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
14 in which it may be utilized for smoking or chewing. As used in this subsection,
15 "sell" includes dispensing from a vending machine under the control of the
16 actor.

17 2. a. It is a noncriminal offense for an individual under twenty-one years of age to
18 purchase cigarettes, cigars, cigarette papers, snuff, or tobacco in any form in
19 which it may be utilized for smoking or chewing.

20 b. It is a noncriminal offense for a minor to purchase, possess, smoke, or use
21 cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in
22 which it may be utilized for smoking or chewing. However, an individual
23 under twenty-one years of age may purchase and an individual under
24 eighteen years of age may purchase and possess tobacco as part of a

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

- 7 3. A city or county may adopt an ordinance or resolution regarding the sale of tobacco
8 to ~~minors~~ individuals under twenty-one years of age and use of tobacco by minors
9 which includes prohibitions in addition to those in subsection 1 or 2. Any ordinance
10 or resolution adopted must include provisions deeming a violation of subsection 2 a
11 noncriminal violation and must provide for a fee of not less than twenty-five dollars
12 for a minor fourteen years of age or older who has been charged with an offense
13 under subdivision b of subsection 2 and a fee of not less than twenty-five dollars
14 for an individual under twenty-one years of age who has been charged with an
15 offense under subdivision a of subsection 2. The failure to post a required bond or
16 pay an assessed fee by an individual found to have violated the ordinance or
17 resolution is punishable as a contempt of court, except a minor may not be
18 imprisoned for the contempt.

- 19 4. A minor fourteen years of age or older found to have violated subdivision b of
20 subsection 2 must pay a fee of twenty-five dollars. An individual under twenty-one
21 years of age found to have violated subdivision a of subsection 2 must pay a fee of
22 twenty-five dollars.

- 23 a. Any individual who has been cited for a violation of subsection 2 may appear
24 before a court of competent jurisdiction and pay the fee by the time scheduled
25 for a hearing, or if bond has been posted, may forfeit the bond by not
26 appearing at the scheduled time. An individual appearing at the time
27 scheduled in the citation may make a statement in explanation of that
28 individual's action and the judge may waive, reduce, or suspend the fee or
29 bond, or both. If the individual cited follows the procedures of this subdivision,
30 that individual has admitted the violation and has waived the right to a hearing
31 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 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. The prosecution must prove the commission of a cited violation under subsection 2 by a preponderance of the evidence.

6. 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. 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 2. APPLICATION. The minimum age requirement for purchasing tobacco products under subdivision a of subsection 2 of section 12.1-31-03 does not apply to an individual who could legally purchase those products on the day before the effective date of this Act. The minimum age requirement for which a person may sell tobacco products to an individual under subdivision a of subsection 1 of section 12.1-31-03 does not apply to the sale to an individual who could legally purchase those products on the day before the effective date of this Act.