

SENATE BILL NO. 2159

Introduced by

Transportation Committee

(At the request of the Department of Transportation)

1 A BILL for an Act to create and enact a new section to Title 39 of the North Dakota Century
2 Code, relating to rest area vending machine permits from the department of transportation.

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

4 **SECTION 1. Permits for vending machines at rest areas.** A vending machine may
5 not be placed or remain upon a rest area under the supervision of the director without a permit
6 from the director. The director may charge a fee for the issuance of a vending machine permit.
7 The amount of the permit fee charged by the director for the placement of a vending machine
8 dispensing a newspaper, magazine, or other publication must relate to the department's actual
9 cost of administration, review, and enforcement of the permit process. The permit process may
10 not be affected by the content of a publication except when the publication contains obscene
11 material or other unprotected speech as defined by the decisions of the United States supreme
12 court, the federal courts, and the courts of this state. The director shall require permittees to
13 comply with appropriate indemnification, insurance, and other risk management provisions of
14 the permit. Vending machines must be secured in a manner that prevents tipping and moving,
15 deters theft, and leaves state property undamaged. Plexiglass, safety glass, or other shatter
16 resistant materials must be employed in windows or displays. All vending machines must be
17 sufficiently enclosed to prevent the distributed product from inadvertently being removed or
18 blown from the machine or weathered by the elements. Stolen or damaged vending machines
19 do not result in liability to the department and must be repaired, restored, or replaced within
20 thirty calendar days. All cash boxes and accesses to cash boxes must be metal and securely
21 locked in place. All vending machines must be placed in a well lighted area visible from the rest
22 area roadway. All vending machines must be placed on a route allowing parallel access by
23 motorized or standard wheelchairs, with at least sixty-six inches [1676.400 millimeters] of clear
24 width. A vending machine may not have a component or function used by the public which

1 requires more than five pounds [2.268 kilograms] of force to be applied. The height of controls,
2 doors, or access points necessary for use by the public may not exceed sixty inches
3 [1524 millimeters]. The director may specify the primary colors of vending machines to
4 complement the decor or theme of the involved property. The director may determine the
5 maximum number of vending machine placements at a given rest area. Priority must be given
6 to vending machines placed pursuant to the Randolph Sheppard Act [Pub. L. 74-732;
7 49 Stat. 1559; 20 U.S.C. 107], as administered by the vocational rehabilitation division of the
8 department of human services under section 50-06.1-13. When, after allowing for the
9 placement of vending machines pursuant to the Randolph Sheppard Act, [Pub. L. 74-732;
10 49 Stat. 1559; 20 U.S.C. 107], the director determines that the number of permit applications for
11 a particular rest area would exceed the remaining available space or would prevent compliance
12 with this section or other law, the director shall grant permits by means of a lottery, with permits
13 allocated pro rata according to the number of applications for each type. The permittee is solely
14 responsible to ensure that any trash, wrapping, boxes, or debris, generated when stocking or
15 servicing vending machines is not left on or at the rest area. The permittee is solely responsible
16 for all installation, maintenance, replacement, inspection, access area cleaning, and stocking of
17 vending machines. Vandalism and graffiti on vending machines must be repaired or removed
18 within fourteen days of written notice by the director. The permittee must inspect and stock
19 vending machines as needed, but at least monthly, to provide adequate service to the public.
20 Vending machines removed for repair or for other reasons must be restored or replaced by the
21 permittee within thirty days. Vending machines in violation of this section or any other
22 applicable law may be removed by the director fourteen days after notice of violation is provided
23 and without liability to the director. Vending machines judged by the director to pose a risk to
24 safety may be removed immediately without liability to the director and without prior notice to
25 the permittee. The director shall retain any removed vending machines for thirty days to allow
26 retrieval by the permittee, after compensation to the director for removal costs. The director
27 may dispose of or sell machines not retrieved within thirty days of removal, but removal costs
28 must be satisfied only to the extent of proceeds received by the director. The director has a
29 cause of action to recover any deficiency, attorneys' fees, and litigation expenses. The director,
30 upon the determination that a rest area must be closed for a period of greater than thirty days,
31 may order the permittee, at the permittee's expense, to remove all vending machines in a

1 manner that does not damage state property, or remove all product and money and place upon
2 the vending machine a prominent notice that all product and money have been removed.
3 Should the director determine that removal of vending machines is necessary to conduct
4 repairs, construction, surveys, or other duties of the department, the permittee, at the
5 permittee's expense, shall remove all vending machines in a manner that does not damage
6 state property, upon fourteen days' notice. The current address and phone number where
7 customer service or business is conducted by the permittee must be legibly and prominently
8 posted upon the vending machine. The director shall cancel the permit should the permittee
9 remove vending machines, except as provided in this section. The cost of any removal must be
10 borne by the permittee. The permittee, at the permittee's own expense, must restore the site
11 the machine formerly occupied to the satisfaction of the director. For purposes of this section,
12 "vending machine" means any device that allows access to a newspaper, magazine, beverage,
13 concession, or other item for public consumption or use. For purposes of this section,
14 "permittee" means any person or organization, including any corporation, partnership, firm, or
15 any other legal entity capable of owning property and transacting business, which has applied
16 for a permit under this chapter. For purposes of this section, "notice" consists of a written
17 communication and must be deemed to have occurred within seventy-two hours of mailing, if
18 mailed within North Dakota, or one hundred twenty hours of mailing, if mailed outside North
19 Dakota. "Notice" to a vendor of the condition of a vending machine also occurs if a period of
20 time greater than the required inspection interval for the vending machines has passed.