

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED SENATE BILL NO. 2116**

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to amend and reenact section 12.1-31-03 and subsection 17 of section
2 27-20-02 of the North Dakota Century Code, relating to the sale of tobacco to minors; and to
3 provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Section 12.1-31-03 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **12.1-31-03. Sale of tobacco to minors and use by minors prohibited.**

- 8 1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor,
9 cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it
10 may be utilized for smoking or chewing. As used in this subsection, "sell" includes
11 dispensing from a vending machine under the control of the actor.
- 12 2. It is ~~an infraction~~ a noncriminal offense for a minor to purchase, possess, smoke,
13 or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in
14 which it may be utilized for smoking or chewing. However, an individual under
15 eighteen years of age may purchase and possess tobacco as part of a compliance
16 survey program when acting with the permission of the individual's parent or
17 guardian and while acting under the supervision of any law enforcement authority.
18 A state agency, city, county, board of health, tobacco retailer, or association of
19 tobacco retailers may also conduct compliance surveys, after coordination with the
20 appropriate local law enforcement authority.
- 21 3. A city or county may adopt an ordinance or resolution regarding the sale of
22 tobacco to minors and use of tobacco by minors which ~~is more stringent than this~~
23 ~~section~~ includes prohibitions in addition to those in subsection 1 or 2. Any
24 ordinance or resolution adopted ~~which deems~~ must include provisions deeming a

violation of subsection 1 ~~or~~ 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 subsection 2 must pay a fee of twenty-five dollars.

a. Any individual who has been cited for a violation ~~that is designated a noncriminal offense of subsection 2~~ may appear before a court of competent jurisdiction and pay the ~~statutory~~ 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 ~~statutory~~ 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 ~~statutory~~ fee. This subdivision does not allow a ~~hearing~~ citing officer to receive the ~~statutory~~ fee or bond.

b. If an individual cited for a violation ~~that is designated a noncriminal offense of subsection 2~~ does not choose to follow ~~any procedure~~ the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation ~~charged~~ 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 ~~charged~~ cited shall deposit with the court an appearance bond equal to the ~~statutory~~ fee for the violation ~~charged~~ 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 ~~state prosecution~~ must prove the commission of a ~~charged cited~~ violation at
the hearing under ~~this section~~ subsection 2 by a preponderance of the evidence.

4. 6. A law enforcement officer or juvenile court 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. AMENDMENT. Subsection 17 of section 27-20-02 of the 1999
Supplement to the North Dakota Century Code is amended and reenacted as follows:

17. "Unruly child" means a child who:

- a. Is habitually and without justification truant from school;
- b. Is habitually disobedient of the reasonable and lawful commands of the child's
parent, guardian, or other custodian and is ungovernable; or who is willfully in
a situation dangerous or injurious to the health, safety, or morals of the child
or others;
- c. Has committed an offense applicable only to a child, except for an offense
committed by a minor fourteen years of age or older under subsection 2 of
section 12.1-31-03 or an equivalent local ordinance or resolution;
- d. Has committed a noncriminal traffic offense without ever having been issued
an operator's license or permit if one was required; ~~or~~
- e. Has committed an offense in violation of section 39-08-18 or 5-01-08; ~~and or~~
- f. Is under the age of fourteen years and has purchased, possessed, smoked,
or used tobacco or tobacco-related products in violation of subsection 2 of
section 12.1-31-03; and
- g. In any of the foregoing instances is in need of treatment or rehabilitation.