

HOUSE BILL NO. 1078

Introduced by

Representatives Larson, Klemin, Kiefert, Nathe

Senators Rust, Luick, Carlisle, Anderson, Kilzer

1 A BILL for an Act to amend and reenact sections 12.1-31-03 and 12.1-31-03.1, subsection 19 of
2 section 27-20-02, and section 51-32-01 of the North Dakota Century Code, relating to the sale
3 and use of nicotine devices by minors; and to 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 North Dakota Century Code is
6 amended and reenacted as follows:

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

- 9 1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor,
10 cigarettes, cigarette papers, nicotine devices, cigars, snuff, or tobacco in any other
11 form in which it may be utilized for smoking or chewing. As used in this subsection,
12 "sell" includes dispensing from a vending machine under the control of the actor.
- 13 2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes,
14 cigars, nicotine devices, cigarette papers, snuff, or tobacco in any other form in which
15 it may be utilized for smoking or chewing. However, an individual under eighteen years
16 of age may purchase and possess tobacco or nicotine devices as part of a compliance
17 survey program when acting with the permission of the individual's parent or guardian
18 and while acting under the supervision of any law enforcement authority. A state
19 agency, city, county, board of health, tobacco retailer, or association of tobacco
20 retailers may also conduct compliance surveys, after coordination with the appropriate
21 local law enforcement authority.
- 22 3. It is a noncriminal offense for a minor to present or offer to another individual a
23 purported proof of age which is false, fraudulent, or not actually the minor's own proof
24 of age, for the purpose of attempting to purchase or possess cigarettes, cigars,

1 cigarette papers, nicotine devices, snuff, or tobacco in any other form in which it may
2 be utilized for smoking or chewing.

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

12 5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must
13 pay a fee of twenty-five dollars.

14 a. Any individual who has been cited for a violation of subsection 2 or 3 may appear
15 before a court of competent jurisdiction and pay the fee by the time scheduled for
16 a hearing, or if bond has been posted, may forfeit the bond by not appearing at
17 the scheduled time. An individual appearing at the time scheduled in the citation
18 may make a statement in explanation of that individual's action and the judge
19 may waive, reduce, or suspend the fee or bond, or both. If the individual cited
20 follows the procedures of this subdivision, that individual has admitted the
21 violation and has waived the right to a hearing on the issue of commission of the
22 violation. The bond required to secure appearance before the court must be
23 identical to the fee. This subdivision does not allow a citing officer to receive the
24 fee or bond.

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

- 1 c. The failure to post bond or to pay an assessed fee is punishable as a contempt of
2 court, except a minor may not be imprisoned for the contempt.
- 3 6. The prosecution must prove the commission of a cited violation under subsection 2 or
4 3 by a preponderance of the evidence.
- 5 7. A law enforcement officer that cites a minor for violation of this section shall mail a
6 notice of the violation to the parent or legal guardian of the minor within ten days of the
7 citation.
- 8 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced
9 by the court to a sanction or order designed to ensure compliance with the payment of
10 the fee or fine or to an alternative sentence or sanction including community service.
- 11 9. As used in this section, "nicotine device" means any noncombustible product that can
12 be used by an individual to simulate smoking through inhalation of a substance that
13 contains or delivers nicotine or any other constituent. Nicotine device includes any
14 component part of that product whether or not sold separately.

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

17 **12.1-31-03.1. Vending machines prohibited - Penalty.**

- 18 1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, nicotine
19 devices, cigars, snuff, or tobacco in any other form in which it may be utilized for
20 smoking or chewing through a vending machine, except as provided in subsection 2.
- 21 2. Subsection 1 does not apply to:
 - 22 a. A vending machine that is located in an area in which minors are not permitted
23 access; or
 - 24 b. A vending machine that dispenses cigarettes, cigarette papers, cigars, nicotine
25 devices, snuff, or tobacco in any other form in which it may be utilized for
26 smoking or chewing through the operation of a device that requires a
27 salesperson to control the dispensation of such product.
- 28 3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, nicotine
29 devices, cigars, snuff, or tobacco in any other form in which it may be utilized for
30 smoking or chewing through any vending machine, if those products are placed

1 together with any nontobacco product, other than matches or nicotine devices, in the
2 vending machine.

3 4. As used in this section, "nicotine device" has the same meaning as in section
4 12.1-31-03.

5 **SECTION 3. AMENDMENT.** Subsection 19 of section 27-20-02 of the North Dakota
6 Century Code is amended and reenacted as follows:

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

8 a. Is habitually and without justification truant from school;

9 b. Is habitually disobedient of the reasonable and lawful commands of the child's
10 parent, guardian, or other custodian and is ungovernable or who is willfully in a
11 situation dangerous or injurious to the health, safety, or morals of the child or
12 others;

13 c. Has committed an offense applicable only to a child, except for an offense
14 committed by a minor fourteen years of age or older under subsection 2 of
15 section 12.1-31-03 or an equivalent local ordinance or resolution;

16 d. Has committed an offense in violation of section 5-01-08; or

17 e. Is under the age of fourteen years and has purchased, possessed, smoked, or
18 used tobacco ~~or~~ tobacco-related products, or nicotine devices in violation of
19 subsection 2 of section 12.1-31-03; and

20 f. In any of the foregoing instances is in need of treatment or rehabilitation.

21 g. As used in this subsection, "nicotine device" has the same meaning as in section
22 12.1-31-03.

23 **SECTION 4. AMENDMENT.** Section 51-32-01 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **51-32-01. Prohibited acts regarding sale of tobacco products and nicotine devices to**
26 **minors.**

27 It is unlawful for any person in the business of selling tobacco products or nicotine devices
28 to take an order for a tobacco product or nicotine devices, other than from a person who is in
29 the business of selling tobacco products or nicotine devices, through the mail or through any
30 telecommunications means, including by telephone, facsimile, or the internet, if in providing for

1 the sale or delivery of the product pursuant to the order, the person mails the product or ships
2 the product by carrier, and the person fails to comply with each of the following procedures:

- 3 1. Before mailing or shipping the product, the person receives from the individual who
4 places the order the following:
 - 5 a. A copy of a valid government-issued document that provides the name, address,
6 and date of birth of the individual; and
 - 7 b. A signed statement from the individual providing a certification that the individual:
 - 8 (1) Is a smoker of legal minimum purchase age in the state;
 - 9 (2) Has selected an option on the statement as to whether the individual wants
10 to receive mailings from a tobacco or nicotine device company; and
 - 11 (3) Understands that providing false information may constitute a violation of
12 law.
- 13 2. Before mailing or shipping the product, the person:
 - 14 a. Verifies the date of birth or age of the individual against a commercially available
15 database; or
 - 16 b. Obtains a photocopy or other image of the valid, government-issued identification
17 stating the date of birth or age of the individual placing the order.
- 18 3. Before mailing or shipping the product, the person provides to the prospective
19 purchaser, by electronic mail or other means, a notice that meets the requirements of
20 section 51-30-04.
- 21 4. In the case of an order for a product pursuant to an advertisement on the internet, the
22 person receives payment by credit card, debit card, or check for the order before
23 mailing or shipping the product.
- 24 5. a. The person employs a method of mailing or shipping the product requiring that
25 the individual purchasing the product:
 - 26 (1) Be the addressee;
 - 27 (2) Have an individual of legal minimum purchase age sign for delivery of the
28 package; and
 - 29 (3) If the individual appears to the carrier making the delivery to be under
30 twenty-seven years of age, take delivery of the package only after producing
31 valid government-issued identification that bears a photograph of the

1 individual, indicates that the individual is not under the legal age to purchase
2 cigarettes, and indicates that the individual is not younger than the age
3 indicated on the government-issued document.

4 b. The bill of lading clearly states the requirements in subdivision a and specifies
5 that state law requires compliance with the requirements.

6 6. The person notifies the carrier for the mailing or shipping, in writing, of the age of the
7 addressee as indicated by the government-issued document.

8 7. As used in this section, "nicotine device" has the same meaning as in section
9 12.1-31-03.