

HOUSE BILL NO. 1265

Introduced by

Representatives M. Nelson, Kretschmar, Oversen

Senators Luick, Nelson

1 A BILL for an Act to amend and reenact section 12.1-31-03 and subsection 19 of section
2 27-20-02 of the North Dakota Century Code, relating to minors and the sale and use of
3 electronic smoking devices; 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 electronic smoking devices to minors and use by**
8 **minors prohibited.**

9 1. As used in this section:

- 10 a. "Child-resistant packaging" has the meaning set forth in title 16, Code of Federal
11 Regulations, section 1700.15(b)(1), as in effect on January 1, 2015, when tested
12 in accordance with the method described in title 16, Code of Federal Regulations,
13 section 1700.20, as in effect on January 1, 2015.
- 14 b. "Electronic smoking device" means any electronic product that delivers nicotine
15 or other substances to the individual inhaling from the device, including, an
16 electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking
17 device includes any component, part, or accessory of such a product, whether or
18 not sold separately. Electronic smoking device does not include drugs, devices,
19 or combination products approved for sale by the United States food and drug
20 administration, as those terms are defined in the Federal Food, Drug and
21 Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
- 22 c. "Self-service merchandising" means the open display of cigarettes, electronic
23 smoking devices, or tobacco products in a manner that is accessible to the public
24 without the intervention or assistance of a tobacco retailer.

- 1 d. "Tobacco product" means any product containing, made, or derived from tobacco
2 which is intended for human consumption, whether chewed, smoked, absorbed,
3 dissolved, inhaled, snorted, sniffed, or ingested by any other means, including
4 cigars, pipe tobacco, chewing tobacco, snuff, snus, other kinds and forms of
5 tobacco, as well as any component, part, paraphernalia, or accessory of a
6 tobacco product; but does not include:
- 7 (1) Cigarettes as defined in section 57-36; or
8 (2) Drugs, devices, or combination products approved for sale by the United
9 States food and drug administration, as those terms are defined in the
10 Federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301
11 et seq.].
- 12 e. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of
13 smoking materials of all types, cigarette rolling machines, and any other item
14 designed for the smoking or ingestion of tobacco products.
- 15 f. "Tobacco retailer" means any person who:
- 16 (1) Is a licensed dealer or licensed distributor under chapter 57-36; or
17 (2) Sells, offers for sale, or offers to exchange for any form of consideration,
18 cigarettes, tobacco products, or electronic smoking devices.
- 19 g. "Vending Machine" means a machine, appliance, or other mechanical device
20 operated by currency, token, debit card, or credit card which is designed or used
21 for vending purposes, including machines or devices that use remote control
22 locking mechanisms.
- 23 2. a. It is an infraction for any person~~tobacco retailer~~ to sell:
- 24 (1) Sell or furnish to a minor, or procure for a minor, cigarettes, cigarette-
25 papers, cigars, snuff, or tobacco in any other form in which it may be utilized
26 for products, or electronic smoking or chewing devices;
- 27 (2) Display cigarettes, tobacco products, or electronic smoking devices by
28 means of self-service merchandising; or
- 29 (3) Sell any liquid or other substance, whether or not that liquid or other
30 substance contains nicotine, which is intended for human consumption and

1 use in an electronic smoking device and which is not contained in packaging
2 that is child-resistant.

3 b. As used in this subsection, "sell" includes dispensing from a vending machine
4 under the control of ~~the~~ a tobacco retailer.

5 c. In addition to any other penalties provided for in this section, a license issued
6 under chapter 57-36 to a tobacco retailer found to have violated this subsection:

7 (1) On three occasions within any twenty-four month period must be suspended
8 for ten calendar days;

9 (2) On four occasions within any twenty-four month period must be suspended
10 for thirty calendar days; and

11 (3) On five occasions within any twenty-four month period must be suspended
12 for ninety calendar days.

13 d. Any person aggrieved by a violation of this subsection may bring an action for
14 injunctive relief to prevent future violations of this subsection or to recover any
15 actual damages the person may prove.

16 ~~2.3.~~ It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes,
17 ~~eigars, cigarette papers, snuff, or tobacco products, or electronic smoking devices~~ in
18 any other form ~~in which it may be utilized for smoking or chewing.~~ However, an
19 individual under eighteen years of age may purchase and possess cigarettes, tobacco
20 products, or electronic smoking devices as part of a compliance survey program when
21 acting with the permission of the individual's parent or guardian and while acting under
22 the supervision of any law enforcement authority. A state agency, city, county, board of
23 health, tobacco retailer, or association of tobacco retailers may also conduct
24 compliance surveys, after coordination with the appropriate local law enforcement
25 authority.

26 ~~3.4.~~ It is a noncriminal offense for a minor to present or offer to another individual a
27 purported proof of age which is false, fraudulent, or not actually the minor's own proof
28 of age, for the purpose of attempting to purchase or possess cigarettes, ~~eigars,~~
29 ~~eigarette papers, snuff, or tobacco products, or electronic smoking devices~~ in any
30 other form ~~in which it may be utilized for smoking or chewing.~~

1 ~~4.5.~~ A city or county may adopt an ordinance or resolution regarding the sale of cigarettes,
2 tobacco products, or electronic smoking devices to minors and use of tobacco by
3 minors which includes prohibitions in addition to those in subsection ~~4, 2, or 3,~~ or 4.
4 Any ordinance or resolution adopted must include provisions deeming a violation of
5 subsection ~~2 or 3,~~ or 4 a noncriminal violation and must provide for a fee of not less
6 than twenty-five dollars for a minor fourteen years of age or older who has been
7 charged with an offense under subsection ~~2 or 3,~~ or 4. The failure to post a required
8 bond or pay an assessed fee by an individual found to have violated the ordinance or
9 resolution is punishable as a contempt of court, except a minor may not be imprisoned
10 for the contempt.

11 ~~5.6.~~ A minor fourteen years of age or older found to have violated subsection ~~2 or 3~~ or 4
12 must pay a fee of twenty-five dollars.

13 a. Any individual who has been cited for a violation of subsection ~~2 or 3~~ or 4 may
14 appear before a court of competent jurisdiction and pay the fee by the time
15 scheduled for a hearing, or if bond has been posted, may forfeit the bond by not
16 appearing at the scheduled time. An individual appearing at the time scheduled in
17 the citation may make a statement in explanation of that individual's action and
18 the judge may waive, reduce, or suspend the fee or bond, or both. If the
19 individual cited follows the procedures of this subdivision, that individual has
20 admitted the violation and has waived the right to a hearing on the issue of
21 commission of the violation. The bond required to secure appearance before the
22 court must be identical to the fee. This subdivision does not allow a citing officer
23 to receive the fee or bond.

24 b. If an individual cited for a violation of subsection ~~2 or 3~~ or 4 does not choose to
25 follow the procedures provided under subdivision a, that individual may request a
26 hearing on the issue of the commission of the violation cited. The hearing must
27 be held at the time scheduled in the citation or at some future time, not to exceed
28 ninety days later, set at that first appearance. At the time of a request for a
29 hearing on the issue on commission of the violation, the individual cited shall
30 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 ~~6-7.~~ The prosecution must prove the commission of a cited violation under subsection ~~2 or~~
4 3 or 4 by a preponderance of the evidence.

5 ~~7-8.~~ 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 ~~8-9.~~ 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 **SECTION 2. AMENDMENT.** Subsection 19 of section 27-20-02 of the North Dakota
12 Century Code is amended and reenacted as follows:

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

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

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

19 c. Has committed an offense applicable only to a child, except for an offense
20 committed by a minor fourteen years of age or older under subsection ~~23~~ of
21 section 12.1-31-03 or an equivalent local ordinance or resolution;

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

23 e. Is under the age of fourteen years and has purchased, possessed, smoked, or
24 used cigarettes, tobacco or tobacco-related products, or electronic smoking
25 devices in any form in violation of subsection ~~23~~ of section 12.1-31-03; and

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