

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED 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 must relate to the department's actual cost of administration,
8 review, and enforcement of the permit process, but may not exceed twenty-five dollars. The
9 permit process may not be affected by the content of a publication. The director shall require
10 permittees to comply with appropriate indemnification, insurance, and other risk management
11 provisions of the permit. Vending machines must be secured in a manner that prevents tipping
12 and moving, deters theft, and leaves state property undamaged. Plexiglass, safety glass, or
13 other shatter resistant materials must be employed in windows or displays. All vending
14 machines must be sufficiently enclosed to prevent the distributed product from inadvertently
15 being removed or blown from the machine or weathered by the elements. Stolen or damaged
16 vending machines do not result in liability to the department and must be repaired, restored, or
17 replaced within thirty calendar days. All cash boxes and accesses to cash boxes must be
18 metal and securely locked in place. All vending machines must be placed in a well-lighted area
19 visible from the rest area roadway. All vending machines must be placed on a route allowing
20 parallel access by motorized or standard wheelchairs, with at least sixty-six inches
21 [1676.400 millimeters] of clear width. A vending machine may not have a component or
22 function used by the public which requires more than five pounds [2.268 kilograms] of force to
23 be applied. The height of controls, doors, or access points necessary for use by the public may
24 not exceed sixty inches [1524 millimeters]. The director may determine the maximum number

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

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