

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2116

2001 SENATE JUDICIARY

SB 2116

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2116

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 15th, 2001

Tape Number	Side A	Side B	Meter #
1	X		0.0-38.8
January 16th, 2001 (tape 2)		X	45.6-end
January 16th, 2001 (tape 3)	X		0
Committee Clerk Signature			

Minutes:

A BILL FOR AN ACT TO AMEND AND REENACT SECTION 12.1-31-03 AND  
SUBSECTION 17 OF SECTION 27-20-02 OF THE NORTH DAKOTA CENTURY CODE,  
RELATING TO THE SALE OF TABACCO TO MINORS; AND TO PROVIDE A PENALTY.  
EDWARD ERICKSON, assistant attorney general speaking in favor of SB 2116. (Testimony  
attached)

SENATOR TRENBEATH judge having the ability to order a person take an addiction treatment  
test, how do you do this if he forfeits his bond?

EDWARD ERICKSON there would still be a hearing if the prosecutor wants.

SENATOR TRENBEATH how does this say that?

EDWARD ERICKSON prosecutor would call for a hearing.

SENATOR TRENBEATH I don't see that here.

EDWARD ERICKSON perhaps an amendment to this bill would be possible.

SENATOR TRENBEATH I have been a defense attorney and the first thing that will happen. The person will avoid the bond and the judge will order treatment, then the defense attorney will say you can't.

EDWARD ERICKSON perhaps we could make an amendment in subsection 4 to provide a procedure where the state or city attorney would have the option of adding a hearing for this purpose.

SENATOR TRENBEATH it would seem that this would just clutter matters. You must have a court appearance.

EDWARD ERICKSON I could draw up some amendments to go with this.

SENATOR TRENBEATH I would like to see it in both fashions of a proposed amendment.

SENATOR NELSON on page 2, line 10 and 11 you say more stringent I can't find that. Is that in the original bill because I can't find that in my bill?

EDWARD ERICKSON I may have printed my differently. My testimony is on page 1 line 21-24.

SENATOR WATNE on the 2nd page where a person is required to attend a smoking addiction treatment course. Are there approved courses? Or can anyone set up a course.

EDWARD ERICKSON there are health centers. We don't want a specific treatment course that would freeze in place.

SENATOR LYSON for a noncriminal offense a fee has to be set by the judge?

EDWARD ERICKSON the problem came with the range of possible fees.

SENATOR LYSON maybe an alternative to the fee would be community service. I don't want this to be a money maker.

EDWARD ERICKSON I don't think this would be money maker. More of a money loser.

SENATOR LYSON this money will be taken from mommies pocket.

SENATOR TRAYNOR from what I understand you want to make the penaltys uniform across the state and the procedure as well.

EDWARD ERICKSON yes.

GREG SUND, Dickinson City Administrator, met with local tobacco coalition who hopes to prevent minors from smoking. One of their concerns is the fee, which they would like more flexibility. Some want more, others less. We would like to make a fee of at least \$25 plus community service. These courses aren't addiction courses they are more preventive.

SENATOR TRENBEATH constitution rears its ugly head. I don't think you can give the judge a precedent to set his own fees. The fee must be set in the bill.

GARY SUND intention is the way the ordinance would be written on a local level.

SENATOR DEVER I question the success of a program which forces kids to a part of.

GARY SUND if someone is addicted it's to late.

SENATOR WATNE this bills original intent was to punish.

GARY SUND yes probably case. In some communities the fee was larger.

GREG WALLACE, office of state court administrator, favors SB 2116. (testimony attached)

JERRY JUMSTAD, representing ND league of cities, favors SB 2116. Supports the change of giving the judge range of penalty.

SENATOR TRAYNOR do you have any comment on the bill taking away home rule.

JERRY JUMSTAD in regards to home rule cities don't have flexibility that they would like to have. From the city view point this is an improvement to the current law.

SENATOR TRENBEATH wouldn't it be an improvement to the city's flexibility regarding a fee of not less than \$25.

JERRY JUMSTAD, yes a fee of not less than \$25 would set a range.

SENATOR TRENBEATH that would allow them their own flexibility.

SENATOR WATNE municipal judge would have the flexibility. However this happens in juvenile court. Where would this end up? Municipal or juvenile.

JERRY JUMSTAD under current law this bill would take them to municipal court.

SENATOR TRAYNOR that's really the point of the bill.

JERRY JUMSTAD that's the idea.

JUNE HERMAN, American Heart Association, neutral in regards to SB 2116. (Meter 28)

(Testimony attached)

SENATOR TRAYNOR have you seen the bill? Do you have any comments on the portion of the bill page 2 line 5 and 6 "A judge may also require a person found to have violated subsection 2 to attend a smoking or tobacco addiction treatment course. Do think the language is appropriate.

JUNE HERMAN the heart association cannot comment on that.

CAPTAIN JEFF BALENTINE, of the Minot police department was present to support SB 2116.

SENATOR TRAYNOR MOTIONS TO HOLD BILL (meter # 38.8) UNTIL COMMITTEE CONSIDERS AMENDMENTS TO THE BILL. IN THE AREA OF THE PENALTY AND ALSO THE NEED FOR THE HEARING. THIRD CONCERN IS WHETHER LANGUAGE ON LINE 6 IS APPROPRIATE. HEARING IS CLOSED.

January 10th 2001 tape 2, meter # 45.6

SENATOR TRAYNOR we are discussing 3 amendments to the bill.

SENATOR TRENBEATH does this merit severity to raise it out of juvenile court. I move to amend verision 1 to the bill. SENATOR BERICIER seconded.

1-16-01

SENATOR NELSON does this conclude judge to say this is not an option.

SENATOR TRENBEATH yes I am. Make it like a traffic violation. But give them treatment.

SENATOR LYSON I disagree with the bill.

SENATOR BERICIER I second so we can get into discussion.

SENATOR WATNE so we are reducing the criminal offense from a \$500 dollar fine. If we defeat the bill.

SENATOR LYSON it won't work.

SENATOR TRENBEATH your saying education courses as being punishment. It won't work.

SENATOR LYSON yes it will.

SENATOR NELSON moves the amendment. SECONDED by SENATOR WATNE.

SENATOR TRENBEATH moves to amend bill on page 2 line 15.

SENATOR TRAYNOR strike line 3. (meter # 7)

SENATOR TRAYNOR closed the hearing. **SENATOR WATNE MOTIONED TO AMEND NOT LESS THAN 25 DOLLARS. SECONDED BY SENATOR BERCIER. VOTE INDICATED 6 YEAS, 1 NAYS, 0 ABSENT AND NOT COUNTING. SENATOR TRENBEATH MOTIONED TO AMEND SHORTER VERSION OF BILL. SECONDED BY SENATOR BERCIER. VOTE INDICATED 6 YEAS, 1 NAYS, AND 0 ABSENT AND NOT VOTING. SENATOR TRENBEATH MOTIONED TO DO PASS AS TWICE AMENDED. SECONDED BY SENATOR BERCIER. VOTE INDICATED 6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING.**

**FISCAL NOTE**  
 Requested by Legislative Council  
 12/26/2000

Bill/Resolution No.: SB 2116

Amendment to:

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The fiscal impact of this bill, which affect cities, is unknown. The impact is wholly dependent on the scope of enforcement by law enforcement officers on young people under age 18 who are using tobacco products.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3622	Date Prepared:	01/10/2001

Date: Jan 16, 01  
Roll Call Vote #: 1 *WTA*

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. *SB 2116*

Senate Judiciary *2116* Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken not less than \$25.00 Amendment

Motion Made By Watne Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	<i>X</i>		Bercier, D.	<i>X</i>	
Watne, D. Vice Chairman	<i>X</i>		Nelson, C.	<i>X</i>	
Dever, D.	<i>X</i>				
Lyson, S.		<i>X</i>			
Trenbeath, T.	<i>X</i>				

Total (Yes) 6 No 1

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 1/16/01  
Roll Call Vote #: 2

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. *SB 2116***

Senate	Judiciary	Committee
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☐ Subcommittee on \_\_\_\_\_  
or \_\_\_\_\_

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Adopt shuter version #1/Amendment

Motion Made By Trabeath Seconded By Berrier

[illegible]

Total (Yes) 6 No 1

Absent 0

## Floor Assignment

**If the vote is on an amendment, briefly indicate intent:**

Date: Jan ~~14th~~ 16<sup>th</sup>  
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2116

Senate Judiciary Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ~~to postpone~~ Do Pass as Amended + 2

Motion Made By Trenbeath Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.		X			
Trenbeath, T.	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment S. Bercier

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2116: Judiciary Committee (Sen. Traynor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2116 was placed on the Sixth order on the calendar.

Page 2, line 2, remove the overstrike over "~~a fee of not less than~~"

Page 2, line 3, remove the overstrike over "~~twenty-five dollars~~" and remove "the same disposition as subsection 4 for those provisions"

Page 2, line 5, remove "A judge may also require a person found to have violated subsection 2 to"

Page 2, remove line 6

Renumber accordingly

2001 HOUSE JUDICIARY

SB 2116

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2116

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-28-01

	Side A	Side B	Meter #
Tape Number			
TAPE I		x	1582 to 6122
Committee Clerk Signature <i>Joan Deers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2116. Relating to the sale of tobacco to minors; and to provide a penalty.

Edward Erickson: Assistant Attorney General, (see attached testimony)

Rep Delmore: Why was the part for smoking cessation or treatment taken out of this bill.

Edward Erickson: The provisions was taken out in order to avoid a hearing in every instance.

Rep Delmore: If you are caught and pay a fine, you would not be put in either program.

Edward Erickson: Correct.

Rep Mahoney: Infraction vs a non criminal offense, an infraction is non-criminal, where is it used.

Edward Erickson: The ticket was modeled off the traffic ticket language.

Rep Mahoney: Traffic fee is set in code, you are not setting any fees?

Edward Erickson: We have set \$25.00.

Chairman DeKrey: If there are no further questions, thank you for appearing. Anyone else wishing to testify on SB 2116.

Bill Wocken: City Administrator for the City of Bismarck, (see attached testimony)

Rep Delmore: Your fee would be \$25.00?

Bill Wocken: No, our fee is \$70.00, it includes the cost of an education class.

Rep Delmore: would this be for the first offense.

Bill Wocken: Unsure, perhaps the police department can answer that question.

Rep Delmore: What happens if I just pay the fine?

Bill Wocken: You are automatically enrolled in the class, not sure of the penalty if you do not appear.

Chairman DeKrey: If there are no questions, thank you for appearing before the committee.

Lt Dick Sovart: Bismarck Police Department, spoke in support. As far as law enforcement stand point, this bill would unify jurisdictions across the state. It would also enhance our enforcement of the smoking statute.

Rep Delmore: If it is a first time, is the fine still \$70.00?

Dick Sovart: Yes, part of the fine is the enrollment of class.

Rep Delmore: If you are cited again would it be another \$70.00.

Dick Sovart: Yes, it is.

Vice Chr Kretschmar: Does Bismarck use kids for a sting operation?

Dick Sovart: We do compliance checks, but the youth we use are under strict guidelines.

Rep Grande: If you ticket youth on the streets, is there any parental notification.

Dick Sovert: The ticket goes into municipal court and they sent out a letter of notice to the parents.

Vice Chr Kretschmar: If the seller is charged and convicted, are they required to take the class?

Dick Sovert: No.

Rep Eckre: Have had stores grab the youth and call the cops.

Dick Sovert: No.

Rep Eckre: Stores don't call and say I have someone trying to buy cigarettes?

Dick Sovert: Stores do cooperate, they do take false ID's.

Rep Maragos: where does the Division of Juvenile Services come in on this?

Dick Sovert: If the youth is under DJS jurisdiction, they would be notified.

Vice Chr Kretschmar: What about cigarette dispensing machines?

Dick Sovert: They are in the bars where you must be 21. The machines must be under supervision and not available to public access.

Rep Mahoney: If they are not under the supervision of Juvenile Services they are not reported to DJS.

Dick Sovert: Reported to the parents but not DJS.

Rep Mahoney: Is it reported to the schools.

Dick Sovert: It would be reported to schools.

Rep Delmore: DO the fees and fines vary then from city to city?

Dick Sovert: Yes, they would be \$25.00 and higher.

Rep Delmore: Each city can decide to do the classes or not.

Dick Sovert: Correct.

Rep Delmore: Do you see more citations as a result of this law.

Dick Sovert: I see more enforcement.

Rep Eckre: If an officer stops a juvenile and writes a citation, does he take the cigarettes?

Dick Sovert: Yes.

Rep Eckre: What if they are not visible.

Dick Sovert: The officer can do a stop and pat procedure.

Chairman DeKrey: Is there any one else wishing to testify?

Jerry Hjelmstad: North Dakota League of Cities, spoke in support of SB 2116.

Rep Maragos: Under the current violation, how much money would be raised?

Jerry Hjelmstad: I don't know. I have no idea of the financial input.

Rep Maragos: Would it be a good revenue source?

Jerry Hjelmstad: I think the cities are just looking to stop juvenile smoking.

Rep Delmore: How many cities charge more than the \$25.00 and do they offer classes.

Jerry Hjelmstad: In checking with a number of cities, I would think that there would be a number who would be interested in classes and quite a number would be looking at \$25.00. It would be a guess on my part.

Rep Delmore: Is there a limit to the upper end of the fine?

Jerry Hjelmstad: Cities are limited to the upper limit.

Rep Mahoney: Where do you see the limit on the upper end?

Jerry Hjelmstad: I am talking about the general penalty limits on violations.

Rep Mahoney: These are not criminal offenses? A \$1000.00 would be the cap.

Jerry Hjelmstad: Right.

Rep Mahoney: Do you know what they have been set around the state.

Jerry Hjelmstad: I don't know.

Chairman DeKrey: If there are no further questions, thank you for appearing before the committee, anyone else wishing to testify on SB 2116?

Jerry Walstad: State Court Administrators Office, with information on the revenue. He explains the procedure. The cost of the classes vary from \$30.00 to \$70.00. If the cities do not pass an ordinance, then the case would remain in district court.

Chairman DeKrey: If there are no questions, thank you for appearing.

Rep Mahoney: If a kid gets a speeding ticket, is that reported to the parents?

Jerry Walstad: Yes. The Department of Transportation notifies the parent.

Rep Mahoney: Who under this laws is responsible for notification.

Jerry Walstad: The law doesn't require notification.

Rep Maragos: What prompts the Department of Transportation to have to notify the parent.

Jerry Walstad: I don't know.

Chairman DeKrey: If there are no questions, thank you for appearing. Is there anyone else wishing to appear in support, or opposition of SB 2116?

Mark Rasmuson: Municipal Judge of Minot, I am opposed to this bill. Under the present law it is an infraction for a person to sell tobacco to a minor. It is an infraction for a minor to possess tobacco. AN infraction is a criminal offense, I don't think it is a good idea to decriminalize the law for selling tobacco to minors. I think that youth offenders should be handled in Juvenile Court.

Rep Delmore: If this bill is defeated, what would be in place?

Mark Rasmuson: They would remain in juvenile court.

Rep Klemin: Asks a question of the Judge for clarification.

Mark Rasmuson: He answers the question and again state that juveniles should be in juvenile court.

Rep Klemin: If there was an infraction, a non criminal offense to purchase is there a problem having different penalties for different vises.

Mark Rasmuson: There is a difference because an infraction can be up to a \$500.00 fine.

Rep Klemin: What I mean by a problem is an institution problem.

Mark Rasmuson: Different standards between an adult and a juvenile.

Rep Klemin: If we change line 8 on page one back to what it was, would that help the problem?

Mark Rasmuson: We have a problem, you have to distinguish between the adults and a minor.

Rep Onstad: If an officer see a minor on the street, was not a high priority, would a ticket process still work in juvenile court?

Mark Rasmuson: I would have no problem with that.

Chairman DeKrey: If there are no further questions, thank you for appearing.

Carol Two Eagles - neutral (see attached testimony)

Chairman DeKrey: Seeing no further testimony, we will close the hearing on SB 2116.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2116b

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-13-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		4650 to 6235
TAPE I		x	01 to 580
Committee Clerk Signature			

Minutes: Chairman DeKrey called the committee to order on SB 2116.

COMMITTEE DISCUSSION

Rep Maragos had an e-mail that he shared with the committee from a person speaking on behalf of the City of Minot, it states that the mayor and city council of Minot are in support of the bill including the amendments and the options shared by the judge from Minot who was opposed the bill are not shared.

The amendments to the bill were discussed in detail by the members of the committee. The committee was not sure that the bill goes where they want it to go. Mr Whitmore from the City of Bismarck testified in support of this bill.

TAPE I SIDE B

The committee discussion continues. After much discussion, Rep Grande and Rep Delmore were to get together with the Attorney General and see if they could take care of the problems in SB 2116.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2116c

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-14-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	2036 to 3737
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey called the committee to order on SB 2116.

DISCUSSION

Chairman DeKrey: Rep Grande moved the Edward Erickson amendments, seconded by Rep Delmore.

DISCUSSION

Chairman DeKrey: We will have a voice vote on Rep Grande amendments, motion carries. Now we will look at the Delmore/Grande amendments.

DISCUSSION

Rep Delmore: moved the amendments, seconded by Rep Grande.

DISCUSSION

Chairman DeKrey: We will have a voice vote on these amendments, Motion carries.

DISCUSSION

Page 2

House Judiciary Committee

Bill/Resolution Number SB 2116

Hearing Date 03-14-01

Chairman Dekrey: we have the bill before us as amended, what are your wishes. Rep Klemin moved a DO PASS as amend, seconded by Rep Grande.

DISCUSSION

Chairman DeKrey: the clerk will call the roll on a DO PASS as amend motion on SB 2116. The motion passes with 13 YES, 0 NO and 2 ABSENT. Carrier Rep Maragos.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2116

Page 1, line 12, after the period insert "A person does not violate this subsection if that person furnishes or procures tobacco for a minor as part of an Indian religious practice."

Page 1, line 21, after the period insert "A minor does not violate this section if the minor possesses, smokes, or uses tobacco as part of an Indian religious practice."

Page 2, line 3, after the period insert "A city or county, including a city or county acting under a home rule charter, may not prohibit or limit what is allowed relating to an Indian religious practice under subsections 1 and 2, the furnishing or procuring of tobacco for possession, smoking, or using by a minor during an Indian religious practice."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2116

PREPARED FOR REP. DELMORE

Page 1, line 8, remove the overstrike over "~~an infraction~~" and remove "a noncriminal offense"

Page 2, line 2, overstrike "1 or"

Page 2, line 3, after "dollars" insert "for a minor 14 years of age or older who has been charged with an offense under subsection 2"

Page 2, line 4, replace "person" with "minor 14 years of age or older" and remove "1 or"

Page 2, line 7, replace "under this section" with "of subsection 2"

Page 2, line 19, replace "under this section" with "of subsection 2"

Page 2, line 28, overstrike " this section" and insert immediately thereafter "subsection 2"

Page 3, line 10, after "under" insert "subsection 2 of", after "12.1-31-03" insert "alleged to have been committed by a minor 14 years of age or older"

Renumber accordingly

Date: 03-14-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB-2116

House JUDICIARY Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number 18210.0202 0300

Action Taken Do Pass as amend

Motion Made By Rep Klemin Seconded By Rep Grande

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2116, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2116 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "and" with a comma

Page 1, line 2, after "27-20-02" insert ", and section 40-18-14"

Page 1, line 8, remove the overstrike over "~~an infraction~~" and remove "a noncriminal offense"

Page 2, line 2, overstrike "1 or"

Page 2, line 3, after "dollars" insert "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"

Page 2, line 4, replace "person" with "minor fourteen years of age or older" and remove "1 or"

Page 2, line 7, replace "under this section" with "of subsection 2"

Page 2, line 19, replace "under this section" with "of subsection 2"

Page 2, after line 26, insert:

"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."

Page 2, line 28, overstrike "this section" and insert immediately thereafter "subsection 2"

Page 3, line 9, after "offense" insert "committed by a minor fourteen years of age or older"

Page 3, line 10, after "under" insert "subsection 2 of" and after "12.1-31-03" insert "or an equivalent local ordinance or resolution"

Page 3, after line 14, insert:

**"SECTION 3. AMENDMENT.** Section 40-18-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-18-14. Municipal judge may enforce orders and judgments and punish for contempt.** A municipal judge ~~has the power to~~ may enforce due obedience to the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders made by the judge. When an act or omission constituting a contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. The person must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge the person or adjudge the person guilty and may punish by fine or imprisonment or both. The fine in any case may not be more than one thousand dollars and the imprisonment may not be more than thirty days. In

**REPORT OF STANDING COMMITTEE (410)**

**March 15, 2001 9:31 a.m.**

**Module No: HR-45-5670**

**Carrier: Maragos**

**Insert LC: 18210.0202 Title: .0300**

addition, a person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the municipal judge to a sanction or order designed to ensure compliance with payment of the fee or fine, or to an alternative sentence or sanction including community service."

Renumber accordingly

2001 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2116

March 26, 2001

PROPOSED AMENDMENTS TO THE FIRST ENGROSSMENT WITH HOUSE  
AMENDMENTS

ENGROSSED SENATE BILL 2116

Page 3, line 18, after the semicolon, overstrike "or"  
Page 3, line 19, overstrike "and" and ~~and~~ insert "or"

Page 3, after line 19, insert:

"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"

Page 3, line 19, replace "f" with "g"

Renumber accordingly

PROPOSED AMENDMENTS TO THE FIRST ENGROSSMENT WITH HOUSE  
AMENDMENTS

ENGROSSED SENATE BILL 2116

Conference Committee REDRAFT

Page 3, after line 5, insert:

"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."

Page 3, line 18, after the semicolon, overstrike "or"

Page 3, line 19, overstrike "and" and insert "or"

Page 3, after line 19, insert:

"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"

Page 3, line 20, overstrike "f" and insert "g"

Page 3, remove lines 21 through 31

Page 4, remove lines 1 through 6

Renumber accordingly

**Roll Call Vote #:** )

Senate	Committee

**Legislative Council Amendment Number** \_\_\_\_\_

Motion Made By R. Grube Seconded By S. Berrier.

[illegible]

Absent

**If the vote is on an amendment, briefly indicate intent:**

**Roll Call Vote #:** 1

Senate Judiciary Committee

Motion Made By Lyson Seconded By Rep. Krietsman

[illegible]

**If the vote is on an amendment, briefly indicate intent:**

**REPORT OF CONFERENCE COMMITTEE**

**SB 2116, as engrossed:** Your conference committee (Sens. Traynor, Lyson, C. Nelson and Reps. Kretschmar, Grande, Mahoney) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 871--872, adopt amendments as follows, and place SB 2116 on the Seventh order:

That the House recede from its amendments as printed on pages 871 and 872 of the Senate Journal and page 928 of the House Journal and that Engrossed Senate Bill No. 2116 be amended as follows:

Page 1, line 8, remove the overstrike over "~~an infraction~~" and remove "a noncriminal offense"

Page 2, line 2, overstrike "1 or"

Page 2, line 3, after "dollars" insert "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"

Page 2, line 4, replace "person" with "minor fourteen years of age or older" and remove "1 or"

Page 2, line 7, replace "under this section" with "of subsection 2"

Page 2, line 19, replace "under this section" with "of subsection 2"

Page 2, after line 26, insert:

"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."

Page 2, line 28, overstrike "this section" and insert immediately thereafter "subsection 2"

Page 2, after line 31, insert:

"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."

Page 3, line 9, after "offense" insert "committed by a minor fourteen years of age or older"

Page 3, line 10, after "under" insert "subsection 2 of" and after "12.1-31-03" insert "or an equivalent local ordinance or resolution"

Page 3, line 12, overstrike "or"

Page 3, line 13, overstrike "and" and insert immediately thereafter "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"

Page 3, line 20, overstrike "f." and insert immediately thereafter "g."

Renumber accordingly

Engrossed SB 2116 was placed on the Seventh order of business on the calendar.

2001 TESTIMONY

SB 2116

Testimony before the Senate Judiciary Committee

S.B. 2116

January 15, 2001

Edward Erickson, Assistant Attorney General

Good Morning, Chairman Traynor and members of the committee. I am Edward Erickson. I am an Assistant Attorney General. Attorney General Stenehjem has asked me to provide a brief explanation of this bill.

Presently existing subsection 3 of section 12.1-31-03 was passed last session to enable cities and counties to regulate tobacco sales to minors and the use of tobacco by minors through a civil ticketing system similar to traffic tickets. However, when cities tried to implement this law, they ran into jurisdictional issues regarding the juvenile court, and sought an attorney general's opinion. The Attorney General determined that the law as it was passed did not transfer jurisdiction over minor offenders from juvenile court to municipal court. The Attorney General also determined that the statute did not allow the monetary fines to be assessed against minor offenders in juvenile court.

After issuing the opinion and meeting with the city attorneys involved, the Attorney General asked that this bill be introduced to correct these issues so that the original intent of the Legislature could be implemented. Attorney General Stenehjem has reviewed this bill, and supports this bill.

There were two specific problems with the present law under the Equal Protection Clause of the state and federal constitutions. Equal

protection rights may be summarized for these purposes as holding that similarly situated persons must be treated in a similar fashion under the law. The first problem is that juvenile court jurisdiction cannot vary within a state. Federal courts have invalidated state laws that provided that minors charged with the same act would be automatically sent to juvenile court in some parts of the state and to adult court in other parts of the state.<sup>1</sup> The other problem occurs when the same act may be charged under more than one law and the punishments vary. The North Dakota Supreme Court has agreed with courts from other states that prosecutors cannot have unbridled discretion to charge in this manner, and that a person charged and convicted under the statute having the greater penalty will be able to have that penalty reduced to the lower penalty.<sup>2</sup>

This bill was drafted to allow cities and counties to create and enforce their own civil ticketing system for tobacco sales offenses. Accordingly, the statewide offense was reduced to a civil or noncriminal offense, and the fee was made uniform across the state and also for those cities and counties enforcing their own ordinances or resolutions. Both a minor or an adult who does not pay the fee will be subject to contempt of court charges under presently existing law. Jurisdiction was also made uniform by removing these offenses from juvenile court jurisdiction. The minor is not committing a delinquent act because a delinquent act is a crime under the law and these offenses are noncriminal under the bill. These offenses are

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<sup>1</sup> Attorney General Opinion No. 2000-15.

<sup>2</sup> Lamb v. Brown, 456 F.2d 18 (10<sup>th</sup> Cir.1972); Long v. Robinson, 316 F.Supp. 22 (D.Md.1970), aff'd 436 F.2d 1116 (4<sup>th</sup> Cir.1971).

also specifically exempted from the definition of unruly for juvenile court purposes. Therefore, minors charged with these offenses will not be in juvenile court.

Two other changes were made which were not strictly required to comply with equal protection rights. First, the grant of authority to cities and counties to regulate tobacco and minors in section 3 of the original law was changed. On page 2, lines 10-11, the phrase "more stringent than this section" was replaced with "prohibitions in addition to those in subsections 1 and 2." There was considerable confusion about the meaning of the "more stringent than" language, but we believe that the new language better reflects the Legislature's original intent. The second change was to permit a judge sentencing a minor who was smoking or using tobacco to attend a treatment course. This was a uniform request from almost everyone I spoke with concerning this bill. It is expected that any costs for such a program will be borne by the person attending.

If you have any questions, I would be happy to address them.

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<sup>1</sup> City of Fargo v. Little Brown Jug, 468 N.W.2d 392 (N.D.1991).



KEITH E. NELSON  
STATE COURT ADMINISTRATOR

**State of North Dakota**  
OFFICE OF STATE COURT ADMINISTRATOR

January 16, 2001

SUPREME COURT  
Judicial Wing, 1st Floor  
600 E. Boulevard Ave Dept 180  
BISMARCK, ND 58505-0530  
(701) 328-4218  
(FAX) 701-328-4480

TO: Sen. John T. "Jack" Traynor  
Senate Judiciary Committee

FROM: Greg Wallace *GW*

SUBJECT: Senate Bill 2116

Senate Bill 2116 will remove offenses related to tobacco use and possession by minors from the juvenile court. If a city has passed the appropriate ordinance, jurisdiction will be with the municipal court. If the city has not passed the ordinance, or if a county passes an ordinance, jurisdiction will be with the district court.

It appears that the drafters intended an administrative process where a citation would be entered, and in most cases, a bond posted and forfeited. However, discussion during testimony on the bill included implementing additional requirements such as attendance at tobacco education programs or community service.

As mentioned during the hearing, implementing these provisions will require a hearing before a judge. This requirement is of considerable concern to the judiciary. With the recent cuts in district judgeships, it does not seem advisable to tie up district judge resources with administrative tobacco cases. I believe that you would find the same concern with municipal judges.

If the intent is to incorporate the additional requirements, then the jurisdiction should remain with the juvenile court. The juvenile courts already require attendance at tobacco education classes and, in some cases, community service. Additionally, if retained, the juvenile courts should also be given the ability to assess a fee or fine for these offenses.

GW/rb

cc: Honorable Wayne K. Stenehjem  
Chief Justice Gerald W. VandeWalle  
Keith E. Nelson

**SB 2116 Testimony**  
**June Herman**  
**American Heart Association**

I am testifying today in a neutral position on this bill. North Dakota unfortunately has the distinction of having the third highest youth use rate in the nation. When 90% of smokers start before age 18, these rates are alarming.

Prevention experts have identified three proven methods that have significantly reduced youth consumption rates:

- **Media:** Which influences youth more than peer pressure
- **Product cost:** A cigarette excise tax increase, irregardless of how the income is spent
- **Social Influences:** Providing broad based cessation encouragement and cessation drug support is a step

Other states are funding tobacco prevention efforts, and reporting significant decreases:

- **Massachusetts:** 33% reduction. Youth rates decreased from 48% to 8%.
- **California:** Decreased by two times the national average.
- **Oregon:** 11% in two years
- **Florida:** smoking among middle school children has declined from 18.5 percent to 8.6 percent, and high school smoker fell from 27.4% to 20.9%.

In North Dakota: with no comprehensive plan, youth smoking rose from 39.6% to 40.6%. As our youth smoking rates increase, tobacco settlement payments are declining due to the progress of the other states. In 23 years, the payments discontinue.

In the past two years, North Dakota has also lost out on the opportunity for millions of dollars in grant funds to address our tobacco problem.

- **Robert Wood Johnson grant** (withdrawal of state health department support for the grant)
- **American Legacy Foundation:** (no demonstrated state expenditures for tobacco prevention)
- **Center of Disease Control and Prevention:** Cardiovascular disease grant application discontinued.

We encourage you to continue to explore what is working and making a difference with youth consumption rates.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2116

Version 1: remove treatment course option and retain ticketing system

Page 2, line 5, remove "A judge may also require a person found to have violated subsection 2 to"

Page 2, remove line 6

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2116

Version 2: retain treatment course option and add hearing on  
that topic

Page 2, line 6, replace "addiction treatment" with "education and  
cessation"

Page 2, line 8, replace "this section" with "subsection 1"

Page 2, line 20, replace "this section" with "subsection 1"

Page 2, after line 27, insert:

"c. An individual cited for a violation under subsection 2 must  
appear before a court of competent jurisdiction 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 hearing, the individual may contest the issue of  
commission of the violation, and the individual and the  
prosecution may contest whether the individual shall attend  
a smoking or tobacco education and cessation course and also  
specify which course of those that are available.

**Testimony before the House Judiciary Committee  
S.B. 2116  
February 28, 2001  
Edward Erickson, Assistant Attorney General**

Good Morning, Chairman DeKrey and members of the committee. I am Edward Erickson. I am an Assistant Attorney General. Attorney General Stenehjem has asked me to provide a brief explanation of this bill.

Presently existing subsection 3 of section 12.1-31-03 was passed last session to enable cities and counties to regulate tobacco sales to minors and the use of tobacco by minors through a civil ticketing system similar to traffic tickets. However, when cities tried to implement this law, they ran into jurisdictional issues regarding the juvenile court, and sought an attorney general's opinion. The Attorney General determined that the law as it was passed did not transfer jurisdiction over minor offenders from juvenile court to municipal court. She also determined that the statute did not allow the monetary fines to be assessed against minor offenders in juvenile court.<sup>1</sup>

After issuing the opinion and meeting with the city attorneys involved, the Attorney General asked that this bill be introduced to correct these issues so that the original intent of the Legislature could be implemented. Attorney General Stenehjem has reviewed this bill, and supports this bill.

There were two specific problems with the present law under the Equal Protection Clause of the state and federal constitutions. Equal protection rights may be summarized for these purposes as holding that similarly situated persons must be treated in a similar fashion under the law. The first problem is that juvenile court jurisdiction cannot vary within a state. Federal courts have invalidated state laws that provided that minors charged with the same act would be automatically sent to juvenile

court in some parts of the state and to adult court in other parts of the state.<sup>2</sup> The other problem occurs when the same act may be charged under more than one law and the punishments vary. The North Dakota Supreme Court has agreed with courts from other states that prosecutors cannot have unbridled discretion to charge in this manner, and that a person charged and convicted under the statute having the greater penalty will be able to have that penalty reduced to the lower penalty.<sup>3</sup>

This bill was drafted to allow cities and counties to create and enforce their own civil ticketing system for tobacco sales offenses. Accordingly, the statewide offense was reduced to a civil or noncriminal offense with a uniform fee. Jurisdiction was also made uniform by removing these offenses from juvenile court jurisdiction. The minor is not committing a delinquent act under the juvenile court law because a delinquent act is a crime under the law and these offenses are noncriminal under the bill. These offenses are also specifically exempted from the definition of unruly for juvenile court purposes. Therefore, minors charged with these offenses will not be in juvenile court.

One other change was made which was not strictly required to comply with equal protection rights. The grant of authority to cities and counties to regulate tobacco and minors in section 3 of the original law was changed. On page 1, lines 23-24 of the engrossed bill, the phrase "more stringent than this section" was replaced with "prohibitions in addition to those in subsections 1 and 2." There was considerable confusion about the meaning of the "more stringent than" language, but we believe that the new language better reflects the Legislature's original intent.

In the Senate, amendments were added which set the statewide fee as \$25 and permit cities and counties to adopt their own fee schedule. Also, provisions providing for smoking cessation or treatment courses were removed.

After the Senate vote, the cities of Bismarck and Dickinson approached me concerning some desired changes to the bill, and the court system made a request as well. These changes are reflected in a set of amendments attached to this testimony. I am presenting these amendments as a courtesy for the cities.

The city of Bismarck wanted to make overt what was generally understood by specifying that failure to pay the bond or fee is a contempt of court, and that the court may make an appropriate sentence against a minor who refused or was unable to pay the fee. Bismarck also pointed out that a municipal judge may only punish contempt by a monetary fine or imprisonment, both of which may be inappropriate punishments for a minor who cannot pay the fee. The proposed amendments make these changes, and provide additional remedies for municipal judges similar to those remedies that are available to district judges. The court system asked that the bill specify that minors may not be imprisoned. This was understood to be the law, but cautionary language was added as a prevention.

The city of Dickinson also asked that the exclusion of this offense from the definition of an unruly child at page 3, lines 9-10 of the engrossed bill, be amended to make clear that the equivalent local law is also excluded. This change is also in the proposed amendments.

If you have any questions, I would be happy to address them.

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<sup>1</sup> Attorney General Opinion No. 2000-15.

<sup>2</sup> Lamb v. Brown, 456 F.2d 18 (10<sup>th</sup> Cir.1972); Long v. Robinson, 316 F.Supp. 22 (D.Md.1970), aff'd 436 F.2d 1116 (4<sup>th</sup> Cir.1971).

<sup>3</sup> City of Fargo v. Little Brown Jug, 468 N.W.2d 392 (N.D.1991).

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2116

Page 1, line 1, after "12.1-31-03" replace "and" with a comma

Page 1, line 2, after "27-20-02" insert ", and section 40-18-14"

Page 2, line 3, after "dollars." insert "The failure of an individual found to have violated the ordinance or resolution to post any required bond or pay any assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt."

Page 2, after line 26 insert:

"c. The failure to post bond or to pay any assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt."

Page 3, line 10, after "12.1-31-03" insert "or an equivalent local ordinance or resolution"

Page 3, after line 14 insert:

**"SECTION 3. AMENDMENT.** Section 40-18-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**40-18-14. Municipal judge may enforce orders and judgments and punish for contempt.** A municipal judge has the power to enforce due obedience to the court's orders and judgments. The judge may fine or imprison for contempt committed in the judge's presence while holding court, as well as for contempt of process issued, and of orders made by the judge. When an act or omission constituting a contempt in a municipal court is not committed in the presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. The person must be given a reasonable opportunity to employ counsel and defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge the person or adjudge the person guilty and may punish by fine or imprisonment or both. The fine in any case may not be more than one thousand dollars and the imprisonment may not be more than thirty days. In addition, a person adjudged guilty of contempt for failure to pay a fee or fine may also be sentenced by the municipal judge to a sanction or order designed to ensure compliance with payment of the fee or fine, or to an alternative sentence or sanction including community service."

Renumber accordingly

Testimony before the House Judiciary Committee  
Engrossed Senate Bill 2116  
February 28, 2001

Good morning Mr. Chairman and committee members. My name is Bill Wocken. I am City Administrator for the City of Bismarck. I am appearing in support of SB 2116 and the amendments Mr. Erickson has offered with his testimony.

It is important to us that the jurisdictional dimension of this bill succeed so that these cases can be moved out of Juvenile Court. It is also important to us that the city be allowed to assess a fee for this offense set at its discretion. The City of Bismarck has designed what we believe will be an effective education program included within its fee structure. It is felt that this approach will be most likely to reduce tobacco use by minors.

We also support the amendments offered by Mr. Erickson so that municipal court judges will have some additional and appropriate options available to them for persons who may not wish to pay their fee if found guilty of this infraction.

I would urge your favorable consideration of this bill with the proposed amendments. Thank you for allowing me to speak to you this morning.

Hon Chairman Dekrey,

In section 2 of SB 2116<sup>(?)</sup> - We need an exemption for Native American religious practice - Tobacco is essential to it. &

(The parents <sup>usually</sup> decide whether a young person will smoke or not in ceremony - The spiritual leader decides, if no parent or adult relative is there; & sometimes, adults may be denied to smoke, by the spiritual leader at a ceremony - )

Thank you for hearing me -

Carol Two Eagles