

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2116
(Judiciary Committee)
(At the request of the Attorney General)

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 tobacco to minors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is ~~an infraction~~ a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which ~~is more stringent than this section~~ includes prohibitions in addition to those in subsection 1 or 2. Any 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~~ 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 ~~halting~~ 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~~ 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
 - f. g. In any of the foregoing instances is in need of treatment or rehabilitation.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2116.

Senate Vote: Yeas 41 Nays 5 Absent 3

House Vote: Yeas 98 Nays 0 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State