

Introduced by

Judiciary Committee

(At the request of the Attorney General)

1 A BILL for an Act to amend and reenact section 12.1-31-03, subsection 17 of section 27-20-02,
2 and section 40-18-14 of the North Dakota Century Code, relating to the sale of tobacco to
3 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 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

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

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

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

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

1 allegations and proofs, the municipal judge may discharge the person or adjudge the person
2 guilty and may punish by fine or imprisonment or both. The fine in any case may not be more
3 than one thousand dollars and the imprisonment may not be more than thirty days. In addition,
4 a person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the
5 municipal judge to a sanction or order designed to ensure compliance with payment of the fee
6 or fine, or to an alternative sentence or sanction including community service.