

HOUSE BILL NO. 1236

Introduced by

Representatives P. Anderson, Guggisberg, Hager, J. Nelson, Schneider

Senator Davison

1 A BILL for an Act to amend and reenact sections 12.1-31-03, 12.1-31-03.1, and 51-32-01 of the
2 North Dakota Century Code, relating to the prohibition of an individual under nineteen years of
3 age from purchasing and using tobacco products; 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, electronic smoking devices, or alternative nicotine**
8 **products to ~~minors~~ an individual under nineteen years of age and use by minors**
9 **an individual under nineteen years of age prohibited - Exception.**

- 10 1. a. It is an infraction for any person to sell or furnish to a ~~minor~~ an individual under
11 nineteen years of age, or procure for a ~~minor~~ an individual under nineteen years
12 of age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in
13 which it may be utilized for smoking or chewing, electronic smoking devices, or
14 alternative nicotine products, unless the individual is eighteen years of age, is an
15 active duty member of the armed forces, and has a valid military identification
16 card. As used in this subdivision, "sell" includes dispensing from a vending
17 machine under the control of the actor.
- 18 b. It is an infraction for any person to display or offer for sale cigarettes, cigarette
19 papers, cigars, snuff, tobacco in any other form in which it may be utilized for
20 smoking or chewing, electronic smoking devices, or alternative nicotine products
21 through a self-service display. This subdivision does not apply to a:
- 22 (1) Vending machine or other coin-operated machine that is permitted under
23 section 12.1-31-03.1; or
- 24 (2) Self-service display that is located in a tobacco specialty store.

- 1 2. It is a noncriminal offense for a ~~minor~~an individual under nineteen years of age to
2 purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco
3 in any other form in which it may be utilized for smoking or chewing, electronic
4 smoking devices, or alternative nicotine products,unless the individual is eighteen
5 years of age, is an active duty member of the armed forces, and has a valid military
6 identification card. However, an individual under ~~eighteen~~nineteen years of age may
7 purchase and possess tobacco, electronic smoking devices, or alternative nicotine
8 products as part of a compliance survey program ~~when acting with the permission of~~
9 ~~the individual's parent or guardian~~ and while acting under the supervision of any law
10 enforcement authority and, if the individual is a minor, with the permission of the
11 individual's parent or guardian. A state agency, city, county, board of health, tobacco,
12 electronic smoking devices, or alternative nicotine products retailer, or association of
13 tobacco, electronic smoking devices, or alternative nicotine products retailers may also
14 conduct compliance surveys, after coordination with the appropriate local law
15 enforcement authority.
- 16 3. It is a noncriminal offense for a ~~minor~~an individual under nineteen years of age to
17 present or offer to another individual a purported proof of age which is false,
18 fraudulent, or not actually ~~the minor's~~that individual's own proof of age, for the purpose
19 of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff,
20 tobacco in any other form in which it may be utilized for smoking or chewing, electronic
21 smoking devices, or alternative nicotine products.
- 22 4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco,
23 electronic smoking devices, or alternative nicotine products to ~~minors~~an individual
24 under nineteen years of age and use of tobacco, electronic smoking devices, or
25 alternative nicotine products by ~~minors~~an individual under nineteen years of age which
26 includes prohibitions in addition to those in subsection 1, 2, or 3, except the ordinance
27 or resolution may not prohibit an individual who is eighteen years of age, is an active
28 duty member of the armed forces, and has a valid military identification card from
29 purchasing or using tobacco, electronic smoking devices, or alternative nicotine
30 products. Any ordinance or resolution adopted must include provisions deeming a
31 violation of subsection 2 or 3 a noncriminal violation and must provide for a fee of not

1 less than twenty-five dollars for a ~~minor~~an individual fourteen years of age or older
2 who has been charged with an offense under subsection 2 or 3. The failure to post a
3 required bond or pay an assessed fee by an individual found to have violated the
4 ordinance or resolution is punishable as a contempt of court, except a ~~minor~~an
5 individual under nineteen years of age may not be imprisoned for the contempt.

- 6 5. ~~A minor~~An individual fourteen years of age or older found to have violated
7 subsection 2 or 3 must pay a fee of twenty-five dollars.
- 8 a. Any individual who has been cited for a violation of subsection 2 or 3 may appear
9 before a court of competent jurisdiction and pay the fee by the time scheduled for
10 a hearing, or if bond has been posted, may forfeit the bond by not appearing at
11 the scheduled time. An individual appearing at the time scheduled in the citation
12 may make a statement in explanation of that individual's action and the judge
13 may waive, reduce, or suspend the fee or bond, or both. If the individual cited
14 follows the procedures of this subdivision, that individual has admitted the
15 violation and has waived the right to a hearing on the issue of commission of the
16 violation. The bond required to secure appearance before the court must be
17 identical to the fee. This subdivision does not allow a citing officer to receive the
18 fee or bond.
- 19 b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow
20 the procedures provided under subdivision a, that individual may request a
21 hearing on the issue of the commission of the violation cited. The hearing must
22 be held at the time scheduled in the citation or at some future time, not to exceed
23 ninety days later, set at that first appearance. At the time of a request for a
24 hearing on the issue on commission of the violation, the individual cited shall
25 deposit with the court an appearance bond equal to the fee for the violation cited.
- 26 c. The failure to post bond or to pay an assessed fee is punishable as a contempt of
27 court, except a ~~minor~~an individual under nineteen years of age may not be
28 imprisoned for the contempt.
- 29 6. The prosecution must prove the commission of a cited violation under subsection 2 or
30 3 by a preponderance of the evidence.

- 1 7. A law enforcement officer that cites a minor for violation of this section shall mail a
2 notice of the violation to the parent or legal guardian of the minor within ten days of the
3 citation.
- 4 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced
5 by the court to a sanction or order designed to ensure compliance with the payment of
6 the fee or fine or to an alternative sentence or sanction including community service.
- 7 9. As used in this section:
- 8 a. "Alternative nicotine product" means any noncombustible product containing
9 nicotine that is intended for human consumption, whether chewed, absorbed,
10 dissolved, or ingested by any other means. The term does not include any
11 cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for
12 smoking or chewing, any electronic smoking device, or any product regulated as
13 a drug or device by the United States food and drug administration under
14 chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
- 15 b. "Electronic smoking device" means any electronic product that delivers nicotine
16 or other substances to the individual inhaling from the device, including, an
17 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking
18 device includes any component, part, or accessory of such a product, whether or
19 not sold separately. Electronic smoking device does not include drugs, devices,
20 or combination products approved for sale by the United States food and drug
21 administration, as those terms are defined in the Federal Food, Drug and
22 Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
- 23 c. "Self-service display" means a display that contains cigarettes, cigarette papers,
24 cigars, snuff, tobacco in any other form which it may be utilized for smoking or
25 chewing, electronic smoking devices, or alternative nicotine products and is
26 located in an area that is openly accessible to the retailer's customers, and from
27 which customers can readily access those products without the assistance of a
28 salesperson. A display case that holds those products behind locked doors does
29 not constitute a self-service display.
- 30 d. "Tobacco specialty store" means a retail store that:

- 1 (1) Derives at least seventy-five percent of its revenue from the sale of
2 cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which
3 it may be utilized for smoking or chewing, electronic smoking devices, or
4 alternative nicotine products; and
- 5 (2) Does not permit minors to enter the premises unless accompanied by a
6 parent or legal guardian.
- 7 e. "Vending machine" means a machine, appliance, or other mechanical device
8 operated by currency, token, debit card, credit card, or other means of payment
9 that is designed or used for vending purposes, including machines or devices
10 that use remote control locking mechanisms.

11 **SECTION 2. AMENDMENT.** Section 12.1-31-03.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12.1-31-03.1. Vending machines prohibited - Penalty.**

- 14 1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
15 snuff, tobacco in any other form in which it may be utilized for smoking or chewing,
16 electronic smoking devices, or alternative nicotine products through a vending
17 machine, except as provided in subsection 2.
- 18 2. Subsection 1 does not apply to:
- 19 a. A vending machine that is located in an area in which ~~minors~~individuals under
20 nineteen years of age are not permitted access; or
- 21 b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff,
22 tobacco in any other form in which it may be utilized for smoking or chewing,
23 electronic smoking devices, or alternative nicotine products through the operation
24 of a device that requires a salesperson to control the dispensation of such
25 product.
- 26 3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
27 snuff, tobacco in any other form in which it may be utilized for smoking or chewing,
28 electronic smoking devices, or alternative nicotine products through any vending
29 machine, if those products are placed together with any nontobacco product, other
30 than matches, in the vending machine.

1 4. As used in this section, "electronic smoking devices" and "alternative nicotine
2 products" have the same meaning as in section 12.1-31-03.

3 **SECTION 3. AMENDMENT.** Section 51-32-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **51-32-01. Prohibited acts regarding sale of tobacco products, electronic smoking
6 devices, or alternative nicotine products to ~~minors~~ individuals under nineteen years of
7 age.**

8 1. It is unlawful for any person in the business of selling tobacco products to take an
9 order for a tobacco product, other than from a person who is in the business of selling
10 tobacco products, through the mail or through any telecommunications means,
11 including by telephone, facsimile, or the internet, if in providing for the sale or delivery
12 of the product pursuant to the order, the person mails the product or ships the product
13 by carrier, and the person fails to comply with each of the following procedures:

14 a. Before mailing or shipping the product, the person receives from the individual
15 who places the order the following:

16 (1) A copy of a valid government-issued document that provides the name,
17 address, and date of birth of the individual; ~~and~~

18 (2) If the individual is eighteen years of age, proof the individual is an active
19 duty member of the armed forces and a photocopy of the individual's valid
20 military identification card; and

21 (3) A signed statement from the individual providing a certification that the
22 individual:

23 (a) Is a smoker of legal minimum purchase age in the state;

24 (b) Has selected an option on the statement as to whether the individual
25 wants to receive mailings from a tobacco company; and

26 (c) Understands that providing false information may constitute a violation
27 of law.

28 b. Before mailing or shipping the product, the person:

29 (1) Verifies the date of birth or age of the individual against a commercially
30 available database; or

- 1 (2) Obtains a photocopy or other image of the valid, government-issued
2 identification stating the date of birth or age of the individual placing the
3 order.
- 4 c. Before mailing or shipping the product, the person provides to the prospective
5 purchaser, by electronic mail or other means, a notice that meets the
6 requirements of section 51-32-04.
- 7 d. In the case of an order for a product pursuant to an advertisement on the
8 internet, the person receives payment by credit card, debit card, or check for the
9 order before mailing or shipping the product.
- 10 e. (1) The person employs a method of mailing or shipping the product requiring
11 that the individual purchasing the product:
12 (a) Be the addressee;
13 (b) Have an individual of legal minimum purchase age sign for delivery of
14 the package; and
15 (c) If the individual appears to the carrier making the delivery to be under
16 twenty-seven years of age, take delivery of the package only after
17 producing valid government-issued identification that bears a
18 photograph of the individual, indicates that the individual is not under
19 the legal age to purchase cigarettes, and indicates that the individual
20 is not younger than the age indicated on the government-issued
21 document.
- 22 (2) The bill of lading clearly states the requirements in subdivision e and
23 specifies that state law requires compliance with the requirements.
- 24 f. The person notifies the carrier for the mailing or shipping, in writing, of the age of
25 the addressee as indicated by the government-issued document.
- 26 2. It is unlawful for any person in the business of selling electronic smoking devices or
27 alternative nicotine products to take an order for an electronic smoking device or
28 alternative nicotine product, other than from a person who is in the business of selling
29 electronic smoking devices or alternative nicotine products through the mail or through
30 any telecommunications means, including by telephone, facsimile, or the internet, if in
31 providing for the sale or delivery of the product pursuant to the order, the person mails

- 1 the product or ships the product by carrier, and the person fails to comply with each of
2 the following procedures:
- 3 a. Before the sale of the electronic smoking device or alternative nicotine product
4 verifies the purchaser is at least ~~eighteen~~nineteen years of age through a
5 commercially available database that is regularly used by business or
6 governmental entities for the purpose of age and identity verification; and
7 ~~b.~~ Uses uses a method of mailing, shipping, or delivery which requires an individual
8 of legal minimum purchase age to sign for delivery before the electronic smoking
9 device or alternative nicotine product is released to the purchaser; or
- 10 b. Before the sale of the electronic smoking device or alternative nicotine product
11 verifies the purchaser is eighteen years of age, is an active duty member of the
12 armed forces, and has a valid military identification card.
- 13 3. As used in subsection 2, "electronic smoking devices" and "alternative nicotine
14 products" have the same meaning as in section 12.1-31-03.