

HOUSE BILL NO. 1186

Introduced by

Representatives K. Koppelman, Delmore, Hogan, Kasper, Mock, Nathe, Sukut, Thoreson
Senators Armstrong, Hogue, Nelson

1 A BILL for an Act to create and enact section 12.1-31-03.2 of the North Dakota Century Code,
2 relating to child-resistant packaging for liquid nicotine containers; to amend and reenact
3 sections 12.1-31-03, 12.1-31-03.1, subsection 19 of section 27-20-02, and section 51-32-01 of
4 the North Dakota Century Code, relating to the sale to minors and use by minors of ~~vapor-~~
5 ~~products~~electronic smoking devices or alternative nicotine products; ~~and~~ to provide a penalty;
6 and to provide an expiration date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 12.1-31-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **12.1-31-03. Sale of tobacco, ~~vapor products~~electronic smoking devices, or alternative**
11 **nicotine products to minors and use by minors prohibited.**

12 1. a. It is an infraction for any person to sell or furnish to a minor, or procure for a
13 minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in
14 which it may be utilized for smoking or chewing, ~~vapor products~~electronic
15 smoking devices, or alternative nicotine products. As used in this
16 subsection~~subdivision~~, "sell" includes dispensing from a vending machine under
17 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, or tobacco in any other form which it may be utilized for
20 smoking or chewing, ~~vapor products~~electronic smoking devices or alternative
21 nicotine products through a self-service display. This subdivision does not apply
22 to a:

23 (1) Vending machine or other coin-operated machine that is permitted under
24 section 12.1-31-03.1; or

- 1 (2) Self-service display that is located in a tobacco specialty store.
- 2 2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes,
3 cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized
4 for smoking or chewing, ~~vapor products~~electronic smoking devices, or alternative
5 nicotine products. However, an individual under eighteen years of age may purchase
6 and possess tobacco, ~~vapor products~~electronic smoking devices, or alternative
7 nicotine products as part of a compliance survey program when acting with the
8 permission of the individual's parent or guardian and while acting under the
9 supervision of any law enforcement authority. A state agency, city, county, board of
10 health, tobacco, ~~vapor products~~electronic smoking devices, or alternative nicotine
11 products retailer, or association of tobacco, ~~vapor products~~electronic smoking devices,
12 or alternative nicotine products retailers may also conduct compliance surveys, after
13 coordination with the appropriate local law enforcement authority.
- 14 3. It is a noncriminal offense for a minor to present or offer to another individual a
15 purported proof of age which is false, fraudulent, or not actually the minor's own proof
16 of age, for the purpose of attempting to purchase or possess cigarettes, cigars,
17 cigarette papers, snuff, or tobacco in any other form in which it may be utilized for
18 smoking or chewing, ~~vapor products~~electronic smoking devices, or alternative nicotine
19 products.
- 20 4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco,
21 ~~vapor products~~electronic smoking devices, or alternative nicotine products to minors
22 and use of tobacco, ~~vapor products~~electronic smoking devices, or alternative nicotine
23 products by minors which includes prohibitions in addition to those in subsection 1, 2,
24 or 3. Any ordinance or resolution adopted must include provisions deeming a violation
25 of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than
26 twenty-five dollars for a minor fourteen years of age or older who has been charged
27 with an offense under subsection 2 or 3. The failure to post a required bond or pay an
28 assessed fee by an individual found to have violated the ordinance or resolution is
29 punishable as a contempt of court, except a minor may not be imprisoned for the
30 contempt.

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

1 a. "Alternative nicotine product" means any noncombustible product containing
2 nicotine that is intended for human consumption, whether chewed, absorbed,
3 dissolved, or ingested by any other means. The term does not include any
4 cigarette, cigar, snuff, or tobacco in any other form in which it may be utilized for
5 smoking or chewing, any ~~vapor product~~electronic smoking device, or any product
6 regulated as a drug or device by the United States Food and Drug Administration
7 under chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et
8 seq.]

9 b. "Electronic smoking device" means any electronic product that delivers nicotine
10 or other substances to the individual inhaling from the device, including, an
11 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking
12 device includes any component, part, or accessory of such a product, whether or
13 not sold separately. Electronic smoking device does not include drugs, devices,
14 or combination products approved for sale by the United States food and drug
15 administration, as those terms are defined in the federal Food, Drug and
16 Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

17 c. "Self-service display" means a display that contains cigarettes, cigarette papers,
18 cigars, snuff, or tobacco in any other form which it may be utilized for smoking or
19 chewing, ~~vapor products~~electronic smoking devices, or alternative nicotine
20 products and is located in an area that is openly accessible to the retailer's
21 customers, and from which customers can readily access those products without
22 the assistance of a salesperson. A display case that holds those products behind
23 locked doors does not constitute a self-service display.

24 e.d. "Tobacco specialty store" means a retail store that:

- 25 (1) Derives at least seventy-five percent of its revenue from the sale of
26 cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in
27 which it may be utilized for smoking or chewing, ~~vapor products~~electronic
28 smoking devices, or alternative nicotine products; and
29 (2) Does not permit minors to enter the premises unless accompanied by a
30 parent or legal guardian.

1 ~~d. "Vapor product" means any noncombustible product containing nicotine which~~
2 ~~employs a heating element, power source, electronic circuit, or other electronic,~~
3 ~~chemical or mechanical means, regardless of shape or size, which can be used~~
4 ~~to produce vapor from nicotine in a solution or other form. The term includes any~~
5 ~~electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar~~
6 ~~product or device and any vapor cartridge or other container of nicotine in a~~
7 ~~solution or other form that is intended to be used with or in an electronic~~
8 ~~cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or~~
9 ~~device. The term does not include any product regulated as a drug or device by~~
10 ~~the United States Food and Drug Administration under chapter V of the federal~~
11 ~~Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].~~

12 e. "Vending machine" means a machine, appliance, or other mechanical device
13 operated by currency, token, debit card, credit card, or other means of payment
14 that is designed or used for vending purposes, including machines or devices
15 that use remote control locking mechanisms.

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

18 **12.1-31-03.1. Vending machines prohibited - Penalty.**

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

- 1 3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
2 snuff, or tobacco in any other form in which it may be utilized for smoking or chewing,
3 ~~vapor products~~electronic smoking devices, or alternative nicotine products through any
4 vending machine, if those products are placed together with any nontobacco product,
5 other than matches, in the vending machine.
- 6 4. As used in this section, "~~vapor products~~" "electronic smoking devices" and "alternative
7 nicotine products" have the same meaning as in section 12.1-31-03.

8 **SECTION 3.** Section 12.1-31-03.2 of the North Dakota Century Code is created and
9 enacted as follows:

10 **12.1-31-03.2. (Contingent expiration date - See note) Child-resistant packaging for**
11 **liquid nicotine containers.**

- 12 1. Any nicotine liquid container that is sold at retail in this state must satisfy the
13 child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section
14 15(b)(1), when tested in accordance with the method described in title 16, CFR, part
15 1700, section 20.
- 16 2. As used in this section, "nicotine liquid container" means a bottle or other container of
17 a liquid or other substance containing nicotine in which the liquid or substance is sold,
18 marketed, or intended for use in an electronic smoking device. The term does not
19 include a liquid or other substance containing nicotine in a cartridge that is sold,
20 marketed, or intended for use in an electronic smoking device, provided that the
21 cartridge is prefilled and sealed by the manufacturer and not intended to be opened by
22 the consumer.
- 23 3. Any person that engages in retail sales of liquid nicotine containers in violation of this
24 section is subject to a civil penalty of not more than five hundred dollars for each
25 separate violation of this section, to be recovered by any enforcement authority
26 designated by the city or political subdivision in which the violation occurred.

27 **SECTION 4. AMENDMENT.** Subsection 19 of section 27-20-02 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 19. "Unruly child" means a child who:
30 a. Is habitually and without justification truant from school;

- 1 b. Is habitually disobedient of the reasonable and lawful commands of the child's
2 parent, guardian, or other custodian and is ungovernable or who is willfully in a
3 situation dangerous or injurious to the health, safety, or morals of the child or
4 others;
- 5 c. Has committed an offense applicable only to a child, except for an offense
6 committed by a minor fourteen years of age or older under subsection 2 of
7 section 12.1-31-03 or an equivalent local ordinance or resolution;
- 8 d. Has committed an offense in violation of section 5-01-08; or
- 9 e. Is under the age of fourteen years and has purchased, possessed, smoked, or
10 used tobacco or tobacco-related products, ~~vapor products~~ electronic smoking
11 devices, or alternative nicotine products in violation of subsection 2 of section
12 12.1-31-03; and
- 13 f. In any of the foregoing instances is in need of treatment or rehabilitation.
- 14 g. As used in this subsection, "~~vapor products~~" "electronic smoking devices" and
15 "alternative nicotine products" have the same meaning as in section 12.1-31-03.

16 **SECTION 5. AMENDMENT.** Section 51-32-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **51-32-01. Prohibited acts regarding sale of tobacco products, ~~vapor~~**
19 **~~products~~ electronic smoking devices, or alternative nicotine products to minors.**

- 20 1. It is unlawful for any person in the business of selling tobacco products to take an
21 order for a tobacco product, other than from a person who is in the business of selling
22 tobacco products, through the mail or through any telecommunications means,
23 including by telephone, facsimile, or the internet, if in providing for the sale or delivery
24 of the product pursuant to the order, the person mails the product or ships the product
25 by carrier, and the person fails to comply with each of the following procedures:
- 26 4. a. Before mailing or shipping the product, the person receives from the individual
27 who places the order the following:
- 28 a. (1) A copy of a valid government-issued document that provides the name,
29 address, and date of birth of the individual; and
- 30 b. (2) A signed statement from the individual providing a certification that the
31 individual:

- 1 (1) (a) Is a smoker of legal minimum purchase age in the state;
- 2 (2) (b) Has selected an option on the statement as to whether the individual
- 3 wants to receive mailings from a tobacco company; and
- 4 (3) (c) Understands that providing false information may constitute a violation
- 5 of law.
- 6 2. b. Before mailing or shipping the product, the person:
- 7 a. (1) Verifies the date of birth or age of the individual against a commercially
- 8 available database; or
- 9 b. (2) Obtains a photocopy or other image of the valid, government-issued
- 10 identification stating the date of birth or age of the individual placing the
- 11 order.
- 12 3. c. Before mailing or shipping the product, the person provides to the prospective
- 13 purchaser, by electronic mail or other means, a notice that meets the
- 14 requirements of section ~~51-30-04~~51-32-04.
- 15 4. d. In the case of an order for a product pursuant to an advertisement on the
- 16 internet, the person receives payment by credit card, debit card, or check for the
- 17 order before mailing or shipping the product.
- 18 5. ~~a-e.~~ (1) The person employs a method of mailing or shipping the product requiring
- 19 that the individual purchasing the product:
- 20 (1) (a) Be the addressee;
- 21 (2) (b) Have an individual of legal minimum purchase age sign for delivery of
- 22 the package; and
- 23 (3) (c) If the individual appears to the carrier making the delivery to be under
- 24 twenty-seven years of age, take delivery of the package only after
- 25 producing valid government-issued identification that bears a
- 26 photograph of the individual, indicates that the individual is not under
- 27 the legal age to purchase cigarettes, and indicates that the individual
- 28 is not younger than the age indicated on the government-issued
- 29 document.
- 30 b. (2) The bill of lading clearly states the requirements in subdivision a and
- 31 specifies that state law requires compliance with the requirements.

1 6. f. The person notifies the carrier for the mailing or shipping, in writing, of the age of
2 the addressee as indicated by the government-issued document.

3 2. It is unlawful for any person in the business of selling ~~vapor products~~electronic
4 smoking devices or alternative nicotine products to take an order for ~~a vapor-~~
5 productan electronic smoking device or alternative nicotine product, other than from a
6 person who is in the business of selling ~~vapor products~~electronic smoking devices or
7 alternative nicotine products through the mail or through any telecommunications
8 means, including by telephone, facsimile, or the internet, if in providing for the sale or
9 delivery of the product pursuant to the order, the person mails the product or ships the
10 product by carrier, and the person fails to comply with each of the following
11 procedures:

12 a. Before the sale of the ~~vapor product~~electronic smoking device or alternative
13 nicotine product verifies the purchaser is at least eighteen years of age through a
14 commercially available database that is regularly used by business or
15 governmental entities for the purpose of age and identity verification; and

16 b. Uses a method of mailing, shipping, or delivery which requires an individual of
17 legal minimum purchase age to sign for delivery before the ~~vapor-~~
18 productelectronic smoking device or alternative nicotine product is released to
19 the purchaser.

20 3. As used in subsection 2, "~~vapor products~~" "electronic smoking devices" and "alternative
21 nicotine products" have the same meaning as in section 12.1-31-03.

22 **SECTION 6. EXPIRATION DATE.** Section 3 of this Act is effective until the date the
23 attorney general certifies to the legislative council that final regulations issued by the United
24 States food and drug administration or another federal agency are in effect which mandate
25 child-resistant effectiveness standards for liquid nicotine containers, and after that date is
26 ineffective.