

HOUSE BILL NO. 1312

Introduced by

Representatives P. Anderson, Boschee, Guggisberg, Hanson, M. Johnson, J. Nelson,
Schneider

Senators Dotzenrod, Oban

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~~ an**
9 **individual under nineteen years of age prohibited.**

- 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. As used in this subdivision, "sell" includes
15 dispensing from a vending machine under the control of the actor.
- 16 b. It is an infraction for any person to display or offer for sale cigarettes, cigarette
17 papers, cigars, snuff, tobacco in any other form in which it may be utilized for
18 smoking or chewing, electronic smoking devices, or alternative nicotine products
19 through a self-service display. This subdivision does not apply to a:
- 20 (1) Vending machine or other coin-operated machine that is permitted under
21 section 12.1-31-03.1; or
- 22 (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. However, an individual under
5 ~~eighteen~~nineteen years of age may purchase and possess tobacco, electronic
6 smoking devices, or alternative nicotine products as part of a compliance survey
7 program ~~when acting with the permission of the individual's parent or guardian and~~
8 while acting under the supervision of any law enforcement authority and, if the
9 individual is a minor, with the permission of the individual's parent or guardian. A state
10 agency, city, county, board of health, tobacco, electronic smoking devices, or
11 alternative nicotine products retailer, or association of tobacco, electronic smoking
12 devices, or alternative nicotine products retailers may also conduct compliance
13 surveys, after coordination with the appropriate local law enforcement authority.
- 14 3. It is a noncriminal offense for ~~a minor~~an individual under nineteen years of age to
15 present or offer to another individual a purported proof of age which is false,
16 fraudulent, or not actually ~~the minor's~~that individual's own proof of age, for the purpose
17 of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff,
18 tobacco in any other form in which it may be utilized for smoking or chewing, electronic
19 smoking devices, or alternative nicotine products.
- 20 4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco,
21 electronic smoking devices, or alternative nicotine products to ~~minors~~an individual
22 under nineteen years of age and use of tobacco, electronic smoking devices, or
23 alternative nicotine products by ~~minors~~an individual under nineteen years of age which
24 includes prohibitions in addition to those in subsection 1, 2, or 3. Any ordinance or
25 resolution adopted must include provisions deeming a violation of subsection 2 or 3 a
26 noncriminal violation and must provide for a fee of not less than twenty-five dollars for
27 ~~a minor~~an individual fourteen years of age or older who has been charged with an
28 offense under subsection 2 or 3. The failure to post a required bond or pay an
29 assessed fee by an individual found to have violated the ordinance or resolution is
30 punishable as a contempt of court, except ~~a minor~~an individual under nineteen years
31 of age may not be imprisoned for the contempt.

- 1 5. ~~A minor~~An individual fourteen years of age or older found to have violated
2 subsection 2 or 3 must 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~~except an individual under nineteen years of age may not be
23 imprisoned for the contempt.
- 24 6. The prosecution must prove the commission of a cited violation under subsection 2 or
25 3 by a preponderance of the evidence.
- 26 7. A law enforcement officer that cites a minor for violation of this section shall mail a
27 notice of the violation to the parent or legal guardian of the minor within ten days of the
28 citation.
- 29 8. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced
30 by the court to a sanction or order designed to ensure compliance with the payment of
31 the fee or fine or to an alternative sentence or sanction including community service.

1 9. As used in this section:

2 a. "Alternative nicotine product" means any noncombustible product containing
3 nicotine that is intended for human consumption, whether chewed, absorbed,
4 dissolved, or ingested by any other means. The term does not include any
5 cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for
6 smoking or chewing, any electronic smoking device, or any product regulated as
7 a drug or device by the United States Food and Drug Administration under
8 chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et 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, tobacco in any other form which it may be utilized for smoking or
19 chewing, electronic smoking devices, or alternative nicotine products and is
20 located in an area that is openly accessible to the retailer's customers, and from
21 which customers can readily access those products without the assistance of a
22 salesperson. A display case that holds those products behind locked doors does
23 not constitute a self-service display.

24 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, tobacco in any other form in which
27 it may be utilized for smoking or chewing, electronic smoking devices, or
28 alternative nicotine products; and
29 (2) Does not permit minors to enter the premises unless accompanied by a
30 parent or legal guardian.

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

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

7 **12.1-31-03.1. Vending machines prohibited - Penalty.**

- 8 1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
9 snuff, tobacco in any other form in which it may be utilized for smoking or chewing,
10 electronic smoking devices, or alternative nicotine products through a vending
11 machine, except as provided in subsection 2.
- 12 2. Subsection 1 does not apply to:
- 13 a. A vending machine that is located in an area in which ~~minors~~individuals under
14 nineteen years of age are not permitted access; or
- 15 b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff,
16 tobacco in any other form in which it may be utilized for smoking or chewing,
17 electronic smoking devices, or alternative nicotine products through the operation
18 of a device that requires a salesperson to control the dispensation of such
19 product.
- 20 3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,
21 snuff, tobacco in any other form in which it may be utilized for smoking or chewing,
22 electronic smoking devices, or alternative nicotine products through any vending
23 machine, if those products are placed together with any nontobacco product, other
24 than matches, in the vending machine.
- 25 4. As used in this section, "electronic smoking devices" and "alternative nicotine
26 products" have the same meaning as in section 12.1-31-03.

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

1 **51-32-01. Prohibited acts regarding sale of tobacco products, electronic smoking**
2 **devices, or alternative nicotine products to ~~minors~~individuals under nineteen years of**
3 **age.**

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

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

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

14 (2) A signed statement from the individual providing a certification that the
15 individual:

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

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

19 (c) Understands that providing false information may constitute a violation
20 of law.

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

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

24 (2) Obtains a photocopy or other image of the valid, government-issued
25 identification stating the date of birth or age of the individual placing the
26 order.

27 c. Before mailing or shipping the product, the person provides to the prospective
28 purchaser, by electronic mail or other means, a notice that meets the
29 requirements of section 51-32-04.

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

- 1 b. Uses a method of mailing, shipping, or delivery which requires an individual of
- 2 legal minimum purchase age to sign for delivery before the electronic smoking
- 3 device or alternative nicotine product is released to the purchaser.
- 4 3. As used in subsection 2, "electronic smoking devices" and "alternative nicotine
- 5 products" have the same meaning as in section 12.1-31-03.