

SENATE BILL NO. 2328

Introduced by

Senators Luick, Bekkedahl, D. Larson

Representatives Schreiber-Beck, Mitskog

1 A BILL for an Act to amend and reenact subsection 1 of section 12.1-31-03, subsection 3 of
2 section 12.1-31-03.2, and sections 57-36-01, 57-36-02, 57-36-04, and 57-36-05 of the North
3 Dakota Century Code, relating to sale of tobacco to minors and licensure of persons in the
4 business of selling tobacco products; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-31-03 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 1. a. It is an infraction for ~~any person a proprietor~~ to sell or for any person to furnish to
9 a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, tobacco
10 in any other form in which it may be utilized for smoking or chewing, electronic
11 smoking devices, or alternative nicotine products. As used in this subdivision,
12 "sell" includes dispensing from a vending machine under the control of the actor.
- 13 b. It is an infraction for ~~any person a proprietor~~ to display or offer for sale cigarettes,
14 cigarette papers, cigars, snuff, tobacco in any other form in which it may be
15 utilized for smoking or chewing, electronic smoking devices, or alternative
16 nicotine products through a self-service display or any display that is not behind a
17 clerk-operated counter. This subdivision does not apply to a:
- 18 (1) Vending machine or other coin-operated machine that is permitted under
19 section 12.1-31-03.1; or
- 20 (2) Self-service display that is located in a tobacco specialty store.

21 **SECTION 2. AMENDMENT.** Subsection 3 of section 12.1-31-03.2 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 3. ~~Any person that engages~~A person may not engage in the retail sales of liquid nicotine
24 containers in violation of this section ~~is subject to a civil penalty of not more than five-~~

1 hundred dollars. It is an infraction for each separate violation of this section, ~~to be~~
2 recovered by any enforcement authority designated by the city or political subdivision
3 in which the violation occurred.

4 **SECTION 3. AMENDMENT.** Section 57-36-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-36-01. Definitions.**

7 As used in this chapter, unless the context or subject matter otherwise requires:

- 8 1. "Alternative nicotine products" means any noncombustible product containing nicotine
9 which is intended for human consumption, whether chewed, absorbed, dissolved, or
10 ingested by any other means. The term does not include any cigarette, cigar, snuff,
11 tobacco in any other form in which it may be utilized for smoking or chewing, any
12 electronic smoking device, or any product regulated as a drug or device by the United
13 States food and drug administration under chapter V of the federal Food, Drug, and
14 Cosmetic Act [21 U.S.C. 501 et seq.].
- 15 2. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
- 16 ~~2.3.~~ "Cigar" means any roll of tobacco wrapped in tobacco.
- 17 ~~3.4.~~ "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed
18 tobacco and encased in any material except tobacco. "Cigarette" also means any
19 product of a cigarette-making machine.
- 20 ~~4.5.~~ "Cigarette-making machine" means a machine used for commercial purposes to
21 process tobacco into a roll or tube, formed or made from any material other than
22 tobacco, at a production rate of more than five rolls or tubes per minute.
- 23 ~~5.6.~~ "Consumer" means any person who has title to or possession of cigarettes, cigars,
24 pipe tobacco, ~~or other tobacco products,~~ electronic smoking devices, or alternative
25 nicotine products in storage, for use or other consumption in this state.
- 26 ~~6.7.~~ "Dealer" includes any person other than a distributor who is engaged in the business
27 of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products,
28 or any product of a cigarette-making machine or any electronic smoking devices or
29 alternative nicotine products.
- 30 ~~7.8.~~ "Distributor" includes any person engaged in the business of producing or
31 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, ~~or other tobacco~~

1 products, electronic smoking devices, or alternative nicotine products, or importing into
2 this state cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products,
3 electronic smoking devices, or alternative nicotine products, for the purpose of
4 distribution and sale thereof to dealers and retailers.

5 ~~8-9.~~ "Electronic smoking device" means any electronic product that delivers nicotine or
6 other substances to the individual inhaling from the device, including, an electronic
7 cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes
8 any component, part, or accessory of such a product, whether or not sold separately.
9 Electronic smoking device does not include drugs, devices, or combination products
10 approved for sale by the United States food and drug administration, as those terms
11 are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301
12 et seq.].

13 ~~10.~~ "Licensed dealer" means a dealer licensed under the provisions of this chapter.

14 ~~9-11.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.

15 ~~10-12.~~ "Other tobacco products" means snuff and chewing tobacco.

16 ~~11-13.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
17 company, trust, or association however formed.

18 ~~12-14.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
19 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
20 consumers as tobacco to be smoked in a pipe.

21 ~~13-15.~~ "Sale" or "sell" applies to gifts, exchanges, and barter.

22 ~~14-16.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
23 placed in the mouth.

24 ~~15-17.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other
25 tobacco products, electronic smoking devices, or alternative nicotine products for use
26 or consumption in this state.

27 ~~16-18.~~ "Use" means the exercise of any right or power incidental to the ownership or
28 possession of cigarettes, cigars, pipe tobacco, or other tobacco products, electronic
29 smoking devices, or alternative nicotine products.

30 **SECTION 4. AMENDMENT.** Section 57-36-02 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **57-36-02. Distributors and dealers to be licensed.**

2 Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars,
3 ~~or tobacco, electronic smoking devices, or alternative nicotine products~~ in this state, including
4 any distributor or dealer, must secure a license from the attorney general before engaging or
5 continuing to engage in business. A separate application and license is required for each
6 distributor at each outlet or place of business within the state, and a separate dealer's license is
7 required for each retail outlet when a person owns or controls more than one place of business
8 dealing in cigarettes, cigarette papers, snuff, cigars, ~~or tobacco, electronic smoking devices, or~~
9 ~~alternative nicotine products~~. No retailer will be granted a distributor's license except a retailer
10 who, in the usual course of business, performed a distributor's or wholesaler's function for at
11 least one year prior to filing the license application. The application prescribed by the attorney
12 general must include the name and address of the applicant, the address and place of
13 business, the type of business, and other information as required for the proper administration
14 of this chapter. Each application for a wholesale or distributor's outlet license must be
15 accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney
16 general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen
17 dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for
18 each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed
19 five hundred dollars for any one licensee in any fiscal year. A distributor's license does not
20 authorize the holder to make retail sales. Each license issued must be prominently displayed on
21 the premises covered by the license.

22 **SECTION 5. AMENDMENT.** Section 57-36-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **57-36-04. Revocation of license - Penalty.**

25 The attorney general may revoke the license of any dealer or distributor for failure to comply
26 with any of the provisions of this chapter, or any of the rules or regulations prescribed by the tax
27 commissioner or the attorney general. When a license has been legally revoked, no license
28 may be issued again to the licensee for a period of one year thereafter. A person may not sell
29 any cigarettes, cigarette papers, snuff, cigars, ~~or tobacco, electronic smoking devices, or~~
30 ~~alternative nicotine products~~ after that person's license has been revoked as provided in this
31 chapter.

1 **SECTION 6. AMENDMENT.** Section 57-36-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **57-36-05. Unlawful to sell without license.**

4 A dealer or distributor may not sell cigarettes, cigarette papers, snuff, cigars, or tobacco,
5 electronic smoking devices, or alternative nicotine products in this state at wholesale or at retail
6 unless a license has been issued to that dealer or distributor as prescribed by this chapter, and
7 a person may not sell, offer for sale, or possess with the intent to sell, any cigarettes, cigarette
8 papers, snuff, cigars, or tobacco, electronic smoking devices, or alternative nicotine products
9 without such a license.