

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2156

Introduced by

Senators Dwyer, Bell

Representatives Hanson, Headland, Heinert, K. Koppelman

1 A BILL for an Act to amend and reenact sections 12.1-31-03, 12.1-31-03.1, 12.1-31-03.3, and  
2 51-32-01 of the North Dakota Century Code, relating to the prohibition of an individual under  
3 twenty-one years of age from purchasing, possessing, or using tobacco products or electronic  
4 smoking devices; to provide a penalty; and to declare an emergency.

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

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

8 **12.1-31-03. Sale of tobacco, electronic smoking devices, or alternative nicotine**  
9 **products to minorsan individual under twenty-one years of age and use by minorsan**  
10 **individual under twenty-one years of age prohibited.**

- 11 1. a. It is an infraction for any person to sell or furnish to a minoran individual under  
12 twenty-one years of age, or procure for a minoran individual under twenty-one  
13 years of age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form  
14 in which it may be utilized for smoking or chewing, electronic smoking devices, or  
15 alternative nicotine products. As used in this subdivision, "sell" includes  
16 dispensing from a vending machine under the control of the actor.
- 17 b. It is an infraction for any person to display or offer for sale cigarettes, cigarette  
18 papers, cigars, snuff, tobacco in any other form in which it may be utilized for  
19 smoking or chewing, electronic smoking devices, or alternative nicotine products  
20 through a self-service display. This subdivision does not apply to a:
- 21 (1) Vending machine or other coin-operated machine that is permitted under  
22 section 12.1-31-03.1; or
- 23 (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 twenty-one 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~~twenty-one 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. A state agency,  
9           city, county, board of health, tobacco, electronic smoking devices, or alternative  
10          nicotine products retailer, or association of tobacco, electronic smoking devices, or  
11          alternative nicotine products retailers may also conduct compliance surveys, after  
12          coordination with the appropriate local law enforcement authority.
- 13       3.    Subsections 1 and 2 do not apply to an individual under twenty-one years of age who  
14          possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in  
15          which it may be used for smoking or chewing, electronic smoking devices, or  
16          alternative nicotine products when required in the performance of the individual's  
17          duties as an employee.
- 18       4.    It is a noncriminal offense for ~~a minor~~an individual under twenty-one years of age to  
19          present or offer to another individual a purported proof of age which is false,  
20          fraudulent, or not actually ~~the minor's~~that individual's own proof of age, for the purpose  
21          of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff,  
22          tobacco in any other form in which it may be utilized for smoking or chewing, electronic  
23          smoking devices, or alternative nicotine products.
- 24       4.5.   A city or county may adopt an ordinance or resolution regarding the sale of tobacco,  
25          electronic smoking devices, or alternative nicotine products to ~~minors~~individuals under  
26          twenty-one years of age and use of tobacco, electronic smoking devices, or alternative  
27          nicotine products by ~~minors~~individuals under twenty-one years of age which includes  
28          prohibitions in addition to those in subsection 1, 2, or ~~34~~. Any ordinance or resolution  
29          adopted must include provisions deeming a violation of subsection 2 or ~~34~~ a  
30          noncriminal violation and must provide for a fee of not less than twenty-five dollars for  
31          ~~a minor~~an individual fourteen years of age or older who has been charged with an

1 offense under subsection 2 or ~~34~~. The failure to post a required bond or pay an  
2 assessed fee by an individual found to have violated the ordinance or resolution is  
3 punishable as a contempt of court, except ~~a minor~~ an individual under twenty-one  
4 years of age may not be imprisoned for the contempt.

5 ~~5-6.~~ A minor An individual fourteen years of age or older found to have violated  
6 subsection 2 or ~~34~~ must pay a fee of twenty-five dollars.

7 a. Any individual who has been cited for a violation of subsection 2 or ~~34~~ may  
8 appear before a court of competent jurisdiction and pay the fee by the time  
9 scheduled for a hearing, or if bond has been posted, may forfeit the bond by not  
10 appearing at the scheduled time. An individual appearing at the time scheduled in  
11 the citation may make a statement in explanation of that individual's action and  
12 the judge may waive, reduce, or suspend the fee or bond, or both. If the  
13 individual cited follows the procedures of this subdivision, that individual has  
14 admitted the violation and has waived the right to a hearing on the issue of  
15 commission of the violation. The bond required to secure appearance before the  
16 court must be identical to the fee. This subdivision does not allow a citing officer  
17 to receive the fee or bond.

18 b. If an individual cited for a violation of subsection 2 or ~~34~~ does not choose to  
19 follow the procedures provided under subdivision a, that individual may request a  
20 hearing on the issue of the commission of the violation cited. The hearing must  
21 be held at the time scheduled in the citation or at some future time, not to exceed  
22 ninety days later, set at that first appearance. At the time of a request for a  
23 hearing on the issue on commission of the violation, the individual cited shall  
24 deposit with the court an appearance bond equal to the fee for the violation cited.

25 c. The failure to post bond or to pay an assessed fee is punishable as a contempt of  
26 court, except ~~a minor~~ an individual may not be imprisoned for the contempt.

27 ~~6-7.~~ The prosecution must prove the commission of a cited violation under subsection 2 or  
28 ~~34~~ by a preponderance of the evidence.

29 ~~7-8.~~ A law enforcement officer that cites a minor for violation of this section shall mail a  
30 notice of the violation to the parent or legal guardian of the minor within ten days of the  
31 citation.

1     ~~8-9.~~ A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced  
2             by the court to a sanction or order designed to ensure compliance with the payment of  
3             the fee or fine or to an alternative sentence or sanction including community service.

4     ~~9-10.~~ As used in this section:

- 5             a. "Alternative nicotine product" means any noncombustible product containing  
6                 nicotine that is intended for human consumption, whether chewed, absorbed,  
7                 dissolved, or ingested by any other means. The term does not include any  
8                 cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for  
9                 smoking or chewing, any electronic smoking device, or any product regulated as  
10                a drug or device by the United States food and drug administration under  
11                chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
- 12            b. "Electronic smoking device" means any electronic product that delivers nicotine  
13                or other substances to the individual inhaling from the device, including, an  
14                electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking  
15                device includes any component, part, or accessory of such a product, whether or  
16                not sold separately. Electronic smoking device does not include drugs, devices,  
17                or combination products approved for sale by the United States food and drug  
18                administration, as those terms are defined in the Federal Food, Drug and  
19                Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
- 20            c. "Self-service display" means a display that contains cigarettes, cigarette papers,  
21                cigars, snuff, tobacco in any other form which it may be utilized for smoking or  
22                chewing, electronic smoking devices, or alternative nicotine products and is  
23                located in an area that is openly accessible to the retailer's customers, and from  
24                which customers can readily access those products without the assistance of a  
25                salesperson. A display case that holds those products behind locked doors does  
26                not constitute a self-service display.
- 27            d. "Tobacco specialty store" means a retail store that:
- 28                (1) Derives at least seventy-five percent of its revenue from the sale of  
29                    cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which  
30                    it may be utilized for smoking or chewing, electronic smoking devices, or  
31                    alternative nicotine products; and

1                   (2) Does not permit minors to enter the premises unless accompanied by a  
2                   parent or legal guardian.

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

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

9                   **12.1-31-03.1. Vending machines prohibited - Penalty.**

10                  1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,  
11                  snuff, tobacco in any other form in which it may be utilized for smoking or chewing,  
12                  electronic smoking devices, or alternative nicotine products through a vending  
13                  machine, except as provided in subsection 2.

14                  2. Subsection 1 does not apply to:

15                  a. A vending machine that is located in an area in which ~~minors~~individuals under  
16                  twenty-one years of age are not permitted access; or

17                  b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff,  
18                  tobacco in any other form in which it may be utilized for smoking or chewing,  
19                  electronic smoking devices, or alternative nicotine products through the operation  
20                  of a device that requires a salesperson to control the dispensation of such  
21                  product.

22                  3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars,  
23                  snuff, tobacco in any other form in which it may be utilized for smoking or chewing,  
24                  electronic smoking devices, or alternative nicotine products through any vending  
25                  machine, if those products are placed together with any nontobacco product, other  
26                  than matches, in the vending machine.

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

29                  **SECTION 3. AMENDMENT.** Section 12.1-31-03.3 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1       **12.1-31-03.3. Sale of flavored e-liquid to minors prohibited - Penalty.**

2       1. A person may not sell, offer for sale, or distribute in this state any flavored e-liquid or  
3       electronic smoking device containing flavored e-liquid to ~~a minor~~an individual under  
4       twenty-one years of age.

5       2. A person that violates subsection 1 and is not a manufacturer is subject to a fine of five  
6       hundred dollars for each individual package of flavored e-liquid product or electronic  
7       smoking device containing flavored e-liquid sold or offered for sale.

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

10       **51-32-01. Prohibited acts regarding sale of tobacco products, electronic smoking**  
11 **devices, or alternative nicotine products to ~~minors~~an individual under twenty-one years**  
12 **of age.**

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

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

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

23       (2) A signed statement from the individual providing a certification that the  
24       individual:

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

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

28       (c) Understands that providing false information may constitute a violation  
29       of law.

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

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

1 any telecommunications means, including by telephone, facsimile, or the internet, if in  
2 providing for the sale or delivery of the product pursuant to the order, the person mails  
3 the product or ships the product by carrier, and the person fails to comply with each of  
4 the following procedures:

5 a. Before the sale of the electronic smoking device or alternative nicotine product  
6 verifies the purchaser is at least ~~eighteen~~twenty-one years of age through a  
7 commercially available database that is regularly used by business or  
8 governmental entities for the purpose of age and identity verification; and

9 b. Uses a method of mailing, shipping, or delivery which requires an individual of  
10 legal minimum purchase age to sign for delivery before the electronic smoking  
11 device or alternative nicotine product is released to the purchaser.

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

14 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.