Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1186
(Representatives K. Koppelman, Delmore, Hogan, Kasper, Mock, Nathe, Sukut, Thoreson)
(Senators Armstrong, Hogue, Nelson)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. a. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this ~~subsection~~subdivision, "sell" includes dispensing from a vending machine under the control of the actor.

   b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subdivision does not apply to a:

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

      (2) Self-service display that is located in a tobacco specialty store.

2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, ~~or~~ tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. However, an individual under eighteen years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or association of tobacco, electronic smoking devices, or alternative nicotine products retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

3. It is a noncriminal offense for a minor to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually the minor's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, ~~or~~ tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.

4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco, electronic smoking devices, or alternative nicotine products to minors and use of tobacco, electronic smoking devices, or alternative nicotine products by minors which includes prohibitions in

addition to those in subsection 1, 2, or 3. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2 or 3. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must pay a fee of twenty-five dollars.

   a. Any individual who has been cited for a violation of subsection 2 or 3 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.

   b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.

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

6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a preponderance of the evidence.

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

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

9. As used in this section:

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

   b. "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are

defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

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

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

(1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and

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

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

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

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

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

2. Subsection 1 does not apply to:

   a. A vending machine that is located in an area in which minors are not permitted access; or

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

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

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

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

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

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.

2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred.

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

19. "Unruly child" means a child who:

    a. Is habitually and without justification truant from school;

    b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;

    c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;

    d. Has committed an offense in violation of section 5-01-08; or

    e. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco ~~or~~, tobacco-related products, electronic smoking devices, or alternative nicotine products in violation of subsection 2 of section 12.1-31-03; and

    f. In any of the foregoing instances is in need of treatment or rehabilitation.

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

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

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

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

~~1.~~ a. Before mailing or shipping the product, the person receives from the individual who places the order the following:

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

~~b.~~ (2) A signed statement from the individual providing a certification that the individual:

~~(1)~~ (a) Is a smoker of legal minimum purchase age in the state;

~~(2)~~ (b) Has selected an option on the statement as to whether the individual wants to receive mailings from a tobacco company; and

~~(3)~~ (c) Understands that providing false information may constitute a violation of law.

~~2.~~ b. Before mailing or shipping the product, the person:

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

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

~~3.~~ c. Before mailing or shipping the product, the person provides to the prospective purchaser, by electronic mail or other means, a notice that meets the requirements of section ~~51-30-04~~51-32-04.

~~4.~~ d. In the case of an order for a product pursuant to an advertisement on the internet, the person receives payment by credit card, debit card, or check for the order before mailing or shipping the product.

~~5. a.~~e. (1) The person employs a method of mailing or shipping the product requiring that the individual purchasing the product:

~~(1)~~ (a) Be the addressee;

~~(2)~~ (b) Have an individual of legal minimum purchase age sign for delivery of the package; and

~~(3)~~ (c) If the individual appears to the carrier making the delivery to be under twenty-seven years of age, take delivery of the package only after producing valid government-issued identification that bears a photograph of the individual, indicates that the individual is not under the legal age to purchase cigarettes, and indicates that the individual is not younger than the age indicated on the government-issued document.

~~b.~~ (2) The bill of lading clearly states the requirements in subdivision a and specifies that state law requires compliance with the requirements.

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

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

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

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

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

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

Wesley R. Belter
Speaker of the House

President of the Senate

Bull J. Reich
Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1186.

House Vote:	Yeas 71	Nays 20	Absent 3
Senate Vote:	Yeas 46	Nays 0	Absent 1

Bull J. Reich
Chief Clerk of the House

Received by the Governor at 2:12 p. M. on April 7, 2015.

Approved at 11:22 A. M. on April 8, 2015.

Jack Dalrymple
Governor

Filed in this office this 8th day of April, 2015,

at 3:36 o'clock P M.

Secretary of State