

**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.