

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED 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 9 of
2 section 12.1-31-03, subsection 3 of section 12.1-31-03.2, and sections 57-36-01, 57-36-02,
3 57-36-04, and 57-36-05 of the North Dakota Century Code, relating to sale of tobacco to minors
4 and licensure of persons in the 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 furnish to a minor, or
9 procure for a minor, cigarettes, cigarette papers, cigars, snuff, tobacco in any
10 other form in which it may be utilized for smoking or chewing, electronic smoking
11 devices, or alternative nicotine products. As used in this subdivision, "sell"
12 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 9 of section 12.1-31-03 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 9. As used in this section:

- 1 a. "Alternative nicotine product" means any noncombustible product containing
2 nicotine that is intended for human consumption, whether chewed, absorbed,
3 dissolved, or ingested by any other means. The term does not include any
4 cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for
5 smoking or chewing, any electronic smoking device, or any product regulated as
6 a drug or device by the United States Food and Drug Administration under
7 chapter V of the federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
- 8 b. "Electronic smoking device" means any electronic product that delivers nicotine
9 or other substances to the individual inhaling from the device, including, an
10 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking
11 device includes any component, part, or accessory of such a product, whether or
12 not sold separately. Electronic smoking device does not include drugs, devices,
13 or combination products approved for sale by the United States food and drug
14 administration, as those terms are defined in the federal Food, Drug and
15 Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
- 16 c. "Proprietor" means the owner of a retail establishment or an individual to whom
17 the owner has delegated the responsibility for day-to-day management of
18 operations of the retail establishment.
- 19 d. "Self-service display" means a display that contains cigarettes, cigarette papers,
20 cigars, snuff, tobacco in any other form which it may be utilized for smoking or
21 chewing, electronic smoking devices, or alternative nicotine products and is
22 located in an area that is openly accessible to the retailer's customers, and from
23 which customers can readily access those products without the assistance of a
24 salesperson. A display case that holds those products behind locked doors does
25 not constitute a self-service display.
- 26 d.e. "Tobacco specialty store" means a retail store that:
27 (1) Derives at least seventy-five percent of its revenue from the sale of
28 cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which
29 it may be utilized for smoking or chewing, electronic smoking devices, or
30 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.f. "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 3. AMENDMENT.** Subsection 3 of section 12.1-31-03.2 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 3. ~~Any person that engages~~A proprietor may not engage in the retail sales of liquid
10 nicotine containers in violation of this section is ~~subject to a civil penalty of not more~~
11 ~~than five hundred dollars. It is an infraction~~ for each separate violation of this section,
12 ~~to be recovered by any enforcement authority designated by the city or political~~
13 ~~subdivision in which the violation occurred.~~

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

16 **57-36-01. Definitions.**

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

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

25 2. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.

26 ~~2.3.~~ "Cigar" means any roll of tobacco wrapped in tobacco.

27 ~~3.4.~~ "Cigarette" means any roll for smoking made wholly or in part of tobacco or processed
28 tobacco and encased in any material except tobacco. "Cigarette" also means any
29 product of a cigarette-making machine.

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- 1 ~~4-5.~~ "Cigarette-making machine" means a machine used for commercial purposes to
2 process tobacco into a roll or tube, formed or made from any material other than
3 tobacco, at a production rate of more than five rolls or tubes per minute.
- 4 ~~5-6.~~ "Consumer" means any person who has title to or possession of cigarettes, cigars,
5 pipe tobacco, ~~or other tobacco products,~~ electronic smoking devices, or alternative
6 nicotine products in storage, for use or other consumption in this state.
- 7 ~~6-7.~~ "Dealer" includes any person other than a distributor who is engaged in the business
8 of selling cigarettes, cigarette papers, cigars, pipe tobacco, or other tobacco products,
9 or any product of a cigarette-making machine or any electronic smoking devices or
10 alternative nicotine products.
- 11 ~~7-8.~~ "Distributor" includes any person engaged in the business of producing or
12 manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, ~~or other tobacco~~
13 products, electronic smoking devices, or alternative nicotine products, or importing into
14 this state cigarettes, cigarette papers, cigars, pipe tobacco, ~~or other tobacco products,~~
15 electronic smoking devices, or alternative nicotine products, for the purpose of
16 distribution and sale thereof to dealers and retailers.
- 17 ~~8-9.~~ "Electronic smoking device" means any electronic product that delivers nicotine or
18 other substances to the individual inhaling from the device, including, an electronic
19 cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes
20 any component, part, or accessory of such a product, whether or not sold separately.
21 Electronic smoking device does not include drugs, devices, or combination products
22 approved for sale by the United States food and drug administration, as those terms
23 are defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301
24 et seq.].
- 25 ~~10.~~ "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- 26 ~~9-11.~~ "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- 27 ~~10-12.~~ "Other tobacco products" means snuff and chewing tobacco.
- 28 ~~11-13.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability
29 company, trust, or association however formed.

1 ~~12-14.~~ "Pipe tobacco" means any processed tobacco that, because of its appearance, type,
2 packaging, or labeling, is suitable for use and likely to be offered to, or purchased by,
3 consumers as tobacco to be smoked in a pipe.

4 ~~13-15.~~ "Proprietor" means the owner of a retail establishment or an individual to whom the
5 owner has delegated the responsibility for day-to-day management of operations of
6 the retail establishment.

7 16. "Sale" or "sell" applies to gifts, exchanges, and barter.

8 ~~14-17.~~ "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be
9 placed in the mouth.

10 ~~15-18.~~ "Storage" means any keeping or retention of cigarettes, cigars, pipe tobacco, or other
11 tobacco products, electronic smoking devices, or alternative nicotine products for use
12 or consumption in this state.

13 ~~16-19.~~ "Use" means the exercise of any right or power incidental to the ownership or
14 possession of cigarettes, cigars, pipe tobacco, or other tobacco products, electronic
15 smoking devices, or alternative nicotine products.

16 **SECTION 5. AMENDMENT.** Section 57-36-02 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **57-36-02. Distributors and dealers to be licensed.**

19 Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars,
20 or tobacco, electronic smoking devices, or alternative nicotine products in this state, including
21 any distributor or dealer, must secure a license from the attorney general before engaging or
22 continuing to engage in business. A separate application and license is required for each
23 distributor at each outlet or place of business within the state, and a separate dealer's license is
24 required for each retail outlet when a person owns or controls more than one place of business
25 dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco, electronic smoking devices, or
26 alternative nicotine products. No retailer will be granted a distributor's license except a retailer
27 who, in the usual course of business, performed a distributor's or wholesaler's function for at
28 least one year prior to filing the license application. The application prescribed by the attorney
29 general must include the name and address of the applicant, the address and place of
30 business, the type of business, and other information as required for the proper administration
31 of this chapter. Each application for a wholesale or distributor's outlet license must be

1 accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney
2 general. Each application for a dealer's outlet license must be accompanied by a fee of fifteen
3 dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for
4 each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed
5 five hundred dollars for any one licensee in any fiscal year. A distributor's license does not
6 authorize the holder to make retail sales. Each license issued must be prominently displayed on
7 the premises covered by the license.

8 **SECTION 6. AMENDMENT.** Section 57-36-04 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **57-36-04. Revocation of license - Penalty.**

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

18 **SECTION 7. AMENDMENT.** Section 57-36-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **57-36-05. Unlawful to sell without license.**

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