



New Electronic Cigarette Law Protects Health

North Dakota's new electronic cigarette law, [House Bill 1186](#), went into effect on August 2015. It prohibits minors from using, possessing or purchasing electronic smoking devices, alternative nicotine products or any of their component parts, and requires child-resistant packaging for liquid nicotine containers. The new law also requires that all tobacco products, electronic smoking devices and alternative nicotine products be sold with the assistance of a clerk, meaning that these products can no longer be displayed or sold through the use of self-service displays.

HB1186 was passed in response to North Dakotans' concerns over possible health consequences of electronic smoking devices and their potential to attract young users. Electronic cigarette use, including vaping devices, tripled among middle and high school students from 2013 to 2014, according to national data published by the Centers for Disease Control and Prevention and the U.S. Food and Drug Administration's Center for Tobacco Products.

The 2014 National Youth Tobacco Survey also shows that e-cigarette use increased from 4.5 percent and 1.1 percent in 2013 to 13.4 percent and 3.9 percent among high school and middle school students, respectively. That amounts to approximately 1.67 million more youth using e-cigarettes. North Dakota's high school youth use of electronic cigarettes is also trending upward, from 1.6 percent in 2011 to 6 percent in 2013, according to the North Dakota Youth Tobacco Use Survey.

Another reason for HB1186 is the increase in calls to poison control centers for nicotine poisoning from liquid nicotine juices. CDC data shows that calls related to poisoning from liquid nicotine used in electronic devices jumped from one per month in 2010 to 215 in February of this year alone. More than half of those calls involved children five years old and younger. The new requirements that nicotine liquid containers meet the United States Consumer Product Safety Commission standards for child-resistant packaging help parents protect their young children from nicotine poisoning.

For more information about electronic smoking devices and to read the full text of HB1186, go to <http://www.breathend.com/TobaccosHarm/ecigs/ECigLaw/>.

Frequently Asked Questions on the Electronic Cigarette Law

When did the new E-Cigarette Youth Protection law take effect?

The new e-cigarette youth protection law took effect Saturday, **August 1, 2015**.

Why was the E-Cigarette Youth Protection law passed?

North Dakota citizens are concerned with the health consequences of [electronic smoking devices](#), their potential to attract young users and the increase of liquid nicotine juice poisoning as reported by poison control centers. Current e-cigarette use among middle and high school students tripled from 2013 to 2014. Findings from the 2014 National Youth Tobacco Survey show that current e-cigarette use among high school students increased from 4.5 percent in 2013 to 13.4 percent in 2014. Among middle school students, current e-cigarette use has more than tripled from 1.1 percent in 2013 to 3.9 percent in 2014. <http://www.cdc.gov/media/releases/2015/p0416-e-cigarette-use.html>

Reported liquid nicotine poisonings have increased significantly from one per month in 2010 to 215 in February of 2015. Over half of these 215 liquid nicotine poisoning calls involve children ages 5 and younger. <http://www.cdc.gov/media/releases/2014/p0403-e-cigarette-poison.html> .

How does this E-Cigarette Youth Protection law protect youth?

Requires child-resistant packaging for liquid nicotine containers sold at retail. Prohibits the sale of [electronic smoking devices](#) and [alternative nicotine products](#) to minors. Prohibits self-service displays of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form, electronic smoking devices, or alternative nicotine products. The self-service display restriction does not apply to: retail locations where minors are not permitted access; a device that requires a salesperson to control and dispense the product; or a [tobacco specialty store](#).

What is the E-Cigarette Youth Protection law?

The E-Cigarette Youth Protection law includes additions to the North Dakota Century Code: [12.1-31-03.2](#), [12.1-31-03](#), [12.1-31-03.1](#), subsection 19 of section 27-20-02, and section 51-32-01

An act to create and enact section 12.1-31-03.2 of the NDCC, 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 NDCC 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. **12.1-31-03. Sales of tobacco, electronic smoking devices, or alternative nicotine products to minors and use by minors prohibited.**

What is the penalty to a person selling to a minor?

It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, **electronic smoking devices, or alternative nicotine products**. “Sell” includes dispensing from a vending machine under the control of the actor.

What is the penalty to a minor for purchasing?

It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, **electronic smoking devices, or alternative nicotine products**. *EXEMPTION: 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 a parent or guardian, and while acting under the supervision of law enforcement authority.* 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. A minor fourteen years of age or older found in violation must pay a fee of \$25. 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 that contempt. Cities or counties may adopt an ordinance or resolution which includes additional prohibitions.

How are self-service display cases managed?

It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, 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](#), including [vending machines](#).**

This subdivision **DOES NOT** apply to: a vending machine or other coin-operated machine that is located in an area in which minors are not permitted; a device that requires a salesperson to control the dispensation; or a self-service display that is located in a tobacco specialty store. A tobacco specialty store means a retail store that 1. *Derives at least 75 percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, 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.*

What are the requirements for child-resistant packaging of nicotine liquid containers?

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, DFR, part 1700, section 20.

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title16-vol2/pdf/CFR-2012-title16-vol2-sec1700-15.pdf>

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title16-vol2/pdf/CFR-2012-title16-vol2-sec1700-20.pdf>

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.**

What is the penalty for selling liquid nicotine containers that do not meet child-resistant packaging standards?

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.

How are mail or internet sales of e-cigarettes and alternative nicotine products regulated to prevent sales to minors?

51-32-01. Prohibited acts regarding sale of tobacco products, electronic smoking devices, or alternative nicotine products to minors. 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: 1. 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 2. 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.

North Dakota Century Code Definitions

“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, 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.].

"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 H. B. NO. 1186 - PAGE 3 defined in the federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].

"Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, 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.

"Tobacco specialty store" means a retail store that, derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and does not permit minors to enter the premises unless accompanied by a parent or legal guardian.

"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.

The information provided is from the Center for Tobacco Prevention and Control Policy and does not represent a legal interpretation. It is provided as guidance in understanding North Dakota's e-cigarette law. Questions regarding legal interpretation should be referred to your state's attorney or your local attorney.