

CHAPTER 6-07. OFFENSES INVOLVING MINORS OR ALCOHOL

6-07-01. Sale of Tobacco or Electronic Smoking Devices to Persons Under 21 Prohibited.

1. Any person who sells or furnishes to a person under the age of 21, or procures for a person under the age of 21, cigarettes, cigarette papers, cigars, snuff, tobacco, tobacco products, or an electronic smoking device, in any form in which it may be utilized for smoking, inhaling or chewing is guilty of an infraction. For the purposes of this Chapter:

a. "Tobacco Product" includes any product that contains tobacco, is derived from tobacco or contains nicotine or other similar substances, that is intended for human consumption, or is likely to be consumed, whether smoked, heated, inhaled, chewed, absorbed, dissolved, or ingested by any other means. The term "tobacco product" includes E-cigarettes and other electronic smoking devices, pipes and rolling papers, but does not include any product approved by the United States Food and Drug Administration for legal sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.

b. "Electronic smoking device" means any electronic product or oral device, such as one composed of a heating element, battery or electronic circuit, 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.]

2. No person over 13 and under 21 years of age shall sell, possess, purchase, attempt to purchase, smoke or use tobacco products or an electronic smoking device or tobacco in any other form in which it may be utilized for smoking, inhaling, or chewing except that a person under 21 years of age employed by a licensed tobacco dealer or distributor may handle the tobacco products, or electronic smoking devices listed in this section as a part of his or her employment. In addition, an individual under twenty-one years of age may purchase and possess tobacco products or an electronic smoking device 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 retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority. Any person or business that is subject to a compliance survey shall be notified of the results within 7 days of the survey. Any person violating this section shall have committed a non-criminal violation and shall pay a fee of seventy (\$70) dollars, subject to the following procedures:

a. Any individual who has been cited for a violation of Section 2 may pay the statutory fee in municipal court by the time scheduled for a first appearance or if a 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 statutory fee. If the individual cited follows the procedures of this paragraph, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. A bond posted under Section 2 must be in the amount of seventy (\$70) dollars. The halting officer shall not receive the statutory fee or a bond.

b. If an individual cited for a violation under Section 2 does not choose to follow any procedure provided under paragraph a, that individual may appear at the time scheduled in the citation and request a hearing on the issue of the commission of the violation charged. The hearing must be held within 90 days of the first appearance. At the time of a request for a hearing on the issue of commission of the violation, the individual charged shall deposit with the court an appearance bond in the amount of seventy (\$70) dollars. At the hearing on the violation, the city must prove the commission of a violation under this section by a preponderance of the evidence. If the individual does not appear at the time set for the hearing on the violation, the citation shall be deemed admitted and the bond shall be forfeited.

c. A person who admits, forfeits or is found guilty of this section must attend an approved tobacco awareness class within 30 days of the admission, forfeiture or finding of guilty. A person who fails to comply with this paragraph is in contempt of court.

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

e. Any person who fails to answer a citation issued under this section or pay the fee or post the bond specified as required is in contempt of court.

f. A person adjudged guilty of contempt of court for failure to comply with this section 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.

3. It shall be an infraction for any person to sell or dispense any tobacco product or electronic smoking device through the use of a vending machine except that tobacco products or electronic smoking devices may be offered for sale or sold from a vending machine on licensed on-sale or off-sale alcoholic beverage premises in those areas not accessible to persons under the age of 21 or through a vending machine that requires a salesperson to control the dispensation of such product. Vending machines for tobacco products or electronic smoking devices located upon licensed premises must be located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases will be readily observable. The vending machine shall not be located in a coat room, restroom, unmonitored hallway, outer lobby or waiting area or similar unobserved area; nor shall the vending machine be accessible to the public when the establishment is closed.

4. For the purpose of this ordinance, "vending machine" shall mean any kind of electronic or mechanical device or machine which, upon the insertion of a debit card, credit card, bills, coin or coins, tokens or other objects will release tobacco products in packages or otherwise.

5. Except on licensed alcohol premises or in a walk in cigar humidor which is closed to people under 18 years of age, no person operating a place of business wherein tobacco products are sold or offered for sale shall sell, permit to be sold, offer for sale, or display for sale any tobacco product or electronic smoking device in any manner, unless such products and cigarettes are stored for sale behind a counter in an area that is accessible only to the employees of such business. A violation of this paragraph is an infraction.

6. Any nicotine liquid container that is sold at retail in the City 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. 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. Any person that engages in retail sales of liquid nicotine containers in violation of this section is guilty of an infraction.

Reference: NDCC Sec. 12.1-31-03 (1985)

(Ord. 4418, 02-25-92; Ord. 4687, 06-13-95; Ord. 4741, 01-23-96; Ord. 4826, 02-25-97; 4988, 05-25-99; Ord. 5017, 11-23-99; Ord. 5031, 03-14-00; Ord. 5129, 08-28-01; Ord. 5160, 02-26-02; Ord. 6029, 02-11-14; Ord. 6164, 10-27-15; Ord. 6406, 02-01-20).