

CHAPTER 12-06

(Source: Ord 634, Sec. 1 [2002]; Ord. 997, Sec. 2 [2014])

SALE OF TOBACCO PRODUCTS TO MINORS AND USE BY MINORS PROHIBITED

SECTIONS:

- 12-0601. Procuring Tobacco Product for Minor.
- 12-0602. Minor Possessing Tobacco Products.
- 12-0603. Fee.
- 12-0604. Payment Procedure.
- 12-0605. Burden of Proof.
- 12-0606. Notice to Parent or Legal Guardian.
- 12-0607. Penalty for Contempt.

12-0601. PROCURING TOBACCO PRODUCT FOR MINOR. For the purpose of this section, the definitions in Section 10-0601 shall apply. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, e-cigarettes, electronic cigarettes, electronic smoking devices, snuff, or tobacco products in any other form in which it may be utilized for smoking or chewing. As used in this section, "sell" includes dispensing from a vending machine under the control of the actor.

12-0602. MINOR POSSESSING TOBACCO PRODUCTS.

1. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, e-cigarettes, electronic cigarettes, electronic smoking devices, snuff, or tobacco products in any form in which it may be utilized for smoking or chewing.
2. Subsection 1 shall not apply to an individual under eighteen years of age who may purchase and possess tobacco 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 product retailer, or association of tobacco product retailers may also conduct compliance surveys, after coordination with the appropriate law enforcement authority.
3. Subsection 1 shall not apply to an employee less than 18 years of age employed by a licensed tobacco product dealer or distributor where said employee under the age of 18 years handles tobacco products listed in this section as part of that employee's employment.

4. Subsection 1 shall not apply if the minor's possession or use of tobacco products relates to a cultural or religious practice; including, without limitation, the use or possession of tobacco products during any religious or cultural ceremony.

12-0603. FEE. A fee of \$25 will be assessed for a minor fourteen (14) years of age or older who has been charged with an offense under Section 12-0602 for the first offense. For a second offense within a year, a fee of \$50 and attendance at a tobacco cessation program approved by the West Fargo Municipal Court will be required. For third and subsequent offenses within a year the Municipal Court may impose a fee of up to \$250 and attendance at a tobacco cessation program. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance is punishable as a contempt of court, except a minor may not be imprisoned for contempt.

12-0604. PAYMENT PROCEDURE. A minor fourteen (14) years of age or older found to have violated Section 12-0602 must pay a fee in the amount set out in Section 12-0603.

1. Any individual who has been cited for a violation of Section 12-0602 may appear before the West Fargo Municipal Court 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 fails to follow the procedures of this section, 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 is the same as the fee schedule set out in Section 12-0603. For a third or subsequent violation, the individual must appear before the Judge of the Municipal Court.
3. An 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 90 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.
4. The failure to post bond or to pay an assessed fee, or attend a tobacco cessation class when required to do so is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.

12-0605. BURDEN OF PROOF. The prosecution must prove the commission of a cited violation under Section 12-0602 by a preponderance of the evidence.

12-0606. NOTICE TO PARENT OR LEGAL GUARDIAN. 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.

12-0607. PENALTY FOR CONTEMPT. A person adjudged guilty of contempt for failure to pay a fee or fine or to attend a tobacco cessation class when required to do so may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or attendance at a tobacco cessation class to an alternative sentence or sanction including community service.

