

## **CHAPTER 12.1-31 MISCELLANEOUS OFFENSES**

### **12.1-31-01. Disorderly conduct.**

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual:
  - a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
  - b. Makes unreasonable noise;
  - c. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
  - d. Obstructs vehicular or pedestrian traffic or the use of a public facility;
  - e. Persistently follows a person in or about a public place or places;
  - f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact;
  - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose; or
  - h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.
2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

### **12.1-31-01.1. Disorderly conduct at a funeral - Penalty.**

1. For purposes of this section:
  - a. "Funeral" means the ceremonies, rituals, processions, and memorial services held at a funeral site in connection with the burial, cremation, or memorial of a deceased individual.
  - b. "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other place at which a funeral is conducted or is scheduled to be conducted within the next hour or has been conducted within the last hour.
2. An individual is guilty of disorderly conduct at a funeral if the individual:
  - a. Engages, with knowledge of the existence of a funeral site, in any loud singing, playing of music, chanting, whistling, yelling, or noisemaking within three hundred feet [91.44 meters] of any ingress or egress of that funeral site if the volume of the singing, music, chanting, whistling, yelling, or noisemaking is likely to be audible at and disturbing to the funeral site; or
  - b. Displays, with knowledge of the existence of a funeral site and within three hundred feet [91.44 meters] of any ingress or egress of that funeral site, any

visual images that convey fighting words or actual or veiled threats against any other individual.

3. Disorderly conduct at a funeral is a class B misdemeanor. A second or subsequent violation of this section is a class A misdemeanor.

**12.1-31-02. Engaging in or financing criminal usury business.**

1. A person is guilty of a class C felony if he knowingly engages in, or directly or indirectly provides financing for, the business of making extensions of credit at such a rate of interest that repayment or performance of any promise given in consideration thereof is unenforceable through civil judicial process in this state.
2. Knowledge of unenforceability shall be presumed, in the case of a person engaging in the business, if any of the following exist, and in the case of a person directly or indirectly providing financing, if he knew any of the following:
  - a. It is an offense to charge, take, or receive interest at the rate involved.
  - b. The rate of interest charged, taken, or received is fifty or more per centum greater than the maximum enforceable rate of interest.
  - c. The rate of interest involved exceeds forty-five per centum per annum or the equivalent rate for a longer or shorter period.
3. Unless otherwise provided by law, the rate of interest is to be calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.
4. It is a defense to a prosecution under this section that the defendant was licensed or otherwise authorized by the United States or by any state government to engage in the business of making extensions of credit.
5. In this section:
  - a. An "extension of credit" means any loan, or any agreement, tacit or express, whereby the repayments or satisfaction of any debt, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.
  - b. "Debtor" means any person to whom an extension of credit is made, or who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.
  - c. The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

**12.1-31-03. Sale of tobacco to minors and use by minors prohibited.**

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen

years of age may purchase and possess tobacco 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.

3. 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, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing.
4. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which includes prohibitions in addition to those in subsection 1, 2, or 3. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 3 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2 or 3. 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 the contempt.
5. A minor fourteen years of age or older found to have violated subsection 2 or 3 must pay a fee of twenty-five dollars.
  - a. Any individual who has been cited for a violation of subsection 2 or 3 may appear before a court of competent jurisdiction 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 follows the procedures of this subdivision, 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 must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
  - b. If an individual cited for a violation of subsection 2 or 3 does not choose to follow the procedures provided under subdivision a, that 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 ninety 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.
  - c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
6. The prosecution must prove the commission of a cited violation under subsection 2 or 3 by a preponderance of the evidence.
7. 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.
8. A person adjudged guilty of contempt for failure to pay a fee or fine 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.

**12.1-31-03.1. Vending machines prohibited - Penalty.**

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through a vending machine, except as provided in subsection 2.
2. Subsection 1 does not apply to:
  - a. A vending machine that is located in an area in which minors are not permitted access; or
  - b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through the operation of a device that requires a salesperson to control the dispensation of such product.
3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.

**12.1-31-04. Manufacture, sale, or delivery of paraphernalia - Definitions - Penalty.**

Repealed by S.L. 1981, ch. 160, § 8.

**12.1-31-05. Child procurement - Penalty.** Except with respect to fees and charges authorized by law or approved by a court in a proceeding related to the placement of a minor child for adoption or related to the adoption of a minor child, a person is guilty of child procurement, a class C felony, if the person knowingly offers, gives, or agrees to give to another or solicits, accepts, or agrees to accept from another, a thing of value as consideration for the recipient's furnishing or aiding another to furnish a minor child for the purposes of adoption. This section does not apply to parties to any agreement in which a woman agrees to become a surrogate, as defined in section 14-18-01, or to relinquish her rights and duties as parent of a child conceived through assisted reproduction, as defined in section 14-20-01.

**12.1-31-06. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty.** Repealed by S.L. 2001, ch. 214, § 10.

**12.1-31-07. Endangering a vulnerable adult - Penalty.**

1. In this chapter, unless the context otherwise requires:
  - a. "Caregiver" means a person who is responsible for the care of a disabled adult or vulnerable elderly adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of a disabled adult or vulnerable elderly adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to a disabled adult or vulnerable elderly adult who is the patient or client of the licensed health care provider.
  - b. "Disabled adult" means a person eighteen years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

- c. "Vulnerable elderly adult" means a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.
- 2. Except as provided for by chapters 23-06.5 and 30.1-30, a caregiver who knowingly performs an act that causes a disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the disabled adult or vulnerable elderly adult and the failure causes the disabled adult's or vulnerable elderly adult's life to be endangered, health to be injured, or preexisting physical or mental condition to deteriorate, is guilty of a class B felony.

#### **12.1-31-07.1. Exploitation of a vulnerable adult - Penalty.**

- 1. A person is guilty of exploitation of a disabled adult or vulnerable elderly adult if:
  - a. The person stands in a position of trust and confidence or has a business relationship with the disabled adult or vulnerable elderly adult and knowingly, by deception or intimidation, obtains or uses, or attempts to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property, for the benefit of someone other than the disabled adult or vulnerable elderly adult; or
  - b. The person knows that the disabled adult or vulnerable elderly adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the disabled adult's or vulnerable elderly adult's funds, assets, or property with the intent to temporarily or permanently deprive the disabled adult or vulnerable elderly adult of the use, benefit, or possession of the property for the benefit of someone other than the disabled adult or vulnerable elderly adult.
- 2. Exploitation of a disabled adult or vulnerable elderly adult is:
  - a. A class A felony if the value of the exploited funds, assets, or property exceeds one hundred thousand dollars.
  - b. A class B felony if the value of the exploited funds, assets, or property exceeds twenty thousand dollars but does not exceed one hundred thousand dollars.
  - c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed twenty thousand dollars.
- 3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
- 4. This section does not impose criminal liability on a person who has:
  - a. Managed the disabled adult's or vulnerable elderly adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or
  - b. Made a good faith effort to assist in the management of the disabled adult's or vulnerable elderly adult's funds, assets, or property.

**12.1-31-07.2. Criminal proceeding involving a vulnerable adult - Speedy trial.** In a criminal proceeding in which a disabled adult or vulnerable elderly adult is a victim, the court and state's attorney shall take appropriate action to ensure a speedy trial to minimize the length of time the disabled adult or vulnerable elderly adult must endure the stress of involvement in the proceedings. In ruling on any motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of the disabled adult or vulnerable elderly adult.

**12.1-31-08. Possession or distribution of certain photographs or other visual representations prohibited - Penalty.** Repealed by S.L. 2009, ch. 133, § 3.

**12.1-31-09. Fraudulent use of receipts and universal product code labels prohibited - Penalty.** Except as otherwise provided in this section, any person who, with the intent to defraud a retailer, possesses, uses, utters, transfers, alters, counterfeits, or reproduces a retail sales receipt or a universal product code label is guilty of a class A misdemeanor. Any person who, with the intent to defraud a retailer, possesses fifteen or more fraudulent retail sales receipts or universal product code labels or who possesses a device the purpose of which is to manufacture fraudulent retail sales receipts or universal product code labels is guilty of a class C felony. For purposes of this section, "universal product code" means the twelve-digit identification number and bar code system developed by the uniform code council which is used to uniquely identify products.

**12.1-31-10. Sale of bidis prohibited - Penalty.** It is an infraction for any person to sell the tobacco product commonly referred to as bidis or beedies. For purposes of this section, "bidis" or "beedies" means a product containing tobacco which is wrapped in temburni leaf, also known as diospyros melanoxylon, or tendu leaf, also known as diospyros exculpra.

**12.1-31-11. False representation of marital status.** An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other.

**12.1-31-12. (Contingent effective date - See note) Abortion - Affirmative defenses.**

1. As used in this section:
  - a. "Abortion" means the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant. The term does not include an act made with the intent to increase the probability of a live birth; preserve the life or health of a child after live birth; or remove a dead, unborn child who died as a result of a spontaneous miscarriage, an accidental trauma, or a criminal assault upon the pregnant female or her unborn child.
  - b. "Physician" means an individual licensed to practice medicine under chapter 43-17.
  - c. "Professional judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
2. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.
3. The following are affirmative defenses under this section:
  - a. That the abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female.

- b. That the abortion was to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.
- c. That the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician.

**12.1-31-13. Tattooing, branding, subdermal implants, scarifying, and piercing - Minors.**

- 1. As used in this section:
  - a. "Brand" means the use of heat, cold, or any chemical compound to imprint permanent markings on an individual's skin.
  - b. "Pierce" means the puncture of any part of an individual's body to insert studs, pins, rings, chains, or other jewelry or adornment.
  - c. "Scarify" means to cut, tear, or abrade an individual's skin for the purpose of creating a permanent mark or design on the skin.
  - d. "Subdermal implant" means to insert a foreign object beneath the skin to decorate an individual's body.
  - e. "Tattoo" means to mark the skin of an individual by insertion of permanent colors through puncture of the skin.
- 2. It is a class B misdemeanor for a person, other than a licensed health care professional acting within that professional's scope of practice, to tattoo, brand, subdermal implant, scarify, or pierce an individual who is under eighteen years of age unless the tattooing, branding, subdermal implanting, scarifying, or piercing takes place in the presence of and with the written consent of the individual's parent or legal guardian.
- 3. It is a class B misdemeanor for a person to sell, trade, or otherwise provide materials or kits for tattooing, self-tattooing, branding, self-branding, scarifying, self-scarifying, subdermal implanting, self-subdermal implanting, body piercing, or self-body piercing to an individual who is under eighteen years of age.
- 4. A political subdivision may enact and enforce an ordinance restricting tattooing, branding, subdermal implanting, scarifying, and piercing or restricting the sale of tattooing, branding, subdermal implanting, scarifying, and piercing materials and kits if the ordinance is equal to or more stringent than this section.