

CHAPTER 88--H.F.No. 331

An act relating to health; adding charter schools to the prohibition of tobacco in schools; increasing the tobacco sale age; increasing administrative penalties; adding a provision to municipal license of tobacco; allowing alternative penalties; amending Minnesota Statutes 2018, sections 171.171; 461.12, subdivisions 2, 3, 4, 5, 6; 461.18; 609.685; 609.6855; Minnesota Statutes 2019 Supplement, sections 144.4165; 144.4167, subdivision 4; proposing coding for new law in Minnesota Statutes, chapter 461.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2019 Supplement, section 144.4165, is amended to read:

144.4165 TOBACCO PRODUCTS PROHIBITED IN PUBLIC SCHOOLS.

No person shall at any time smoke, chew, or otherwise ingest tobacco ~~or a tobacco product~~, or carry or use an activated electronic delivery device as defined in section 609.685, subdivision 1, in a public school, as defined in section 120A.05, subdivisions 9, 11, and 13, or in a charter school governed by chapter 124E; ~~and no person under the age of 18 shall possess any of these items.~~ This prohibition extends to all facilities, whether owned, rented, or leased, and all vehicles that a school district owns, leases, rents, contracts for, or controls. Nothing in this section shall prohibit the lighting of tobacco by an adult as a part of a traditional Indian spiritual or cultural ceremony. For purposes of this section, an Indian is a person who is a member of an Indian tribe as defined in section 260.755, subdivision 12.

Sec. 2. Minnesota Statutes 2019 Supplement, section 144.4167, subdivision 4, is amended to read:

Subd. 4. **Tobacco products shop.** Sections 144.414 to 144.417 do not prohibit the lighting, heating, or activation of tobacco in a tobacco products shop by a customer or potential customer for the specific purpose of sampling tobacco products. For the purposes of this subdivision, a tobacco products shop is a retail establishment that has an entrance door opening directly to the outside, that cannot be entered at any time by persons younger than 21 years of age, and that derives more than 90 percent of its gross revenue from the sale of tobacco, tobacco-related devices, and electronic delivery devices, as defined in section 609.685, and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

Sec. 3. Minnesota Statutes 2018, section 171.171, is amended to read:

171.171 SUSPENSION; ILLEGAL PURCHASE OF ALCOHOL OR TOBACCO.

The commissioner shall suspend for a period of 90 days the license of a person who:

(1) is under the age of 21 years and is convicted of purchasing or attempting to purchase an alcoholic beverage in violation of section 340A.503 if the person used a license, Minnesota identification card, or any type of false identification to purchase or attempt to purchase the alcoholic beverage;

(2) is convicted under section 171.22, subdivision 1, clause (2), or 340A.503, subdivision 2, clause (3), of lending or knowingly permitting a person under the age of 21 years to use the person's license, Minnesota

identification card, or other type of identification to purchase or attempt to purchase an alcoholic beverage;
or

~~(3) is under the age of 18 years and is found by a court to have committed a petty misdemeanor under section 609.685, subdivision 3, if the person used a license, Minnesota identification card, or any type of false identification to purchase or attempt to purchase the tobacco product; or~~

~~(4)~~ (3) is convicted under section 171.22, subdivision 1, clause (2), of lending or knowingly permitting a person under the age of ~~18~~ 21 years to use the person's license, Minnesota identification card, or other type of identification to purchase or attempt to purchase ~~a tobacco product~~ tobacco, a tobacco-related device, or an electronic delivery device, as defined in section 609.685, subdivision 1; or a nicotine or lobelia delivery product, as described in section 609.6855, subdivision 1.

Sec. 4. Minnesota Statutes 2018, section 461.12, subdivision 2, is amended to read:

Subd. 2. **Administrative penalties for sales and furnishing; licensees.** If a licensee or employee of a licensee sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of ~~18~~ 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of ~~\$75~~ \$300 for the first violation. An administrative penalty of ~~\$200~~ \$600 must be imposed for a second violation at the same location within ~~24~~ 36 months after the initial violation. For a third or any subsequent violation at the same location within ~~24~~ 36 months after the initial violation, an administrative penalty of ~~\$250~~ \$1,000 must be imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than seven days and may be revoked. No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Sec. 5. Minnesota Statutes 2018, section 461.12, subdivision 3, is amended to read:

Subd. 3. **Administrative penalty for sales and furnishing; individuals.** An individual who sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of ~~18~~ 21 years ~~must~~ may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Sec. 6. Minnesota Statutes 2018, section 461.12, subdivision 4, is amended to read:

Subd. 4. **~~Minors~~ Alternative penalties for use of false identification; persons under age 21.** The licensing authority shall consult with interested persons, as applicable, including but not limited to educators, parents, ~~children~~ guardians, persons under the age of 21 years, and representatives of the court system to develop alternative penalties for ~~minors~~ persons under the age of 21 years who purchase, ~~possess, and consume~~ or attempt to purchase, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's license, permit, Minnesota identification card, or any other type of false identification to misrepresent the person's age, in violation of section 609.685 or 609.6855. The licensing authority and the interested persons shall consider a variety of alternative civil options penalties, including, but not limited to, ~~tobacco-free~~ tobacco-free education; tobacco-cessation programs; notice to

schools; and parents, or guardians; community service; and ~~other~~ court diversion programs. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

Sec. 7. Minnesota Statutes 2018, section 461.12, subdivision 5, is amended to read:

Subd. 5. **Compliance checks.** A licensing authority shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold to test compliance with sections 609.685 and 609.6855. Compliance checks conducted under this subdivision must involve ~~minors~~ persons over the age of 15 at least 17 years of age, but under the age of 18 21, who, with the prior written consent of a parent or guardian if the person is under the age of 18, attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products under the direct supervision of a law enforcement officer or an employee of the licensing authority. The age requirements for persons participating in compliance checks under this subdivision shall not affect the age requirements in federal law for persons participating in federally required compliance checks of these locations.

Sec. 8. Minnesota Statutes 2018, section 461.12, subdivision 6, is amended to read:

Subd. 6. **Defense.** It is an affirmative defense to the charge of selling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of ~~18~~ 21 years in violation of subdivision 2 or 3 that the licensee or individual making the sale relied in good faith upon proof of age as described in section 340A.503, subdivision 6.

Sec. 9. Minnesota Statutes 2018, section 461.18, is amended to read:

461.18 BAN ON SELF-SERVICE SALE OF PACKS SALES; EXCEPTIONS.

Subdivision 1. **Except in ~~adult-only~~ facilities for persons 21 years of age and older.** (a) No person shall offer for sale tobacco or tobacco-related devices, or electronic delivery devices as defined in section 609.685, subdivision 1, or nicotine or lobelia delivery products as described in section 609.6855, in open displays which are accessible to the public without the intervention of a store employee.

(b) ~~[Expired August 28, 1997]~~

(c) ~~[Expired]~~

~~(d)~~ (b) This subdivision shall not apply to retail stores ~~which~~ that have an entrance door opening directly to the outside and that derive at least 90 percent of their gross revenue from the sale of tobacco and tobacco-related devices, and electronic delivery devices as defined in section 609.685, subdivision 1, and where the retailer ensures that no person ~~younger than 18 years of age~~ under the age of 21 years is present, or permitted to enter, at any time.

Subd. 2. **Vending machine sales prohibited.** No person shall sell tobacco products, electronic delivery devices, or nicotine or lobelia delivery products from vending machines. This subdivision does not apply to vending machines in facilities that cannot be entered at any time by persons ~~younger than 18~~ under the age of 21 years ~~of age~~.

Subd. 3. **Federal regulations for cartons, multipacks.** Code of Federal Regulations, title 21, part 897.16~~(e)~~ 1140.16(c), as amended from time to time, is incorporated by reference with respect to cartons and other multipack units.

Sec. 10. **[461.22] AGE VERIFICATION AND SIGNAGE REQUIRED.**

Subdivision 1. **Signage.** At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.

Subd. 2. **Age verification.** At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense to a violation of this subdivision that the person appeared to be 30 years of age or older.

Sec. 11. Minnesota Statutes 2018, section 609.685, is amended to read:

609.685 SALE OF TOBACCO TO CHILDREN PERSONS UNDER AGE 21.

Subdivision 1. **Definitions.** For the purposes of this section, the following terms shall have the meanings respectively ascribed to them in this section.

(a) "Tobacco" means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose; drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

(b) "Tobacco-related devices" means cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of ~~vapors~~ aerosol or vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

(c) "Electronic delivery device" means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption ~~that can be used by a person to simulate smoking in the delivery of nicotine or any other substance~~ through inhalation of aerosol or vapor from the product. Electronic delivery devices includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose; excludes drugs, devices, or combination products, as those terms are defined in the

Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 1a. **Penalty to sell or furnish.** (a) ~~Whoever~~ Any person 21 years of age or older who sells, gives, or otherwise furnishes tobacco, tobacco-related devices, or electronic delivery devices to a person under the age of 18 21 years is guilty of a petty misdemeanor for the first violation. Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a gross misdemeanor.

(b) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in section 340A.503, subdivision 6.

Subd. 2. ~~Other offenses~~ **Use of false identification.** (a) ~~Whoever furnishes tobacco, tobacco-related devices, or electronic delivery devices to a person under the age of 18 years is guilty of a misdemeanor for the first violation. Whoever violates this paragraph a subsequent time is guilty of a gross misdemeanor.~~

~~(b) A person under the age of 18 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices and who uses a driver's license, permit, Minnesota identification card, or any type of false identification to misrepresent the person's age, is guilty of a misdemeanor shall only be subject to an alternative civil penalty, in accordance with subdivision 2a.~~

Subd. 2a. **Alternative penalties.** Law enforcement and court system representatives shall consult, as applicable, with interested persons, including but not limited to parents, guardians, educators, and persons under the age of 21 years, to develop alternative civil penalties for persons under the age of 21 years who violate this section. Consulting participants shall consider a variety of alternative civil penalties including but not limited to tobacco-free education programs, community service, court diversion programs, and tobacco cessation programs, and for persons under the age of 18 years, notice to schools and to parents or guardians. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

Subd. 3. ~~Petty misdemeanor.~~ ~~Except as otherwise provided in subdivision 2, whoever possesses, smokes, chews, or otherwise ingests, purchases, or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices and is under the age of 18 years is guilty of a petty misdemeanor.~~

Subd. 4. **Effect on local ordinances.** Nothing in subdivisions 1 to 3 2a shall supersede or preclude the continuation or adoption of any local ordinance which provides for more stringent regulation of the subject matter in subdivisions 1 to 3 2a.

Subd. 5. **Exceptions.** (a) Notwithstanding subdivision 2 1a, an Indian may furnish tobacco to an Indian under the age of 18 21 years if the tobacco is furnished as part of a traditional Indian spiritual or cultural ceremony. For purposes of this paragraph, an Indian is a person who is a member of an Indian tribe as defined in section 260.755, subdivision 12.

(b) The penalties in this section do not apply to a person under the age of 18 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

Subd. 6. **Seizure of false identification.** A ~~retailer~~ licensee may seize a form of identification listed in section 340A.503, subdivision 6, if the ~~retailer~~ licensee has reasonable grounds to believe that the form of identification has been altered or falsified or is being used to violate any law. A ~~retailer~~ licensee that

seizes a form of identification as authorized under this subdivision shall deliver it to a law enforcement agency within 24 hours of seizing it.

Sec. 12. Minnesota Statutes 2018, section 609.6855, is amended to read:

609.6855 SALE OF NICOTINE DELIVERY PRODUCTS TO ~~CHILDREN~~ PERSONS UNDER AGE 21.

Subdivision 1. **Penalty to sell or furnish.** (a) ~~Whoever~~ Any person 21 years of age or older who sells, gives, or otherwise furnishes to a person under the age of ~~18~~ 21 years a product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined by section 609.685, is guilty of a petty misdemeanor for the first violation. Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a ~~gross~~ misdemeanor.

(b) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in section 340A.503, subdivision 6.

(c) Notwithstanding paragraph (a), a product containing or delivering nicotine or lobelia intended for human consumption, ~~whether natural or synthetic, or any part of such a product, that is not tobacco or an electronic delivery device as defined by section 609.685, may be sold to persons under the age of 18~~ 21 if the product ~~has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose~~ is a drug, device, or combination product, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that is authorized for sale by the United States Food and Drug Administration.

Subd. 2. **~~Other offense~~ Use of false identification.** A person under the age of ~~18~~ 21 years who purchases or attempts to purchase a product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined by section 609.685, and who uses a driver's license, permit, Minnesota identification card, or any type of false identification to misrepresent the person's age, ~~is guilty of a misdemeanor~~ shall only be subject to an alternative civil penalty in accordance with subdivision 3. No penalty shall apply to a person under the age of 21 years who purchases or attempts to purchase these products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

Subd. 3. **~~Petty misdemeanor~~ Alternative penalties.** ~~Except as otherwise provided in subdivisions 1 and 2, whoever is under the age of 18 years and possesses, purchases, or attempts to purchase a product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined by section 609.685, is guilty of a petty misdemeanor.~~ Law enforcement and court system representatives shall consult, as applicable, with interested persons, including but not limited to parents, guardians, educators, and persons under the age of 21 years, to develop alternative civil penalties for persons under the age of 21 years who violate this section. Consulting participants shall consider a variety of alternative civil penalties including but not limited to tobacco-free education programs, community service, court diversion programs, and tobacco cessation programs, and for persons under the age of 18 years, notice to schools and to parents or guardians. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

Presented to the governor May 15, 2020