

## CHAPTER 461

### REGULATING SALES OF TOBACCO; TOBACCO-RELATED AND ELECTRONIC DELIVERY DEVICES; AND NICOTINE AND LOBELIA PRODUCTS

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**461.01** [Repealed, 1976 c 44 s 70]

**461.02** [Repealed, 1984 c 503 s 6]

**461.03** [Repealed, 1982 c 572 s 3]

**461.04** [Repealed, 1982 c 572 s 3]

**461.05** [Repealed, 1982 c 572 s 3]

**461.06** [Repealed, 1982 c 572 s 3]

**461.07** [Repealed, 1976 c 44 s 70]

**461.08** [Repealed, 1976 c 44 s 70]

**461.09** [Repealed, 1976 c 44 s 70]

**461.10** [Repealed, 1976 c 44 s 70]

**461.11** [Repealed, 1976 c 44 s 70]

#### **461.12 MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.**

Subdivision 1. **Authorization.** A town board or the governing body of a home rule charter or statutory city may license and regulate the retail sale of tobacco, tobacco-related devices, and electronic delivery devices as defined in section 609.685, subdivision 1, and nicotine and lobelia delivery products as described in section 609.6855, and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products in unorganized territory of the county except on the State Fairgrounds and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. The State Agricultural Society shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products on the State Fairgrounds. Retail establishments licensed by a town or city to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products are not required to obtain a second license for the same location under the licensing ordinance of the county.

Subd. 2. **Administrative penalties; licensees.** If a licensee or employee of a licensee sells tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 18 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$75. An administrative penalty of \$200 must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 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. No suspension or 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.

Subd. 3. **Administrative penalty; individuals.** An individual who sells tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 18 years must 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.

Subd. 4. **Minors.** The licensing authority shall consult with interested educators, parents, children, and representatives of the court system to develop alternative penalties for minors who purchase, possess, and consume tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products. The licensing authority and the interested persons shall consider a variety of options, including, but not limited to, tobacco free education programs, notice to schools, parents, community service, and other court diversion programs.

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 must involve minors over the age of 15, but under the age of 18, who, with the prior written consent of a parent or guardian, 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.

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 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.

Subd. 7. **Judicial review.** Any person aggrieved by a decision under subdivision 2 or 3 may have the decision reviewed in the district court in the same manner and procedure as provided in section 462.361.

Subd. 8. **Notice to commissioner.** The licensing authority under this section shall, within 30 days of the issuance of a license, inform the commissioner of revenue of the licensee's name, address, trade name, and the effective and expiration dates of the license. The commissioner of revenue must also be informed of a license renewal, transfer, cancellation, suspension, or revocation during the license period.

**History:** 1941 c 242 s 3; 1941 c 405 s 3; 1951 c 382 s 1; Ex1959 c 73 s 2; 1973 c 123 art 5 s 7; 1982 c 572 s 2; 1997 c 227 s 4; 1Sp2001 c 5 art 7 s 63; 2010 c 255 s 7; 2010 c 305 s 4-9; 2014 c 291 art 6 s 28

**461.13 CIGARETTE LICENSE FEES, APPORTIONMENT.**

The fees for licenses granted by the governing body of any municipality shall be for the benefit of the municipality. When a license is issued by the county board the fee shall be deposited in the county treasury and be credited to the county revenue fund.

**History:** 1941 c 242 s 4; 1941 c 405 s 4; 1951 c 382 s 2

**461.14** [Repealed, 1982 c 572 s 3]

**461.15 BLIND PERSONS NOT TO PAY CIGARETTE LICENSES.**

No applicant for any license required of persons for the sale or manufacture of cigarettes shall be required to pay any fee to the state or any political subdivision thereof upon furnishing a doctor's certificate showing that the applicant is blind, as defined by section 256D.35, subdivision 4a.

**History:** 1941 c 461 s 1; 1986 c 444; 2014 c 275 art 1 s 111

**461.17 MANUFACTURERS TO REPORT ON CERTAIN SUBSTANCES.**

Subdivision 1. **Annual report required.** Each manufacturer of tobacco products sold in Minnesota shall provide the commissioner of health with an annual report, either on paper or by electronic means. The report shall be provided in a form and at a time specified by the commissioner, identifying, for each brand of such product, any of the following substances present in detectable levels in the product in its unburned state and if the product is typically burned when consumed, in its burned state:

- (1) ammonia or any compound of ammonia;
- (2) arsenic;
- (3) cadmium;
- (4) formaldehyde; and
- (5) lead.

The form for annual reports under this section is not a rule for purposes of chapter 14, including section 14.386.

Subd. 2. **Assistance to local governments.** Upon request, the commissioner shall provide a local government unit with a copy of reports filed under this section, to assist in the enforcement of local ordinances.

Subd. 3. **Public data.** Reports under this section are public data.

**History:** 1997 c 227 s 5

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

Subdivision 1. **Except in adult-only facilities.** (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) This subdivision shall not apply to retail stores which derive at least 90 percent of their revenue from tobacco and tobacco-related devices and where the retailer ensures that no person younger than 18 years of age 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 years of age.

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

**History:** *1997 c 227 s 6; 2010 c 305 s 10; 2014 c 291 art 6 s 29*

#### **461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.**

Sections 461.12 to 461.18 do not preempt a local ordinance that provides for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products. A governing body shall give notice of its intention to consider adoption or substantial amendment of any local ordinance required under section 461.12 or permitted under this section. The governing body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license under section 461.12. The notice shall state the time, place, and date of the meeting and the subject matter of the proposed ordinance.

**History:** *1997 c 227 s 7; 2014 c 291 art 6 s 30*

#### **461.20 SALE OF ELECTRONIC DELIVERY DEVICE; PACKAGING.**

(a) For purposes of this section, "child-resistant packaging" is defined as set forth in Code of Federal Regulations, title 16, section 1700.15 (b)(1), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

(b) The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device, as defined in section 609.685, subdivision 1, that is not contained in packaging that is child-resistant, is prohibited. All licensees under this chapter must ensure that any liquid intended for human consumption and use in an electronic delivery device is sold in child-resistant packaging.

(c) A licensee that fails to comply with this section is subject to administrative penalties under section 461.12, subdivision 2.

**History:** *2014 c 291 art 6 s 31*

#### **461.21 KIOSK SALES PROHIBITED.**

No person shall sell tobacco, 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, from a moveable place of business. For the purposes of this section, a moveable place of business means any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or a motorized or nonmotorized vehicle.

**History:** *2014 c 291 art 6 s 32*