CHAPTER 461

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

461.12 MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.
461.13 CIGARETTE LICENSE FEES, APPORTIONMENT.
461.15 BLIND PERSONS NOT TO PAY CIGARETTE LICENSES.
461.17 MANUFACTURERS TO REPORT ON CERTAIN SUBSTANCES.
461.18 BAN ON SELF-SERVICE SALES; EXCEPTIONS.
461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.
461.20 SALE OF ELECTRONIC DELIVERY DEVICE; PACKAGING.
461.21 KIOSK SALES PROHIBITED.
461.22 AGE VERIFICATION AND SIGNAGE REQUIRED.

461.01 MS 1974 [Repealed, 1976 c 44 s 70]

461.02 MS 1982 [Repealed, 1984 c 503 s 6]

461.03 MS 1980 [Repealed, 1982 c 572 s 3]

461.04 MS 1980 [Repealed, 1982 c 572 s 3]

461.05 MS 1980 [Repealed, 1982 c 572 s 3]

461.06 MS 1980 [Repealed, 1982 c 572 s 3]

461.07 MS 1974 [Repealed, 1976 c 44 s 70]

461.08 MS 1974 [Repealed, 1976 c 44 s 70]

461.09 MS 1974 [Repealed, 1976 c 44 s 70]

461.10 MS 1974 [Repealed, 1976 c 44 s 70]

461.11 MS 1974 [Repealed, 1976 c 44 s 70]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 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 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of $300 for the first violation. An administrative penalty of $600 must be imposed for a second violation at the same location within 36 months after the initial violation. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of $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.

Subd. 2a. **Penalties for sales of certain products; licensees.** (a) A 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 if the licensee:

(1) holds a license or registration issued pursuant to chapter 342 or section 151.72, subdivision 5b, and the license or registration is revoked;

(2) is convicted of an offense under section 151.72, subdivision 7; or

(3) has been convicted under any other statute for the illegal sale of marijuana, cannabis flower, cannabis products, lower-potency hemp edibles, hemp-derived consumer products, or edible cannabinoid products and the sale took place on the premises of a business that sells tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

(b) 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.

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 21 years 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.

Subd. 4. **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, guardians, persons under the age of 21 years, and representatives of the court system to develop alternative penalties for persons under the age of 21 years who purchase, 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 penalties, including, but not limited to, tobacco-free education; tobacco cessation programs; notice to schools and parents or guardians; community service; and court diversion programs. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

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 persons at least 17 years of age, but under the age of 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.

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 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.

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; 2020 c 88 s 4-8; 2023 c 63 art 6 s 53*

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 MS 1980 [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 SALES; EXCEPTIONS.

Subdivision 1. **Except in 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) This subdivision shall not apply to retail stores 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, tobacco-related devices, and electronic delivery devices as defined in section 609.685, subdivision 1, and where the retailer ensures that no person 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 under the age of 21 years.

Subd. 3. **Federal regulations for cartons, multipacks.** Code of Federal Regulations, title 21, part 1140.16(c), as amended from time to time, 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; 2020 c 88 s 9*

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 movable place of business. For the purposes of this section, a movable 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*

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.

History: *2020 c 88 s 10*