

**SENATE**  
**STATE OF MINNESOTA**  
**NINETY-FIRST SESSION**

**S.F. No. 3872**

(SENATE AUTHORS: HAYDEN, Klein, Simonson, Franzen and Kent)

DATE	D-PG	OFFICIAL STATUS
03/02/2020	5124	Introduction and first reading Referred to Health and Human Services Finance and Policy

1.1 A bill for an act

1.2 relating to health; prohibiting the sale or furnishing of flavored products; modifying

1.3 administrative penalties for selling or furnishing certain devices or products;

1.4 providing for alternative civil penalties for certain persons under age 21 who sell

1.5 or distribute flavored products; providing criminal penalties; amending Minnesota

1.6 Statutes 2018, sections 461.12, subdivisions 2, 3, 4; 461.19; proposing coding for

1.7 new law in Minnesota Statutes, chapter 609.

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

1.9 Section 1. Minnesota Statutes 2018, section 461.12, subdivision 2, is amended to read:

1.10 Subd. 2. **Administrative penalties for sales and furnishing; licensees.** If a licensee or

1.11 employee of a licensee offers, sells, gives, or otherwise furnishes tobacco, tobacco-related

1.12 devices, electronic delivery devices, or nicotine or lobelia delivery products to a person

1.13 under the age of 18 years; offers, sells, gives, or otherwise furnishes flavored products as

1.14 defined in section 609.6857, subdivision 1, to a person; or violates any other provision of

1.15 this chapter, the licensee shall be charged an administrative penalty of ~~\$75~~ \$300 for the first

1.16 violation. An administrative penalty of ~~\$200~~ \$600 must be imposed for a second violation

1.17 at the same location within ~~24~~ 36 months after the initial violation. For a third violation or

1.18 subsequent violation at the same location within ~~24~~ 36 months after the initial violation, an

1.19 administrative penalty of ~~\$250~~ \$1,000 must be imposed, and the licensee's authority to sell

1.20 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery

1.21 products at that location must be suspended for not less than seven days and may be revoked.

1.22 No suspension, revocation, or other penalty may take effect until the licensee has received

1.23 notice, served personally or by mail, of the alleged violation and an opportunity for a hearing

1.24 before a person authorized by the licensing authority to conduct the hearing. A decision

1.25 that a violation has occurred must be in writing. Administrative penalties for the offer, sale,

2.1 gift, or furnishing of flavored products shall be calculated on a per item and per transaction  
2.2 basis and may be assessed cumulatively.

2.3 Sec. 2. Minnesota Statutes 2018, section 461.12, subdivision 3, is amended to read:

2.4 Subd. 3. **Administrative penalty for sales and furnishing; individuals.** An individual  
2.5 who offers, sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic  
2.6 delivery devices, or nicotine or lobelia delivery products to a person under the age of 18  
2.7 years ~~must~~; or offers, sells, gives, or otherwise furnishes flavored products as defined in  
2.8 section 609.6857, subdivision 1, to a person may be charged an administrative penalty of  
2.9 \$50. No penalty may be imposed until the individual has received notice, served personally  
2.10 or by mail, of the alleged violation and an opportunity for a hearing before a person  
2.11 authorized by the licensing authority to conduct the hearing. A decision that a violation has  
2.12 occurred must be in writing. Administrative penalties for the offer, sale, gift, or furnishing  
2.13 of flavored products shall be calculated on a per item and per transaction basis and may be  
2.14 assessed cumulatively.

2.15 Sec. 3. Minnesota Statutes 2018, section 461.12, subdivision 4, is amended to read:

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

2.23 Sec. 4. Minnesota Statutes 2018, section 461.19, is amended to read:

2.24 **461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.**

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

3.1 461.12. The notice shall state the time, place, and date of the meeting and the subject matter  
3.2 of the proposed ordinance.

3.3 **Sec. 5. [609.6857] SALE OR FURNISHING OF FLAVORED PRODUCTS**

3.4 **PROHIBITED.**

3.5 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

3.6 (b) "Electronic delivery device" has the meaning given in section 609.685, subdivision  
3.7 1.

3.8 (c) "Flavored product" means any tobacco, tobacco-related device, electronic delivery  
3.9 device, or nicotine or lobelia delivery product that imparts a taste or smell, other than the  
3.10 taste or smell of tobacco, that is distinguishable by an ordinary consumer prior to or during  
3.11 consumption of the product, including but not limited to the taste or smell of chocolate,  
3.12 cocoa, fruit, honey, menthol, mint, vanilla, wintergreen, or any candy, dessert, alcoholic  
3.13 beverage, herb, or spice.

3.14 (d) "Licensee" means an individual or entity licensed according to chapter 461 to engage  
3.15 in the retail sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine  
3.16 or lobelia delivery products.

3.17 (e) "Nicotine or lobelia delivery product" means a product described in section 609.6855.

3.18 (f) "Tobacco" has the meaning given in section 609.685, subdivision 1.

3.19 (g) "Tobacco-related device" has the meaning given section 609.685, subdivision 1.

3.20 Subd. 2. **Prohibition.** No person shall offer, sell, give, or otherwise furnish any flavored  
3.21 product to a person.

3.22 Subd. 3. **Presumption that tobacco, product, or device is a flavored product.** There  
3.23 shall be a rebuttable presumption that tobacco, a tobacco-related device, an electronic  
3.24 delivery device, or a nicotine or lobelia delivery product is a flavored product if a licensee;  
3.25 an employee or agent of a licensee; a manufacturer of tobacco, tobacco-related devices,  
3.26 electronic delivery devices, or nicotine or lobelia delivery products; or an employee or agent  
3.27 of such a manufacturer:

3.28 (1) makes a public statement or claim that the tobacco, tobacco-related device, electronic  
3.29 delivery device, or nicotine or lobelia delivery product imparts a taste or smell other than  
3.30 the taste or smell of tobacco;

3.31 (2) uses text, images, or coloring on the label or packaging of the tobacco, tobacco-related  
3.32 device, electronic delivery device, or nicotine or lobelia delivery product to explicitly or

4.1 implicitly indicate that the tobacco, tobacco-related device, electronic delivery device, or  
4.2 nicotine or lobelia delivery product imparts a taste or smell other than the taste or smell of  
4.3 tobacco.

4.4 Subd. 4. Penalties. (a) Any person 21 years of age or older who offers, sells, gives, or  
4.5 otherwise furnishes a flavored product to a person is guilty of a misdemeanor for the first  
4.6 violation. Whoever violates this paragraph a second or subsequent time within five years  
4.7 after a previous conviction under this paragraph is guilty of a gross misdemeanor.

4.8 (b) A person under 21 years of age who offers, sells, gives, or otherwise furnishes a  
4.9 flavored product to a person shall only be subject to an alternative civil penalty established  
4.10 according to this paragraph. Law enforcement and court system representatives shall consult,  
4.11 as applicable, with interested persons, including but not limited to parents, guardians,  
4.12 educators, and persons under 21 years of age, to develop alternative civil penalties for  
4.13 persons under 21 years of age who violate this section. Consulting participants shall consider  
4.14 a variety of alternative civil penalties, including but not limited to tobacco-free education  
4.15 programs, community service, court diversion programs, and tobacco-cessation programs.  
4.16 For a person under 18 years of age, consulting participants shall also consider notice to  
4.17 schools and notice to parents or guardians. Alternative civil penalties developed under this  
4.18 paragraph shall not include fines or monetary penalties.

4.19 (c) Each offer, sale, gift, or furnishing of a flavored product to a person shall constitute  
4.20 a separate violation.

4.21 Subd. 5. Effect on local ordinances. Nothing in subdivisions 1 to 4 shall supersede or  
4.22 preclude the continuation or adoption of any local ordinance that provides for more stringent  
4.23 regulation of the subject matter in subdivisions 1 to 4.

4.24 EFFECTIVE DATE. This section is effective August 1, 2020, and applies to crimes  
4.25 committed on or after that date.