

CHAPTER 461

HEALTH REGULATIONS

461.12	Municipal tobacco license.	461.18	Ban on self-service sale of single packs; exceptions.
461.17	Manufacturers to report on certain substances.	461.19	Effect on local ordinance; notice.

461.12 MUNICIPAL TOBACCO LICENSE.

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 as defined in section 609.685, subdivision 1, 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 in unorganized territory of the county and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail tobacco sales. Retail establishments licensed by a town or city to sell tobacco 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 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 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 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. 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 is sold to test compliance with section 609.685. 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 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 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.

History: 1997 c 227 s 4

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 SINGLE PACKS; EXCEPTIONS.

Subdivision 1. **Except in adult-only facilities.** (a) No person shall offer for sale single packages of cigarettes or smokeless tobacco in open displays which are accessible to the public without the intervention of a store employee.

(b) Cartons and other multipack units may be offered and sold through open displays accessible to the public.

(c) Paragraph (b) expires on August 28, 1997.

(d) This subdivision shall not apply to retail stores which derive at least 90 percent of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than 18 years of age.

Subd. 2. **Vending machine sales prohibited.** No person shall sell tobacco 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

NOTE: Subdivision 3, as added by Laws 1997, chapter 227, section 6, is effective upon the implementation of Code of Federal Regulations, title 21, part 897.16(c). Laws 1997, chapter 227, section 9. Code of Federal Regulations, title 21, part 897.16(c) is effective August 28, 1997. Federal Register, August 28, 1996, page 44396.

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 tobacco sales. 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