

Subject Sale or furnishing of flavored tobacco products

Authors Halverson and others

Analyst Elisabeth Klarqvist

Date February 28, 2020

Overview

This bill prohibits the offer, sale, gift, or furnishing of flavored products, defined as any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that imparts a taste or smell other than the taste or smell of tobacco. It also modifies administrative penalty provisions that apply to tobacco retailers, their employees, and individuals, and requires development of alternative penalties for minors who purchase, possess, and consume flavored products.

Under federal law, cigarettes with a characterizing flavor other than menthol or tobacco are prohibited. Federal law does not prohibit other flavored tobacco products. A January 2020 guidance issued by the U.S. Food and Drug Administration (FDA) prioritizes FDA enforcement actions against the manufacture, distribution, or sale of certain flavored, cartridge-based electronic nicotine delivery systems (other than tobacco- or menthol-flavored products) that have not received premarket authorization, and enforcement action against any electronic nicotine delivery system offered for sale after May 2020 if the manufacturer has not applied for premarket authorization.

Summary

Section	Description
---------	-------------

- | | |
|---|--|
| 1 | <p>Administrative penalties for sales and furnishing; licensees.</p> <p>Amends § 461.12, subd. 2. Expands the circumstances in which a tobacco retailer or employee is subject to administrative penalties, to include:</p> <ul style="list-style-type: none">the offer, gift, or furnishing of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to person under age 18 (under current law penalties apply to the sales of these items to persons under 18); and |
|---|--|

Section	Description
---------	-------------

- the offer, sale, gift, or furnishing of flavored products.

Increases administrative penalty amounts from \$75 to \$300 for a first violation, from \$200 to \$600 for a second violation at the same location within 36 months of the initial violation (rather than within 24 months as in current law), and from \$250 to \$1,000 for a third or subsequent violation at the same location within 36 months of the initial violation (rather than within 24 months). Allows a tobacco retailer's license to be revoked for a third or subsequent violation within 36 months. Specifies that administrative penalties related to flavored products must be calculated on a per item and per transaction basis and may be assessed cumulatively.

2 Administrative penalty for sales and furnishing; individuals.

Amends § 461.12, subd. 3. Permits, rather than requires, an administrative penalty to be applied to a person who violates this section. Expands the circumstances in which an individual may be charged an administrative penalty, to include:

- the offer, gift, or furnishing of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to persons under age 18 (under current law the penalty applies only to the sale of these items to persons under 18); and
- the offer, sale, gift, or furnishing of flavored products.

Specifies that an administrative penalty related to flavored products must be calculated on a per item and per transaction basis and may be assessed cumulatively.

3 Minors.

Amends § 461.12, subd. 4. Requires local units of government to develop alternative penalties for minors who purchase, possess, and consume flavored products. Also makes a technical change.

4 Effect on local ordinance; notice.

Amends § 461.19. Provides that state law does not preempt a local ordinance that regulates flavored products in a more restrictive manner. Also corrects a term used.

5 Sale or furnishing of flavored products prohibited.

Adds § 609.6857. Prohibits the offer, sale, gift, or furnishing of flavored products, establishes a rebuttable presumption of when a product is a flavored product, establishes penalties, and provides that this section does not preempt a more stringent local ordinance.

Subd. 1. Definitions. Defines terms for this section: electronic delivery device, flavored product, licensee, nicotine or lobelia delivery product, tobacco, and tobacco-related device. Flavored product means tobacco, a tobacco-related

Section	Description
---------	-------------

device, an electronic delivery device, or a nicotine or lobelia delivery product that imparts a taste or smell other than the taste or smell of tobacco.

Subd. 2. Prohibition. Prohibits the offer, sale, gift, or furnishing of any flavored product to a person.

Subd. 3. Presumption that tobacco, product, or device is a flavored product.

Lists circumstances in which there is a rebuttable presumption that tobacco, a tobacco-related device, an electronic delivery device, or a nicotine or lobelia delivery product is a flavored product.

Subd. 4. Penalties. Paragraph (a) provides that any person age 21 or older who offers, sells, gives, or otherwise furnishes a flavored product to a person is guilty of a misdemeanor for the first violation and a gross misdemeanor for a second or subsequent violation within five years of a previous conviction under this paragraph.

Paragraph (b) provides that a person under 21 who violates this section is subject only to alternative civil penalties developed by law enforcement and court system representatives, in consultation with interested parties.

Paragraph (c) requires each offer, sale, gift, or furnishing to constitute a separate violation.

Subd. 5. Effect on local ordinances. Provides that this section does not supersede an existing or new local ordinance that more stringently regulates the sale or furnishing of flavored products.

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



**MN HOUSE
RESEARCH**

Minnesota House Research Department provides nonpartisan legislative, legal, and information services to the Minnesota House of Representatives. This document can be made available in alternative formats.

www.house.mn/hrd | 651-296-6753 | 600 State Office Building | St. Paul, MN 55155