

## **11.095 Restrictions on Sale or Gift of Cigarettes, Nicotine Products, or Tobacco Products.**

### **(1) Definitions.** In this section:

- (a)** Cigarette has the meaning given in Wis. Stats. §139.30(1m).
- (b)** Direct marketer has the meaning given in Wis. Stats. §139.30(2n).
- (c)** Distributor means any of the following:
  - (i)** A person specified under Wis. Stats. §139.30(3).
  - (ii)** A person specified under Wis. Stats. §139.75(4).
- (d)** Identification card means any of the following:
  - (i)** A license containing a photograph issued under Wis. Stats. Chapter 343.
  - (ii)** An identification card issued under Wis. Stats. §343.50.
  - (iii)** An identification card issued under Wis. Stats. §125.08, (1987).
- (e)** Jobber has the meaning given in Wis. Stats. §139.30(6).
- (f)** Manufacturer means any of the following:
  - (i)** A person specified under Wis. Stats. §139.30(7).
  - (ii)** A person specified under Wis. Stats. §139.75(5).
- (g)** Nicotine product means a product that contains nicotine and is not any of the following:
  - (i)** A tobacco product.
  - (ii)** A cigarette.
  - (iii)** A product that has been approved by the U.S. food and drug administration for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such an approved purpose.
- (h)** Retailer means any person licensed under Wis. Stats. §134.65(1).
- (i)** School has the meaning given in Wis. Stats. §118.257(1)(d).
- (j)** Stamp has the meaning given in Wis. Stats. §139.30(13).
- (k)** Subjobber has the meaning given in Wis. Stats. §139.75(11).
- (l)** Tobacco products has the meaning given in Wis. Stats. §139.75(12).
- (m)** Vending machine has the meaning given in Wis. Stats. §139.30(14).

(n) Vending machine operator has the meaning given in Wis. Stats. §139.30(15).

**(2) Restrictions.**

(a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person under the age of 18, except as provided in Wis. Stats. §254.92(2)(a). A vending machine operator is not liable under this paragraph for the purchase of cigarettes, nicotine products, or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

(b) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

(c)

(i) A retailer shall post a sign in areas within his or her premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under this section and Wis. Stats. §254.92.

(ii) A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under Wis. Stats. §§134.66 and 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.

(d)

(i) A retailer or vending machine operator may not sell cigarettes or tobacco products from a vending machine unless the vending machine is located in a place where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

(ii) Notwithstanding subd. 1m., no retailer may place a vending machine within 500 feet of a school.

(e) No retailer or direct marketer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under Wis. Stats. §139.32(1).

**(3) Training.**

(a) Except as provided in section (3)(b), at the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or

tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with sections (2)(a) and (2)(b), including training on the penalties under section (5)(a)(ii) for a violation of sections (2)(a) or (2)(b). The department of health services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this paragraph. A retailer may comply with this paragraph by providing the training program developed or approved by the department of health services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the department of health services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee, or independent contractor.

- (b) Section (3)(a) does not apply to an agent, employee, or independent contractor who has received the training described in section (3)(a) as part of a responsible beverage server training course or a comparable training course, as described in Wis. Stats. §125.04(5)(a)5., that was successfully completed by the agent, employee, or independent contractor. The department of health services shall make the training program developed or approved by that department under section (3)(a) available to the technical college system board, and that board shall include that training program or a comparable training program approved by that department in the curriculum guidelines specified by that board under Wis. Stats. §125.04(5)(a)5. The department of health services shall also make the training program developed or approved by that department under section (3)(a) available to any provider of a comparable training course, as described in Wis. Stats. §125.04(5)(a)5., on request, and the department of revenue or the educational approval board may approve a comparable training course under Wis. Stats. §125.04(5)(a)5. only if that training course includes the training program developed or approved by the department of health services under section (3)(a) or a comparable training program approved by that department.
  - (c) If an agent, employee, or independent contractor who has not received the training described in section (3)(a) commits a violation of sections (2)(a) or (2)(b), a governmental regulatory authority, as defined in Wis. Stats. §254.911(2), may issue a citation based on that violation only to the retailer that hired or contracted with the agent, employee, or independent contractor and not to the agent, employee, or independent contractor who has not received that training. If an agent, employee, or independent contractor who has received the training described in section (3)(a) commits a violation of sections (2)(a) or (2)(b) for which a governmental regulatory authority issues a citation to the retailer that hired or contracted with the agent, employee, or independent contractor, the governmental regulatory authority shall also issue a citation based on that violation to the agent, employee, or independent contractor who has received that training.
- (4) **Defense; sale to minor.** Proof of all of the following facts by a retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of section (2)(a):
- (a) That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.

- (b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18.
- (c) That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18.

**(5) Penalties.**

**(a)**

- (i) In this paragraph, violation means a violation of sections (2)(a), (2)(b), (2)(d), or (2)(e).
- (ii) A person who commits a violation is subject to a forfeiture of:
  - (1) Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or
  - (2) Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.
- (iii) A court shall suspend any license or permit issued under Wis. Stats. §§134.65, 139.34, or 139.79 to a person for:
  - (1) Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;
  - (2) Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or
  - (3) Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 or more other violations.
- (iv) The court shall promptly mail notice of a suspension under section (5)(a)(iii) to the department of revenue and to the clerk of each municipality which has issued a license or permit to the person.

- (b) Whoever violates section (2)(c) shall forfeit not more than \$25.

**(6) Amendment to Conform with State Statute.** This ordinance is created pursuant to the authority given in Wis. Stats. §134.66(5), which requires that this ordinance be in strict conformity with the terms of §134.66. Therefore, this ordinance shall be deemed amended to conform to the terms of Wis. Stats. §134.66, or its successors, as necessary to remain at all times in compliance therewith.