

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

S.F. No. 2123

(SENATE AUTHORS: CHAMPION, Utke and Kupec)

DATE
02/27/2023

D-PG

Introduction and first reading
Referred to Health and Human Services

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to health; prohibiting the sale or offer for sale of flavored products;
1.3 authorizing penalties; amending Minnesota Statutes 2022, sections 461.12,
1.4 subdivision 2; 461.19; proposing coding for new law in Minnesota Statutes, chapter
1.5 461.

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

1.7 Section 1. Minnesota Statutes 2022, section 461.12, subdivision 2, is amended to read:

1.8 Subd. 2. **Administrative penalties for sales and furnishing; licensees.** If a licensee or
1.9 employee or agent of a licensee sells, gives, or otherwise furnishes tobacco, tobacco-related
1.10 devices, electronic delivery devices, or nicotine or lobelia delivery products to a person
1.11 under the age of 21 years; sells or offers for sale to a person any flavored products as defined
1.12 in section 461.23, subdivision 1; or violates any other provision of this chapter, the licensee
1.13 shall be charged an administrative penalty of \$300 for the first violation. An administrative
1.14 penalty of \$600 must be imposed for a second violation at the same location within 36
1.15 months after the initial violation. For a third or any subsequent violation at the same location
1.16 within 36 months after the initial violation, an administrative penalty of \$1,000 must be
1.17 imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic
1.18 delivery devices, or nicotine or lobelia delivery products at that location must be suspended
1.19 for not less than seven days and may be revoked. No suspension, revocation, or other penalty
1.20 may take effect until the licensee has received notice, served personally or by mail, of the
1.21 alleged violation and an opportunity for a hearing before a person authorized by the licensing
1.22 authority to conduct the hearing. A decision that a violation has occurred must be in writing.
1.23 Administrative penalties for the sale or offer for sale of flavored products shall be calculated
1.24 on a per-item and per-transaction basis and may be assessed cumulatively.

2.1 Sec. 2. Minnesota Statutes 2022, section 461.19, is amended to read:

2.2 **461.19 EFFECT ON LOCAL ORDINANCE; NOTICE.**

2.3 Sections 461.12 to 461.18 and 461.23 do not preempt a local ordinance that provides
2.4 for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery
2.5 devices, ~~and~~ nicotine ~~and~~ or lobelia delivery products, or flavored products. A governing
2.6 body shall give notice of its intention to consider adoption or substantial amendment of any
2.7 local ordinance required under section 461.12 or permitted under this section. The governing
2.8 body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting
2.9 to the last known address of each licensee or person required to hold a license under section
2.10 461.12. The notice shall state the time, place, and date of the meeting and the subject matter
2.11 of the proposed ordinance.

2.12 Sec. 3. **461.23 SALE OF FLAVORED PRODUCTS PROHIBITED.**

2.13 Subdivision 1. Definitions. (a) The terms defined in this subdivision apply to this section.

2.14 (b) "Consumer" means an individual who purchases, receives, or possesses tobacco, a
2.15 tobacco-related device, an electronic delivery device, or a nicotine or lobelia delivery product
2.16 for personal consumption and not for resale.

2.17 (c) "Electronic delivery device" has the meaning in section 609.685, subdivision 1.

2.18 (d) "Flavored product" means any tobacco, tobacco-related device, electronic delivery
2.19 device, or nicotine or lobelia delivery product that imparts a taste or smell, other than the
2.20 taste or smell of tobacco, that is distinguishable by an ordinary consumer prior to or during
2.21 consumption of the product, including but not limited to the taste or smell of chocolate,
2.22 cocoa, fruit, honey, menthol, mint, vanilla, wintergreen, or any candy, dessert, alcoholic
2.23 beverage, herb, or spice.

2.24 (e) "Licensee" means an individual or entity licensed according to section 461.12 to
2.25 engage in the retail sale of tobacco, tobacco-related devices, electronic delivery devices, or
2.26 nicotine or lobelia delivery products.

2.27 (f) "Nicotine or lobelia delivery product" means a product described in section 609.6855.

2.28 (g) "Out-of-state retailer" means an individual or entity engaged outside of this state in
2.29 the business of selling or offering for sale tobacco, tobacco-related devices, electronic
2.30 delivery devices, or nicotine or lobelia delivery products to a consumer in this state by
2.31 means of a telephonic or other method of voice transmission, United States mail or any
2.32 other delivery service, or the Internet or other online service.

3.1 (h) "Tobacco" has the meaning in section 609.685, subdivision 1.

3.2 (i) "Tobacco-related device" has the meaning in section 609.685, subdivision 1.

3.3 Subd. 2. **Prohibition.** No licensee, employee or agent of a licensee, or out-of-state retailer
3.4 shall sell or offer for sale any flavored product to a consumer in this state.

3.5 Subd. 3. **Presumption that tobacco, device, or product is a flavored product.** There
3.6 shall be a rebuttable presumption that tobacco, a tobacco-related device, an electronic
3.7 delivery device, or a nicotine or lobelia delivery product is a flavored product if the
3.8 manufacturer of the tobacco, tobacco-related device, electronic delivery device, or nicotine
3.9 or lobelia delivery product; a licensee; an out-of-state retailer; or an employee or agent of
3.10 such a manufacturer, licensee, or out-of-state retailer:

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

3.14 (2) uses text, images, or coloring on the label or packaging of the tobacco, tobacco-related
3.15 device, electronic delivery device, or nicotine or lobelia delivery product to explicitly or
3.16 implicitly indicate that the tobacco, tobacco-related device, electronic delivery device, or
3.17 nicotine or lobelia delivery product imparts a taste or smell other than the taste or smell of
3.18 tobacco.

3.19 Subd. 4. **Penalties.** (a) A licensee who violates this section is subject to administrative
3.20 penalties under section 461.12, subdivision 2.

3.21 (b) Any flavored product sold or offered for sale to a consumer in this state is contraband
3.22 under sections 297F.21 and 325F.781 and is subject to forfeiture, civil penalties, and
3.23 enforcement actions in accordance with sections 297F.21 and 325F.781, and other applicable
3.24 law.

3.25 (c) Each sale or offer for sale of a flavored product to a consumer in this state in violation
3.26 of this section shall constitute a separate violation.

3.27 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to sales and
3.28 offers for sale occurring on or after that date.