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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **3532**

03/08/2018 Authored by Anselmo, Franke, Layman, Baker, Uglem and others  
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act  
1.2 relating to health; adding charter schools to the prohibition of tobacco in schools;  
1.3 increasing the tobacco sale age; increasing administrative penalties; allowing  
1.4 alternative penalties; amending Minnesota Statutes 2016, sections 144.4165;  
1.5 144.4167, subdivision 4; 171.171; 461.12, subdivisions 2, 3, 4, 5, 6; 461.18;  
1.6 609.685; 609.6855; proposing coding for new law in Minnesota Statutes, chapter  
1.7 461.

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

1.9 Section 1. Minnesota Statutes 2016, section 144.4165, is amended to read:

1.10 **144.4165 TOBACCO PRODUCTS PROHIBITED IN PUBLIC SCHOOLS.**

1.11 No person shall at any time smoke, chew, or otherwise ingest tobacco or a tobacco  
1.12 product, or inhale or exhale vapor from an electronic delivery device as defined in section  
1.13 609.685, subdivision 1, in a public school, as defined in section 120A.05, subdivisions 9,  
1.14 11, and 13, ~~and no person under the age of 18 shall possess any of these items~~ or in a charter  
1.15 school, as defined in section 124E.03, subdivision 2. This prohibition extends to all facilities,  
1.16 whether owned, rented, or leased, and all vehicles that a school district owns, leases, rents,  
1.17 contracts for, or controls. Nothing in this section shall prohibit the lighting of tobacco by  
1.18 an adult as a part of a traditional Indian spiritual or cultural ceremony. For purposes of this  
1.19 section, an Indian is a person who is a member of an Indian tribe as defined in section  
1.20 260.755, subdivision 12.

1.21 Sec. 2. Minnesota Statutes 2016, section 144.4167, subdivision 4, is amended to read:

1.22 Subd. 4. **Tobacco products shop.** Sections 144.414 to 144.417 do not prohibit the  
1.23 lighting of tobacco in a tobacco products shop by a customer or potential customer for the

2.1 specific purpose of sampling tobacco products. For the purposes of this subdivision, a  
 2.2 tobacco products shop is a retail establishment ~~with~~ that cannot be entered at any time by  
 2.3 persons under the age of 21 years that has an entrance door opening directly to the outside,  
 2.4 and that derives more than 90 percent of its gross revenue from the sale of loose tobacco,  
 2.5 ~~plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco~~  
 2.6 ~~and related smoking accessories~~ tobacco-related devices, and electronic delivery devices,  
 2.7 as defined in section 609.685, and in which the sale of other products is merely incidental.  
 2.8 "Tobacco products shop" does not include a tobacco department or section of any individual  
 2.9 business establishment with any type of liquor, food, or restaurant license.

2.10 Sec. 3. Minnesota Statutes 2016, section 171.171, is amended to read:

2.11 **171.171 SUSPENSION; ILLEGAL PURCHASE OF ALCOHOL OR TOBACCO.**

2.12 The commissioner shall suspend for a period of 90 days the license of a person who:

2.13 (1) is under the age of 21 years and is convicted of purchasing or attempting to purchase  
 2.14 an alcoholic beverage in violation of section 340A.503 if the person used a license, Minnesota  
 2.15 identification card, or any type of false identification to purchase or attempt to purchase the  
 2.16 alcoholic beverage;

2.17 (2) is convicted under section 171.22, subdivision 1, clause (2), or 340A.503, subdivision  
 2.18 2, clause (3), of lending or knowingly permitting a person under the age of 21 years to use  
 2.19 the person's license, Minnesota identification card, or other type of identification to purchase  
 2.20 or attempt to purchase an alcoholic beverage; or

2.21 ~~(3) is under the age of 18 years and is found by a court to have committed a petty~~  
 2.22 ~~misdemeanor under section 609.685, subdivision 3, if the person used a license, Minnesota~~  
 2.23 ~~identification card, or any type of false identification to purchase or attempt to purchase the~~  
 2.24 ~~tobacco product; or~~

2.25 ~~(4)~~ (3) is convicted under section 171.22, subdivision 1, clause (2), of lending or  
 2.26 knowingly permitting a person under the age of ~~18~~ 21 years to use the person's license,  
 2.27 Minnesota identification card, or other type of identification to purchase or attempt to  
 2.28 purchase a ~~tobacco product~~. tobacco, a tobacco-related device, an electronic delivery device  
 2.29 as defined in section 609.685, subdivision 1, or a nicotine or lobelia delivery product as  
 2.30 described in section 609.6855, subdivision 1.

3.1 Sec. 4. Minnesota Statutes 2016, section 461.12, subdivision 2, is amended to read:

3.2 Subd. 2. **Administrative penalties; licensees.** If a licensee or employee of a licensee  
3.3 sells, gives, or otherwise furnishes tobacco, tobacco-related devices, electronic delivery  
3.4 devices, or nicotine or lobelia delivery products to a person under the age of ~~18~~ 21 years,  
3.5 or violates any other provision of this chapter, the licensee shall be charged an administrative  
3.6 penalty of ~~\$75~~ \$250. An administrative penalty of ~~\$200~~ \$500 must be imposed for a second  
3.7 violation at the same location within 24 months after the initial violation. For a third or any  
3.8 subsequent violation at the same location within 24 months after the initial violation, an  
3.9 administrative penalty of ~~\$250~~ \$1,000 must be imposed, and the licensee's authority to sell  
3.10 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery  
3.11 products at that location must be suspended for not less than seven days and may be revoked.  
3.12 No suspension, revocation, or other penalty may take effect until the licensee has received  
3.13 notice, served personally or by mail, of the alleged violation and an opportunity for a hearing  
3.14 before a person authorized by the licensing authority to conduct the hearing. A decision  
3.15 that a violation has occurred must be in writing.

3.16 Sec. 5. Minnesota Statutes 2016, section 461.12, subdivision 3, is amended to read:

3.17 Subd. 3. **Administrative penalty; individuals.** An individual who sells, gives, or  
3.18 otherwise furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine  
3.19 or lobelia delivery products to a person under the age of ~~18~~ 21 years must be charged an  
3.20 administrative penalty of \$50. No penalty may be imposed until the individual has received  
3.21 notice, served personally or by mail, of the alleged violation and an opportunity for a hearing  
3.22 before a person authorized by the licensing authority to conduct the hearing. A decision  
3.23 that a violation has occurred must be in writing.

3.24 Sec. 6. Minnesota Statutes 2016, section 461.12, subdivision 4, is amended to read:

3.25 Subd. 4. **~~Minors~~ Persons under age 21.** The licensing authority shall consult with  
3.26 interested educators, parents, ~~children~~ persons under the age of 21 years, and representatives  
3.27 of the court system to develop alternative penalties for ~~minors~~ persons under the age of 21  
3.28 years who purchase, ~~possess, and consume~~ or attempt to purchase tobacco, tobacco-related  
3.29 devices, electronic delivery devices, or nicotine or lobelia delivery products using a driver's  
3.30 license, permit, Minnesota identification card, or any other type of false identification to  
3.31 misrepresent the person's age, in violation of section 609.685 or 609.6855. The licensing  
3.32 authority and the interested persons shall consider a variety of options, including, but not

4.1 limited to, tobacco-free education, tobacco cessation programs, notice to schools, parents,  
4.2 community service, and other court diversion programs.

4.3 Sec. 7. Minnesota Statutes 2016, section 461.12, subdivision 5, is amended to read:

4.4 Subd. 5. **Compliance checks.** A licensing authority shall conduct unannounced  
4.5 compliance checks at least once each calendar year at each location where tobacco,  
4.6 tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products  
4.7 are sold to test compliance with sections 609.685 and 609.6855. Compliance checks must  
4.8 involve ~~minors~~ persons over the age of 15 years, but under the age of ~~18~~ 21 years, who,  
4.9 with the prior written consent of a parent or guardian if under the age of 18 years, attempt  
4.10 to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or  
4.11 lobelia delivery products under the direct supervision of a law enforcement officer or an  
4.12 employee of the licensing authority.

4.13 Sec. 8. Minnesota Statutes 2016, section 461.12, subdivision 6, is amended to read:

4.14 Subd. 6. **Defense.** It is an affirmative defense to the charge of selling tobacco,  
4.15 tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products  
4.16 to a person under the age of ~~18~~ 21 years in violation of subdivision 2 or 3 that the licensee  
4.17 or individual making the sale relied in good faith upon proof of age as described in section  
4.18 340A.503, subdivision 6.

4.19 Sec. 9. Minnesota Statutes 2016, section 461.18, is amended to read:

4.20 **461.18 BAN ON SELF-SERVICE ~~SALE OF PACKS~~ SALES; EXCEPTIONS.**

4.21 Subdivision 1. **Except in ~~adult-only~~ age 21 and older facilities.** (a) No person shall  
4.22 offer for sale tobacco or tobacco-related devices, or electronic delivery devices as defined  
4.23 in section 609.685, subdivision 1, or nicotine or lobelia delivery products as described in  
4.24 section 609.6855, in open displays which are accessible to the public without the intervention  
4.25 of a store employee.

4.26 (b) [~~Expired August 28, 1997~~]

4.27 (c) [~~Expired~~]

4.28 (d) (b) This subdivision shall not apply to retail stores ~~which~~ that have an entrance door  
4.29 opening directly to the outside and that derive at least 90 percent of their gross revenue from  
4.30 tobacco and, tobacco-related devices, and electronic delivery devices as defined in section

5.1 609.685, subdivision 1, and where the retailer ensures that no person younger than 18 under  
 5.2 the age of 21 years of age is present, or permitted to enter, at any time.

5.3 Subd. 2. **Vending machine sales prohibited.** No person shall sell tobacco products,  
 5.4 electronic delivery devices, or nicotine or lobelia delivery products from vending machines.  
 5.5 This subdivision does not apply to vending machines in facilities that cannot be entered at  
 5.6 any time by persons ~~younger than 18~~ under the age of 21 years of age.

5.7 Subd. 3. **Federal regulations for cartons, multipacks.** Code of Federal Regulations,  
 5.8 title 21, part ~~897.16(e)~~ 1140.16(c), as amended by Code of Federal Regulations, volume  
 5.9 81, number 90 (May 10, 2016), and as otherwise amended from time to time, is incorporated  
 5.10 by reference with respect to cartons and other multipack units.

5.11 Sec. 10. **[461.22] SIGNAGE REQUIRED.**

5.12 At each location where tobacco, tobacco-related devices, electronic delivery devices, or  
 5.13 nicotine or lobelia delivery products are sold, the licensee shall display a sign in plain view  
 5.14 to provide public notice that selling any of these products to any person under the age of  
 5.15 21 years is illegal and subject to penalties. The notice shall be placed in a conspicuous  
 5.16 location in the licensed establishment and shall be readily visible to any person who is  
 5.17 purchasing or considering a purchase of such products. The sign must provide notice that  
 5.18 all persons responsible for selling such products shall verify, by means of photographic  
 5.19 identification containing the bearer's date of birth, the age of any person under the age of  
 5.20 30 years.

5.21 Sec. 11. Minnesota Statutes 2016, section 609.685, is amended to read:

5.22 **609.685 SALE OF TOBACCO TO CHILDREN PERSONS UNDER AGE 21.**

5.23 Subdivision 1. **Definitions.** For the purposes of this section, the following terms shall  
 5.24 have the meanings respectively ascribed to them in this section.

5.25 (a) "Tobacco" means cigarettes and any product containing, made, or derived from  
 5.26 tobacco that is intended for human consumption, whether chewed, smoked, absorbed,  
 5.27 dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component,  
 5.28 part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies;  
 5.29 perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff;  
 5.30 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts;  
 5.31 refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of  
 5.32 tobacco. Tobacco excludes any tobacco product that has been approved by the United States

6.1 Food and Drug Administration for sale as a tobacco-cessation product, as a  
 6.2 tobacco-dependence product, or for other medical purposes, and is being marketed and sold  
 6.3 solely for such an approved purpose.

6.4 (b) "Tobacco-related devices" means cigarette papers or pipes for smoking or other  
 6.5 devices intentionally designed or intended to be used in a manner which enables the chewing,  
 6.6 sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related  
 6.7 devices include components of tobacco-related devices which may be marketed or sold  
 6.8 separately.

6.9 (c) "Electronic delivery device" means any product containing or delivering nicotine,  
 6.10 lobelia, or any other substance intended for human consumption that can be used by a person  
 6.11 to simulate smoking in the delivery of nicotine or any other substance through inhalation  
 6.12 of vapor from the product. Electronic delivery device includes any component part of a  
 6.13 product, whether or not marketed or sold separately. Electronic delivery device does not  
 6.14 include any product that has been approved or certified by the United States Food and Drug  
 6.15 Administration for sale as a tobacco-cessation product, as a tobacco-dependence product,  
 6.16 or for other medical purposes, and is marketed and sold for such an approved purpose.

6.17 Subd. 1a. **Penalty to sell or furnish.** (a) Whoever sells, gives, or otherwise furnishes  
 6.18 tobacco, tobacco-related devices, or electronic delivery devices to a person under the age  
 6.19 of ~~18~~ 21 years is guilty of a misdemeanor for the first violation. Whoever violates this  
 6.20 subdivision a subsequent time within five years of a previous conviction under this  
 6.21 subdivision is guilty of a gross misdemeanor.

6.22 (b) It is an affirmative defense to a charge under this subdivision if the defendant proves  
 6.23 by a preponderance of the evidence that the defendant reasonably and in good faith relied  
 6.24 on proof of age as described in section 340A.503, subdivision 6.

6.25 Subd. 2. ~~Other offenses~~ **Use of false identification.** (a) ~~Whoever furnishes tobacco,~~  
 6.26 ~~tobacco-related devices, or electronic delivery devices to a person under the age of 18 years~~  
 6.27 ~~is guilty of a misdemeanor for the first violation. Whoever violates this paragraph a~~  
 6.28 ~~subsequent time is guilty of a gross misdemeanor.~~

6.29 ~~(b)~~ A person under the age of ~~18~~ 21 years who purchases or attempts to purchase tobacco,  
 6.30 tobacco-related devices, or electronic delivery devices and who uses a driver's license,  
 6.31 permit, Minnesota identification card, or any type of false identification to misrepresent the  
 6.32 person's age, is guilty of a petty misdemeanor.

6.33 Subd. 2a. **Alternative penalties.** Law enforcement and court system representatives  
 6.34 shall consult with interested persons including as applicable parents, educators, persons

7.1 under the age of 21 years, and others to develop alternative penalties for persons under the  
 7.2 age of 21 years who violate any subdivision in this section. All participants shall consider  
 7.3 a variety of options including but not limited to tobacco-free education programs, community  
 7.4 service, and tobacco cessation programs; and for persons under the age of 18 years, notice  
 7.5 to schools and parents, and court diversion programs.

7.6 ~~Subd. 3. **Petty misdemeanor.** Except as otherwise provided in subdivision 2, whoever~~  
 7.7 ~~possesses, smokes, chews, or otherwise ingests, purchases, or attempts to purchase tobacco,~~  
 7.8 ~~tobacco-related devices, or electronic delivery devices and is under the age of 18 years is~~  
 7.9 ~~guilty of a petty misdemeanor.~~

7.10 Subd. 4. **Effect on local ordinances.** Nothing in subdivisions 1 to ~~3~~ 2a shall supersede  
 7.11 or preclude the continuation or adoption of any local ordinance which provides for more  
 7.12 stringent regulation of the subject matter in subdivisions 1 to ~~3~~ 2a.

7.13 Subd. 5. **Exceptions.** (a) Notwithstanding subdivision 2, an Indian may furnish tobacco  
 7.14 to an Indian under the age of ~~18~~ 21 years if the tobacco is furnished as part of a traditional  
 7.15 Indian spiritual or cultural ceremony. For purposes of this paragraph, an Indian is a person  
 7.16 who is a member of an Indian tribe as defined in section 260.755, subdivision 12.

7.17 (b) The penalties in this section do not apply to a person under the age of ~~18~~ 21 years  
 7.18 who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic  
 7.19 delivery devices while under the direct supervision of a responsible adult for training,  
 7.20 education, research, or enforcement purposes.

7.21 Subd. 6. **Seizure of false identification.** A retailer may seize a form of identification  
 7.22 listed in section 340A.503, subdivision 6, if the retailer has reasonable grounds to believe  
 7.23 that the form of identification has been altered or falsified or is being used to violate any  
 7.24 law. A retailer that seizes a form of identification as authorized under this subdivision shall  
 7.25 deliver it to a law enforcement agency within 24 hours of seizing it.

7.26 Sec. 12. Minnesota Statutes 2016, section 609.6855, is amended to read:

7.27 **609.6855 SALE OF NICOTINE DELIVERY PRODUCTS TO CHILDREN**  
 7.28 **PERSONS UNDER AGE 21.**

7.29 Subdivision 1. **Penalty to sell or furnish.** (a) Whoever sells, gives, or otherwise furnishes  
 7.30 to a person under the age of ~~18~~ 21 years a product containing or delivering nicotine or lobelia  
 7.31 intended for human consumption, or any part of such a product, that is not tobacco or an  
 7.32 electronic delivery device as defined by section 609.685, is guilty of a misdemeanor for the

8.1 first violation. Whoever violates this subdivision a subsequent time within five years of a  
8.2 previous conviction under this subdivision is guilty of a gross misdemeanor.

8.3 (b) It is an affirmative defense to a charge under this subdivision if the defendant proves  
8.4 by a preponderance of the evidence that the defendant reasonably and in good faith relied  
8.5 on proof of age as described in section 340A.503, subdivision 6.

8.6 (c) Notwithstanding paragraph (a), a product containing or delivering nicotine or lobelia  
8.7 intended for human consumption, or any part of such a product, that is not tobacco or an  
8.8 electronic delivery device as defined by section 609.685, may be sold to persons under the  
8.9 age of ~~18~~ 21 years if the product ~~has been approved or otherwise certified for legal sale by~~  
8.10 ~~the United States Food and Drug Administration for tobacco use cessation, harm reduction,~~  
8.11 ~~or for other medical purposes, and is being marketed and sold solely for that approved~~  
8.12 ~~purpose.~~ is a drug, device, or combination product authorized for sale by the United States  
8.13 Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and  
8.14 Cosmetic Act.

8.15 Subd. 2. ~~Other offense~~ Use of false identification. A person under the age of ~~18~~ 21  
8.16 years who purchases or attempts to purchase a product containing or delivering nicotine or  
8.17 lobelia intended for human consumption, or any part of such a product, that is not tobacco  
8.18 or an electronic delivery device as defined by section 609.685, and who uses a driver's  
8.19 license, permit, Minnesota identification card, or any type of false identification to  
8.20 misrepresent the person's age, is guilty of a petty misdemeanor. This penalty does not apply  
8.21 to a person under the age of 21 years who purchases or attempts to purchase such a product  
8.22 while under the direct supervision of a responsible adult for training, education, research,  
8.23 or enforcement purposes.

8.24 Subd. 3. ~~Petty misdemeanor~~ Alternative penalties. ~~Except as otherwise provided in~~  
8.25 ~~subdivisions 1 and 2, whoever is under the age of 18 years and possesses, purchases, or~~  
8.26 ~~attempts to purchase a product containing or delivering nicotine or lobelia intended for~~  
8.27 ~~human consumption, or any part of such a product, that is not tobacco or an electronic~~  
8.28 ~~delivery device as defined by section 609.685, is guilty of a petty misdemeanor.~~ Law  
8.29 enforcement and court system representatives shall consult with interested persons including  
8.30 as applicable parents, educators, persons under the age of 21 years, and others to develop  
8.31 alternative penalties for persons under the age of 21 years who violate any subdivision in  
8.32 this section. All participants shall consider a variety of options including but not limited to  
8.33 tobacco-free education programs, community service, and tobacco cessation programs; and  
8.34 for persons under the age of 18 years, notice to schools and parents, and court diversion  
8.35 programs.