A bill for an act

relating to health; prohibiting the sale or offer for sale of flavored products;
authorizing penalties; amending Minnesota Statutes 2020, sections 461.12,
subdivision 2; 461.19; proposing coding for new law in Minnesota Statutes, chapter
461.

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

Section 1. Minnesota Statutes 2020, section 461.12, subdivision 2, is amended to read:

Subd. 2. Administrative penalties for sales and furnishing; licensees. If a licensee or
employee or agent of a licensee sells, gives, or otherwise furnishes tobacco, tobacco-related
devices, electronic delivery devices, or nicotine or lobelia delivery products to a person
under the age of 21 years; sells or offers for sale any flavored products, as defined in section
461.23, subdivision 1, to a person; or violates any other provision of this chapter, the licensee
shall be charged an administrative penalty of $300 for the first violation. An administrative
penalty of $600 must be imposed for a second violation at the same location within 36
months after the initial violation. For a third or any subsequent violation at the same location
within 36 months after the initial violation, an administrative penalty of $1,000 must be
imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic
delivery devices, or nicotine or lobelia delivery products at that location must be suspended
for not less than seven days and may be revoked. No suspension, revocation, or other 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.
Administrative penalties for the sale or offer for sale of flavored products shall be calculated
on a per-item and per-transaction basis and may be assessed cumulatively.
Sec. 2. Minnesota Statutes 2020, section 461.19, is amended to read:

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

Sections 461.12 to 461.18 and 461.23 do not preempt a local ordinance that provides for more restrictive regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products, or flavored products. 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.

Sec. 3. [461.23] SALE OF FLAVORED PRODUCTS PROHIBITED.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

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

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

(d) "Flavored product" means 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, that is distinguishable by an ordinary consumer prior to or during consumption of the product, including but not limited to the taste or smell of chocolate, cocoa, fruit, honey, menthol, mint, vanilla, wintergreen, or any candy, dessert, alcoholic beverage, herb, or spice.

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

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

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

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

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

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

Subd. 3. Presumption that tobacco, device, or product is a flavored product. There
shall be a rebuttable presumption that tobacco, a tobacco-related device, an electronic
delivery device, or a nicotine or lobelia delivery product is a flavored product if the
manufacturer of the tobacco, tobacco-related device, electronic delivery device, or nicotine
or lobelia delivery product, or an employee or agent of such a manufacturer:

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

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

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

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

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

EFFECTIVE DATE. This section is effective August 1, 2021, and applies to sales and
offers for sale occurring on or after that date.