

AMENDING CHAPTER 34 OF THE DANE COUNTY CODE OF ORDINANCES, RESTRICTING THE USE OF NICOTINE PRODUCTS BY MINORS

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 34.23 is amended to read as follows:

34.23 STATUTORY OFFENSES; RESTRICTIONS ON SALE OR GIFT OF CIGARETTES, NICOTINE PRODUCTS OR TOBACCO PRODUCTS.

(intro.) *References.* In subsection (1), all references to sections and chapters are to those of the Wisconsin Statutes.

(1) *Definitions.* In this section:

(a) *Cigarette* has the meaning given in s. 139.30(1).

(b) *Distributor* means any of the following:

1. A person specified under s. 139.30(3).
2. A person specified under s. 139.75(4).

(c) *Identification card* means any of the following:

1. A license containing a photograph issued under ch. 343.
2. An identification card issued under s. 343.50.
3. An identification card issued under s. 125.08, 1987 Stats.

(d) *Jobber* has the meaning given in s. 139.30(6).

(e) *Manufacturer* means any of the following:

1. A person specified under s. 139.30(7).
2. A person specified under s. 139.75(5).

(f) *Nicotine product* has the meaning given in s. 134.66(1)(f).

(g) *Retailer* means any person licensed under s. 134.65(1).

(h) *School* has the meaning given in s. 118.257(1)(c).

(hm) *Stamp* has the meaning given in s. 139.30(13).

(i) *Subjobber* has the meaning given in s. 139.75(11).

(j) *Tobacco products* has the meaning given in s. 139.75(12).

(k) *Vending machine* has the meaning given in s. 139.30(14).

(L) *Vending machine operator* has the meaning given in s. 139.30(15).

(2) *Restrictions.* **(a)** No retailer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, 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 s. 254.92(2)(a), Wis. Stats. 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.

(am) No retailer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, 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.

(b) 1. A retailer shall post a sign in areas within his or her premises where cigarettes, nicotine products, or tobacco products are sold to consumers stating that the sale of any cigarette, nicotine product or tobacco product to a person under the age of 18 is unlawful under this section and s. 254.92, Wis. Stats.

2. 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, nicotine product, or tobacco product by a person under the age of 18 is unlawful under s. 254.92, Wis. Stats., and that the purchaser is subject to a forfeiture of not to exceed \$50.

(c) 1. A retailer or vending machine operator may not sell cigarettes, nicotine products, 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.

2. Notwithstanding sub. (1), no retailer may place a vending machine within 500 feet of a school.

(d) No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under s. 139.32(1), Wis. Stats.

(3) 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, nicotine products, or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of sub. (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.

(4) Penalties. (a) 1. In this paragraph, *violation* means a violation of sub. (2)(a), (am), (c) or (d) or a local ordinance which strictly conforms to sub. (2)(a), (am), (c) or (d).

2. A person who commits a violation is subject to a forfeiture of:

a. Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or

b. Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.

3. A court shall suspend any license or permit issued under s. 134.65, 139.34 or 139.79, Wis. Stats., to a person for:

a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

b. 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

c. 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.

4. The court shall promptly mail notice of a suspension under subd. 3. 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 sub. (2)(b) shall forfeit not more than \$25.

(5) Local ordinance. This section does not apply within any town, village or city that has adopted or adopts an ordinance under s. 134.66(5), Wis. Stats.

ARTICLE 3. Section 34.235 is amended to read as follows:

34.235 STATUTORY OFFENSES; PURCHASE OR POSSESSION OF CIGARETTES, NICOTINE PRODUCTS, OR TOBACCO PRODUCTS BY PERSON UNDER 18 PROHIBITED.

(1) No person under 18 years of age may falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product.

(2) No person under 18 years of age may purchase, attempt to purchase or possess any cigarette, nicotine product, or tobacco product except as follows:

(a) A person under 18 years of age may purchase or possess cigarettes, nicotine products, or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.

(b) A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess cigarettes, nicotine products, or tobacco products in the course of his or her participation in an investigation under s. 254.916, Wis. Stats., that is conducted in accordance with s. 254.916(3), Wis. Stats.

(3) A law enforcement officer shall seize any cigarette, nicotine product, or tobacco product that has been sold to and is in the possession of a person under 18 years of age.

- (4) Penalties. (a)** Any person who violates this section shall be subject to a forfeiture of not less than Five Dollars (\$5.00) nor more than Twenty-Five Dollars (\$25.00) and shall, in addition thereto, be subject to all associated court costs and costs of prosecution.
- (b)** Any order imposing a forfeiture shall include a finding that the juvenile alone is financially able to pay and shall allow up to twelve (12) months for said payment to be made.
- (5) Local ordinance.** This section does not apply within any city, village or town that has adopted or adopts its own ordinance pursuant to s. 254.92, Wis. Stats.