

## CHAPTER 86

### RESTRICTIONS ON SALE OR GIFT OF CIGARETTE AND TOBACCO PRODUCTS TO MINORS

#### 86.01 Purpose and Authority

- (A) St. Croix County Health and Human Services – Public Health Department recognizes many smokers begin smoking before the age of 18 years; and those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; that because smoking has been shown to be the cause of several serious health problems, including cancer, heart disease, and respiratory problems, which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale or gift of tobacco products to minors.
- (B) Under Wis. Stats. §134.66(5), St. Croix County may adopt an ordinance regulating the conduct of tobacco sales to minors. This ordinance is adopted pursuant to that authority provided by Wis. Stats. §254.916 (1). Wis. Stats. §254.916 (1) authorizes the Saint Croix County Public Health Department to become the designated agents of the Wisconsin Department of Health & Family Services for the purpose to cause unannounced investigations to be conducted at least annually at retail outlets, including sites of tobacco vending machines, to survey overall levels of compliance with Wis. Stats. §134.66 (2) (a) and (am).

#### 86.02 Applicability

- (A) The provisions of this ordinance shall apply to any retailer, manufacturer, distributor, jobber and/or subjobber, agent, employee or independent contractor of any retailer, manufacturer, distributor, or jobber who has obtained a cigarette and tobacco products retailer license from the clerk of the city, village or town wherein such license is sought to be exercised.
- (B) This ordinance shall apply to all geographic locations in St. Croix County. However, this ordinance shall not apply within any town, village, or city that has adopted or adopts an ordinance under Wis. Stats. §134.66(5).

#### 86.03 Definitions

In this section:

- (A) “Cigarette” has the meaning given in Wis. Stats. §139.30(1)
- (B) “Distributor” means any of the following:
  - (1) A person specified under Wis. Stats. §139.30(3)

- (2) A person specified under Wis. Stats. §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 Wis. Stats. §343.50
  - (3) An identification card issued under Wis. Stats. §125.08, 1987 Stats.
- (D) “Jobber” has the meaning given in Wis. Stats. §139.30(6)
- (E) “Manufacturer” means any of the following:
  - (1) A person specified under Wis. Stats. §139.30(7)
  - (2) A person specified under Wis. Stats. §139.75(5)
- (F) “Retailer” means any person licensed under Wis. Stats. §134.65(1)
- (G) “School” has the meaning given in Wis. Stats. §118.257(1)(d)
- (H) “Stamp” has the meaning given in Wis. Stats. §139.30(13)
- (I) “Subjobber” has the meaning given in Wis. Stats. §139.75(11)
- (J) “Tobacco products” has the meaning given in Wis. Stats. §139.75(12)
- (K) “Vending machine” has the meaning given in Wis. Stats. §139.30(14)
- (L) “Vending machine operator” has the meaning given in Wis. Stats. §139.30(15)

#### 86.04 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 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 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, 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 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) Required Notice

(1) 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.

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

(D) 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. No retailer may place a vending machine within 500 feet of a school.

(E) No retailer 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).

86.05 Defense: Sale to Minor.

(A) 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 86.04(A).

(1) That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.

(2) 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.

(3) 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.

## 86.06 Penalties.

- (A) In this paragraph, *violation* means a violation of section 86.04(A), (B), (D) or (E) or a local ordinance which strictly conforms to section 86.04(A), (B), (D) or (E).
- (B) 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.
- (C) 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.
- (D) The court shall promptly mail notice of a suspension under 86.06(C) to the department of revenue and to the clerk of each municipality which has issued a license or permit to the person.
- (E) Whoever violates sub. (C)(1) shall forfeit not more than \$25.

## 86.07 Enforcement

Any law enforcement officer of St. Croix County and any person designated by the Director of the St. Croix County Health and Human Services Department may issue citations under this chapter.

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