

(3) Any person who violates sub. (1) or (2) may be required to forfeit not more than \$1,000.

History: 1991 a. 216.

134.60 Cutting or transportation of evergreens. No person may cut for sale in its natural condition and untrimmed, with or without roots, any evergreen or coniferous tree, branch, bough, bush, sapling or shrub, from the lands of another without the written consent of the owner, whether such land is publicly or privately owned. The written consent shall contain the legal description of the land where the tree, branch, bough, bush, sapling or shrub was cut, as well as the name of the legal owner. The written consent or a certified copy of the consent shall be carried by every person in charge of the cutting or removing of the trees, branches, boughs, bushes, saplings or shrubs, and shall be exhibited to any officer of the law, forest ranger, forest patrol officer, conservation warden, or other officer of the department of natural resources at the officer's request at any time. The officer may inspect the trees, branches, boughs, bushes, saplings or shrubs when being transported in any vehicle or other means of conveyance and may investigate to determine whether or not this section has been complied with. The officer may stop any vehicle or means of conveyance found carrying any trees, branches, boughs, bushes, saplings or shrubs upon any public highway of this state for the purpose of making such inspection and investigation, and may seize and hold, subject to the order of the court, any such trees, bushes, saplings or shrubs found being cut, removed or transported in violation of this section. No person may ship or transport any such trees, bushes, saplings or shrubs outside the county where they were cut unless the person attaches to the outside of each package, box, bale, truckload or carload shipped a tag or label on which appears the person's name and address. No common carrier or truck hauler may receive for shipment or transportation any such trees, bushes, saplings or shrubs unless the tag or label is attached. Any person who violates this section shall be fined not less than \$10 nor more than \$100. Any person who signs any such written consent or certified copy under this section who is not authorized to do so, and any person who lends or transfers or offers to lend or transfer any such written consent or certified copy to another person who is not entitled to use it, and any person not entitled to use any such written consent or certified copy, or who borrows, receives or solicits from another any such written consent or certified copy thereof shall be fined not less than \$100 nor more than \$500.

History: 1975 c. 365, 366; 1975 c. 394 s. 27; 1975 c. 421; 1979 c. 342; 1981 c. 314.

Cross-reference: See s. 23.50 concerning enforcement procedure.

134.63 Nitrous oxide; restrictions on sales; records of certain sales; labeling. (1) In this section:

(a) "Deliver" or "delivery" means the actual, constructive or attempted transfer of nitrous oxide or a nitrous oxide container from one person to another.

(b) "Nitrous oxide container" means any compressed gas container that contains food grade or pharmaceutical grade nitrous oxide as its principal ingredient.

(2) (a) Except as provided in par. (b), no person who engages in the retail sale of cartridges of nitrous oxide may sell more than 24 cartridges in any single retail transaction.

(am) Except as provided in par. (b), no person may, during any consecutive 48-hour period, engage in more than one retail purchase of nitrous oxide or any nitrous oxide container.

(b) Paragraphs (a) and (am) do not apply to any of the following:

1. A retail sale to a bakery, restaurant, institutional food distributor or other person engaged in the food service industry if the bakery, restaurant, distributor or other person has an emergency business need for the cartridges.

2. Any retail sale to or retail purchase by a hospital, health care clinic or other health care organization that uses nitrous oxide to provide medical or dental care.

3. A retail food establishment, as defined in s. 97.30 (1) (c).

(3) (a) Except as provided in sub. (5), every person in this state who delivers nitrous oxide or any nitrous oxide container to another shall keep a register of all deliveries of nitrous oxide or any nitrous oxide container. The register shall show the name and complete address of the person to whom the nitrous oxide or nitrous oxide container is delivered, the number of cartridges or other containers delivered and the date of delivery.

(b) A person required to keep a register under par. (a) shall preserve the register on his or her business premises for 2 years in such a manner as to ensure permanency and accessibility for inspection and shall permit inspection of the register at all reasonable hours by state and local law enforcement agencies and by any state agency, as defined in s. 16.61 (2) (d).

(c) No person required to keep a register under par. (a) may deliver nitrous oxide or any nitrous oxide container to another person unless the person to whom the nitrous oxide or nitrous oxide container is delivered presents an official identification card, as defined in s. 125.085 (1) (a) to (c).

(d) No person to whom nitrous oxide or any nitrous oxide container is delivered may give a false name or address to a person required to keep a register under par. (a).

(4) (a) Except as provided in sub. (5), no person may deliver a cartridge of nitrous oxide to another unless the cartridge bears a label, stamp or tag that sets forth in clearly legible and conspicuous form the following warning: "Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under the age of 21. Do not inhale the contents of this cartridge. Misuse of nitrous oxide can be dangerous to your health."

(b) Except as provided in sub. (5), no person may deliver a cartridge of nitrous oxide to another unless the packaging in which the cartridge is enclosed is marked with a label or other device that indicates the name and business address of the person delivering the cartridge of nitrous oxide.

(5) Subsections (3) and (4) do not apply to a retail food establishment, as defined in s. 97.30 (1) (c).

History: 1997 a. 336; 2007 a. 164.

134.65 Cigarette and tobacco products retailer license. (1) No person shall in any manner, or upon any pre-

tense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products to any person not holding a license as herein provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised.

(1m) A city, village, or town clerk may not issue a license under sub. (1) unless the applicant specifies in the license application whether the applicant will sell, exchange, barter, dispose of, or give away the cigarette or tobacco products over the counter or in a vending machine, or both.

(2) (a) Except as provided in par. (b), upon filing of a proper written application a license shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The city, village or town may charge a fee for the license of not less than \$5 nor more than \$100 per year which shall be paid to the city, village or town treasurer before the license is issued.

(b) In any municipality electing to come under this paragraph, upon filing of a proper written application a license shall be issued and continue in force for one year from the date of issuance unless sooner revoked. The city, village or town may charge a fee for the license of not less than \$5 nor more than \$100 per year which shall be paid to the city, village or town treasurer before the license is issued.

(3) Each such license shall name the licensee and specifically describe the premises where such business is to be conducted.

Such licenses shall not be transferable from one person to another nor from one premises to another.

(4) Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes and tobacco products. Such records shall be preserved on the licensed premises for 2 years in such a manner as to insure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.

(5) Any person violating this section shall be fined not more than \$100 nor less than \$25 for the first offense and not more than \$200 nor less than \$25 for the 2nd or subsequent offense. If upon such 2nd or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned not exceeding 60 days or both. Conviction shall immediately terminate the license of the person convicted of being personally guilty of such failure to exercise due care and the person shall not be entitled to another license hereunder for a period of 5 years thereafter, nor shall the person in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license.

History: 1983 a. 27; 1987 a. 67; 1993 a. 482; 1997 a. 214; 2001 a. 75.

134.66 Restrictions on sale or gift of cigarettes or tobacco products. (1) DEFINITIONS. In this section:

- (a) "Cigarette" has the meaning given in s. 139.30 (1m).
 (am) "Direct marketer" has the meaning given in s. 139.30 (2n).
 (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).
 (g) "Retailer" means any person licensed under s. 134.65 (1).
 (h) "School" has the meaning given in s. 118.257 (1) (d).
 (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, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, 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 s. 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.

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

(b) 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 s. 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 s. 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.

(cm) 1m. 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.

2. Notwithstanding subd. 1m., no retailer may place a vending machine within 500 feet of a school.

(e) No retailer or direct marketer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under s. 139.32 (1).

(2m) TRAINING. (a) Except as provided in par. (b), at the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for a violation of sub. (2) (a) or (am). The department of health services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this paragraph. A retailer may comply with this paragraph by providing the training program developed or approved by the department of health services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the department of health services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee, or independent contractor.

(b) Paragraph (a) does not apply to an agent, employee, or independent contractor who has received the training described in par. (a) as part of a responsible beverage server training course or a comparable training course, as described in s. 125.04 (5) (a) 5., that was successfully completed by the agent, employee, or independent contractor. The department of health services shall make the training program developed or approved by that department under par. (a) available to the technical college system board, and that board shall include that training program or a comparable training program approved by that department in the curriculum guidelines specified by that board under s. 125.04 (5) (a) 5. The department of health services shall also make the training program developed or approved by that department under par. (a) available to any provider of a comparable training course, as described in s. 125.04 (5) (a) 5., on request, and the department of revenue or the educational approval board may approve a comparable training course under s. 125.04 (5) (a) 5. only if that training course includes the training program developed or approved by the department of health services under par. (a) or a comparable training program approved by that department.

(c) If an agent, employee, or independent contractor who has not received the training described in par. (a) commits a violation of sub. (2) (a) or (am), a governmental regulatory authority, as defined in s. 254.911 (2), may issue a citation based on that violation only to the retailer that hired or contracted with the agent,

employee, or independent contractor and not to the agent, employee, or independent contractor who has not received that training. If an agent, employee, or independent contractor who has received the training described in par. (a) commits a violation of sub. (2) (a) or (am) for which a governmental regulatory authority issues a citation to the retailer that hired or contracted with the agent, employee, or independent contractor, the governmental regulatory authority shall also issue a citation based on that violation to the agent, employee, or independent contractor who has received that training.

(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 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), (cm), or (e) or a local ordinance which strictly conforms to sub. (2) (a), (am), (cm), or (e).

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 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. A county, town, village, or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section. A county ordinance adopted under this subsection does not apply within any town, village, or city that has adopted or adopts an ordinance under this subsection. If a county, town, village, or city conducts unannounced investigations of retail outlets, as defined in s. 254.911 (5), to determine compliance with an ordinance adopted under this subsection, as authorized under s. 254.916 (1), the investigations shall meet the requirements of s. 254.916 (3) (a) to (f) and any standards established by the department of health services under s. 254.916 (1) (b).

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352; 1997 a. 214; 1999 a. 9; 2001 a. 75; 2003 a. 326; 2005 a. 25; 2007 a. 20 s. 9121 (6) (a).

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations that are not in strict conformity with those of the state. *U.S. Oil, Inc. v. City of Fond du Lac*, 199 Wis. 2d 333, 544 N.W.2d 589 (Ct. App. 1995), 95–0213.

134.69 Peddling finger alphabet cards prohibited. No person in this state may engage in the business of peddling finger alphabet cards or printed matter stating that the person is deaf, or use finger alphabet cards or such printed matter or masquerade as a deaf person in any way as a means of inducement in the sale of merchandise. No state or local license may be issued to any person for the purpose of peddling finger alphabet cards or printed matter stating that the person is deaf or masquerading as a deaf person. Any person who peddles or uses finger alphabet cards or such printed matter, or masquerades as a deaf person in any way as a means of inducement in the sale of merchandise in this state and any person who issues any state or local license for that purpose may be imprisoned not more than 90 days or fined not less than \$25 nor more than \$100 or both.

History: 1977 c. 29 s. 1503; Stats. 1977 s. 134.69.

134.695 Antique dealers and recyclers. (1) In this section:

(a) “Antique dealer” means a person, other than a nonprofit organization, who is engaged in the business of selling or purchasing used home furnishings.

(am) “Nonprofit organization” means an organization described in section 501 (c) (3) of the Internal Revenue Code which is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

(b) “Recycler” means a person, other than a nonprofit organization, who is engaged in the business of purchasing used home furnishings for the purpose of collecting, separating, processing and selling the material that was used in manufacturing the used home furnishings.

(c) “Registration plate” means a plate specified under s. 341.12 or under a similar law of another state.

(d) “Used home furnishings” means windows, siding, piping, radiators, cabinets, bookcases, doors, light fixtures, wood moldings, bathroom fixtures, bannisters, doorknobs, mantels, staircases or other attached items that are removed from a home or other building.

(2) No antique dealer or recycler may knowingly purchase or receive used home furnishings from a person unless the antique dealer or recycler obtains the person’s signature and records all of the following information:

(a) The person’s name and address.

(b) One of the following identification numbers:

1. The person’s motor vehicle operator’s license number.

2. The person’s state identification card number.

3. The person’s military identification card number.

4. The person’s U.S. passport number.

5. The person’s alien registration card number.

(c) The registration plate numbers and the color, make, model and year of any motor vehicle delivering the used home furnishings to the antique dealer or recycler.

(d) If known by the person, the address of the home or other building from which the used home furnishings were removed.

(3) An antique dealer or recycler shall maintain a record of the information provided under sub. (2) for not less than one year after the later of the dates on which the antique dealer or recycler purchases or receives the used home furnishings.

(4) Any person who violates this section shall forfeit not less than \$100 nor more than \$1,000 for the first offense and shall forfeit not less than \$500 nor more than \$3,000 upon conviction for a 2nd or subsequent offense.

History: 1997 a. 76.

134.71 Pawnbrokers and secondhand article and jewelry dealers. (1) DEFINITIONS. In this section:

(a) “Article” means any of the following articles except jewelry: