



Legislation Text

File #: 010342, Version: 1

010342
SUBSTITUTE 1

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A substitute ordinance relating to cigarette and tobacco sales to, and possession by, persons under the age of 18.

106-30-1-d rc

106-30-1-e cr

106-30-2 rc

106-30-3-a am

106-30-3-b am

106-30-3-d cr

106-30-3-e cr

106-30-4 rn

106-30-4 cr

106-30.5 cr

This ordinance amends various provisions relating to the sale to and possession of cigarettes and tobacco products to persons under the age of 18 to bring the code into compliance with state statutes pursuant to recent amendments enacted by 1999 Wisconsin acts 9, 84 and 185. The major changes include a penalty not to exceed \$50 for possession of cigarettes or tobacco products by minors and permits an exception for minors involved in official "sting" operations. There is also a provision related to the defense of retailers who sell to minors who present false ID or appear to be 18 or over to a prudent person.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 106-30-1-d of the code is repealed and recreated to read:

106-30. Sale of Tobacco to Persons Under 18.

1. DEFINITIONS.

d. "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; fine cut and other chewing tobaccos; short; refuse scrape, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes, as defined under s. 139.30(1), Wis. Stats.

Part 2. Section 106-30-1-e of the code is created to read:

e. "Vending machine" means any mechanical device that automatically dispenses cigarettes or

tobacco products when money or tokens are deposited in the device in payment for cigarettes or tobacco products.

Part 3. Section 106-30-2 of the code is repealed and recreated to read:

2. PROHIBITION. a. No retailer may sell or give to any person under the age of 18 any cigarette or tobacco products at any time, except as provided in s.254.92(2)(a), Wis. Stats. A vending machine operator is not liable under this section 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 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.

Part 4. Section 106-30-3-a and b of the code is amended to read:

3. REGULATIONS.

a. The owner or operator of a premise which sells cigarettes or tobacco produces shall post a sign in the immediate area where those products are sold stating that the sale of any cigarette or tobacco products to a person under the age of 18 is unlawful under this section and ~~[[s.]]~~ ss. 134.66 ~~[[,~~]] and 254.92, Wis. Stats.

b. Any person licensed under s. 84-43 who sells cigarettes through a vending machine shall place on >>the front of<< each machine, in a conspicuous place, a decal furnished by the city, which states that it is unlawful for persons under the age of 18 to purchase cigarettes >>under s. 254.92, Wis. Stats., and that the purchaser is subject to a forfeiture not to exceed \$50<<.

Part 5. Section 106-30-3-d and e of the code is created to read:

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.

e. 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.

Part 6. Section 106-30-4 of the code is renumbered 106-30-5.

Part 7. Section 106-30-4 of the code is created to read:

4. DEFENSE OF RETAILER. Proof of all of the following facts by a retailer 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.

Part 8. Section 106-30.5 of the code is created to read:

106-30.5. Purchase and Possession of Cigarettes and Tobacco Products by Persons Under the Age of 18.

1. FALSE REPRESENTATION ILLEGAL. No person under 18 years of age may falsely represent his or her age for the purpose of receiving any cigarette or tobacco product.
2. EXCEPTION. No person under 18 years of age may purchase or possess cigarettes or tobacco products except as follows:
 - a. A person under 18 years of age may purchase or possess cigarettes 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 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 sub. 3 and s. 254.916(3), Wis. Stats.
3. INVESTIGATION EXCEPTION. With the permission of his or her parent or guardian, a person under the age of 18 years, but not under 15 years of age may buy, attempt to buy or possess any cigarette or tobacco product if all of the following are true:
 - a. The person commits the act for the purpose of conducting an investigation under s. 254.916, Wis. Stats.
 - b. The person is directly supervised during the conducting of the investigation by an adult employe of a governmental regulatory authority.
 - c. The person has prior written authorization to commit the act from a governmental regulatory authority or a district attorney or from an authorized agent of a governmental regulatory authority or a district attorney.
4. SEIZURE. A police officer shall seize any cigarette or tobacco product that has been sold to and is in the possession of a person under 18 years of age.
5. PENALTY. Any person convicted of violating this section, shall be subject to a forfeiture not to

exceed \$50.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB01085-3

lme

7/24/01