



Legislation Text

File #: 180187, Version: 0

180187
ORIGINAL

ALD. MURPHY, JOHNSON, PEREZ, LEWIS, HAMILTON, BORKOWSKI AND DONOVAN
An ordinance relating to regulation of electronic cigarettes for minors.

106-30-1-b rn
106-30-1-b cr
106-30-1-c rn
106-30-1-d rn
106-30-1-e rn
106-30-2-a am
106-30-2-b am
106-30.2 cr

The ordinance prohibits sale of electronic cigarettes and electronic cigarette paraphernalia to minors.

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

Part 1. Section 106-30-1-b to e of the code is renumbered 106-30-1-c to f.

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

106-30. Sale of Cigarettes, Nicotine Products, or Tobacco Products to Persons Under 18.

1. DEFINITIONS.

b. "Nicotine products" means a product that contains nicotine and is not any of the following:

b-1. A tobacco product.

b-2. A cigarette.

b-3. A product that has been approved by the U.S. food and drug administration for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such an approved purpose.

Part 3. Sections 106-30-2-a and b of the code is amended to read:

2. PROHIBITION. a. No retailer may sell or give to any person under the age of 18 any cigarette >>₁ nicotine product,<< or tobacco product[[s]] at any time >>, except as provided in s. 254.92(2)(a), Wis. Stats<<.

b. No retailer 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.

Part 4: Section 106-30.2 of the code is created to read:

106-30.2. Sale of Electronic Cigarettes to Persons Under 18.

1. DEFINITIONS. In this section:

- a. "Electronic smoking device" means an electronic device that can be used to deliver an inhaled dose of nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. It includes any such device whether manufactured, distributed, marketed, or sold as an electronic cigarette, commonly known as e-cigarettes; an electronic cigar; an electronic cigarillo; an electronic pipe; an electronic hookah; vape pen; or any other product name or descriptor.
- b. "Electronic smoking device paraphernalia" means a cartridge, cartomizer, e-liquid, smoke juice, tip, atomizer, electronic smoking device battery, electronic smoking device charger, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices. It does not include any cigarette, as defined in s. 139.30(1m) Wis. Stats., nicotine product, as defined in s. 134.66(1)(f), Wis. Stats., or tobacco products, as defined in s. 139.74(12), Wis. Stats.
- c. "Person" means any individual, partnership, firm, organization, association, corporation, trustee, or other legal entity of any kind.
- d. "Vending machine" means any mechanical device that automatically dispenses electronic smoking devices or electronic smoking device paraphernalia when money or tokens are deposited in the device in payment for electronic smoking devices or electronic smoking device paraphernalia.

2. PROHIBITION. a. No person may sell or give any person under the age of 18 any electronic smoking device or electronic smoking device paraphernalia at any time.

b. No person may provide for nominal or no consideration an electronic smoking device or electronic smoking device paraphernalia 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.

3. REGULATIONS. a. The owner or operator of an establishment that sells electronic smoking devices or electronic smoking device paraphernalia shall post a sign in the immediate area where those products are sold stating that the sale of any electronic smoking devices or electronic smoking device paraphernalia to a person under the age of 18 is unlawful under this section.

b. A person or vending machine operator may not sell electronic smoking devices or electronic smoking device paraphernalia from a vending machine, except in an establishment where individuals under the age of 18 are not present or permitted at any time, as provided in s. 21 CFR Part 1140.

4. DEFENSE OF SELLER. Proof of all the following facts by a person who sells electronic smoking devices or electronic smoking device paraphernalia 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.

5. PENALTIES. a. Any person convicted of violating this section, except sub. 3-a, shall be subject to the following forfeitures:

a-1. Not more than \$500 if the person has not committed a previous violation within 12 months of the violation.

a-2. Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.

b. Any person convicted of violating sub. 3-a shall forfeit not more than \$25.

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: _____

LRB 170748-1b
Tea Norfolk
5/4/2018