

**Subject** Sale of flavored tobacco products

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**Date** February 15, 2021

## Overview

This bill prohibits the sale or offer for sale of flavored products. Flavored products are defined as tobacco, a tobacco-related device, an electronic delivery device, or a nicotine or lobelia delivery product that imparts a taste or smell, other than the taste or smell of tobacco, before or during consumption of the product.

At the federal level, the Food and Drug Administration bans cigarettes with characterizing flavors other than menthol or tobacco. Other flavored tobacco products are not prohibited by the FDA. A federal law prohibits new tobacco products from being legally marketed unless they receive premarket authorization. A 2020 FDA guidance prioritizes FDA enforcement for lack of marketing authorization against flavored, cartridge-based electronic nicotine delivery systems (ENDS products), other than tobacco or menthol-flavored ENDS products; and all other ENDS products for which the manufacturer is not acting to prevent access by minors or that are targeted to minors. The guidance also prioritizes enforcement against ENDS products offered for sale after September 9, 2020, for which the manufacturer has not submitted a premarket application or which received a negative FDA action.

## Summary

Section	Description
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| 1 | <p><b>Administrative penalties for sales and furnishing; licensees.</b></p> <p>Amends § 461.12, subd. 2. Expands the circumstances in which a tobacco retailer, employee, or agent is subject to administrative penalties, by:</p> <ul style="list-style-type: none"><li>▪ adding licensee agents as persons on whom administrative penalties may be imposed; and</li><li>▪ including selling or offering to sell flavored products to a person.</li></ul> |
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Specifies that administrative penalties for selling flavored products or offering them for sale shall be calculated on a per-item and per-transaction basis, and allows penalties to be assessed cumulatively.

**2 Effect on local ordinance; notice.**

Amends § 461.19. Provides that a local ordinance that more restrictively regulates the sale or offering for sale of flavored products is not preempted by state law. Also corrects a term.

**3 Sale of flavored products prohibited.**

Adds § 461.23. Prohibits the sale or offer for sale of flavored products, establishes a rebuttable presumption of when a product is a flavored product, and specifies penalties.

**Subd. 1. Definitions.** Defines terms for this section: consumer, electronic delivery device, flavored product, licensee, nicotine or lobelia delivery product, out-of-state retailer, tobacco, and tobacco-related device.

**Subd. 2. Prohibition.** Prohibits tobacco retailers, employees or agents of a tobacco retailer, and out-of-state retailers from selling or offering for sale flavored products to consumers in this state.

**Subd. 3. Presumption that tobacco, device, or product is a flavored product.** Specifies that if a manufacturer, employee, or agent makes public statements or claims that a tobacco product imparts a taste or smell other than the taste or smell of tobacco, or uses text, images, or colors to indicate that a tobacco product imparts a taste or smell other than the taste or smell of tobacco, there is a rebuttable presumption that the tobacco product is a flavored product.

**Subd. 4. Penalties.** Paragraph (a) specifies that a tobacco retailer who violates this section is subject to administrative penalties according to this chapter.

Paragraph (b) provides that flavored products sold or offered for sale in this state are contraband and are subject to forfeiture, civil penalties, and enforcement actions according to other law.

Paragraph (c) provides that each sale or offer for sale of a flavored product in violation of this section constitutes a separate violation.

This section is effective August 1, 2021, and applies to sales or offers for sale occurring on or after that date.



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