

ORDINANCE NO. 2367

AN ORDINANCE AMENDING CHAPTER 352, JUVENILES TO PROHIBIT VAPING DEVICES

The Board of Trustees of the Village of Winneconne do ordain as follows:

Section 1. Section 352-8, is hereby amended to read as follows:

§ 352-8. Purchase, use, and/or possession of tobacco products, electronic smoking devices, and hemp-derived cannabinoid products.

A. Definitions. As used in this section:

CIGARETTE

Has the meaning given in § 139.30(1), Wis. Stats.

DISTRIBUTOR

A person specified under § 139.30(3) or 139.75(4), Wis. Stats.

ELECTRONIC SMOKING DEVICES

Electronic smoking devices include vapes, vaporizers, vape pens, hookah pens, electronic cigarettes (e-cigarettes or e-cigs), e-cigars, e-pipes, and other electronic delivery systems (ENDS), which use an "e-liquid" typically containing nicotine (i.e., the addictive drug found in regular cigarettes and other tobacco products), marijuana, flavorings, and/or other chemicals that produce an aerosol. Users inhale the aerosol from devices, and bystanders breathe in the aerosol that has been exhaled by users of such devices.

Electronic smoking devices are often made to look like conventional cigarettes, cigars, and pipes, as well as everyday items, such as USB flash drives and pens.

The United States Food and Drug Administration (FDA) monitors use in such devices and has noted an "epidemic" of electronic smoking device use by youth.

HEMP-DERIVED CANNABINOID PRODUCTS

Hemp-derived cannabinoid products include:

- cannabinoids other than Delta-9 tetrahydrocannabinol (THC), or an isomer derived from such cannabinoids (including, but not limited to, Delta-8 THC and Delta-10 THC); and

- products containing Delta-9 THC in a concentration of 0.3 percent or less.

IDENTIFICATION CARD

A license containing photograph issued under Ch. **343**, Wis. Stats.

JOBBER

Has the meaning given in § 139.30(6), Wis. Stats.

LAW ENFORCEMENT OFFICER

Has the meaning given in § 30.50(4s), Wis. Stats.

MANUFACTURER

Any person specified under § 139.30(7) or 139.75(5), Wis. Stats.

NICOTINE PRODUCT

Has the meaning given in § 134.66(1)(f), Wis. Stats.

NON-TOBACCO CHEWING POUCH OR CHEW

A pouch or chew, containing nicotine, which resembles chewing tobacco or chewing tobacco pouches but is tobacco-free.

RETAILER

Any person licensed under § 139.65(1), Wis. Stats.

SCHOOL

Has the meaning given in § 118.257(1)(c), Wis. Stats.

SUBJOBBER

Has the meaning given in § 139.75(11), Wis. Stats.

TOBACCO PRODUCTS

Has the meaning given in § 139.75(12), Wis. Stats.

VENDING MACHINE

Has the meaning given in § 139.30(14), Wis. Stats.

VENDING MACHINE OPERATOR

Has the meaning given in § 139.30(15), Wis. Stats.

B. Restrictions.

- (1) Except as provided in Subsection **C** below, no person under the age of ~~18- 21~~ may buy or attempt to buy, *or possess* any cigarettes or tobacco products, falsely represent his or her age for the purpose of receiving any cigarette or tobacco product, or possess any cigarette or tobacco product.
- (2) Except as provided in Subsection **C** below, no retailer may sell or give cigarettes or tobacco products to any person under the age of ~~18-21~~. A vending machine operator is not liable under this subsection for the purchase of cigarettes or tobacco products from his/her vending machine by a person under the age of ~~18-21~~ if the vending machine operator was unaware of the purchase.
- (3) A retailer shall post a sign in areas within his/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 ~~18-21~~ is unlawful under this section or comparable state laws.
- (4) No person may place a vending machine within 500 feet of a school.
- (5) No manufacturer, distributor, jobber, subjobber, or retailer, or their employees or agents, may provide cigarettes or tobacco products for nominal or no consideration to any person under the age of ~~18-21~~.
- (6) No person under the age of 21 may use or possess an electronic smoking device(s) (including, but not limited to, a vape(s) or vaping device(s)) or a nicotine product(s) (including, but not limited to, a non-tobacco chewing pouch(es) or chew).
- (7) No person under the age of 21 may use or possess a hemp-derived cannabinoid product(s) (including, but not limited to, a product containing Delta-8 or Delta-10).

C. Employment resale exception. A child may purchase or possess cigarettes or tobacco products for the sole purpose of resale in the course of employment during his/her normal working hours if employed by a retailer licensed under § 134.65(1), Wis. Stats.

D. Defense of retailers. Proof of all the following facts by retailer who sells cigarettes or tobacco products to a person under the age of ~~18-21~~ is a defense to any prosecution for a violation of Subsection **B(2)** above:

- (1) That the purchaser falsely represented that he/she had attained the age of ~~18-21~~ 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 ~~18-21~~;
- (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 ~~18-21~~.

E. Seizure of tobacco products. A law enforcement officer shall seize any cigarette or tobacco product involved in any violation of Subsection **B** above committed in his/her presence.

F. Penalties.

- (1) A person who commits a violation of Subsection **B(2)**, **(4)** or **(5)** of this section is subject to a forfeiture as determined by Village Board.
- (2) In addition, a court shall suspend any license or permit under § 134.65, 139.34 or 139.79, Wis. Stats., as set forth in § 134.66(4), Wis. Stats.
- (3) Whoever violates Subsection **B(3)** of this section shall pay a forfeiture as determined by Village Board.
- (4) Whoever violates Subsection **B(1)** of this section shall pay a forfeiture as determined by Village Board.
- (5) Whoever violates Subsection **B(6)** or **B(7)** of this section shall pay a forfeiture as determined by the Village Board. Citation amounts shall increase for each subsequent offense.

Section 2. Any person violating the provisions of this Ordinance shall be subject to the penalty as provided therein.

Section 3. The appropriate Village officials are hereby authorized and directed to take such action as is necessary to effectuate the terms of this Ordinance.


Section 4. This Ordinance shall take effect and be in force upon its passage and publication as provided by law.

Adopted this 20th day of February, 2024

VILLAGE OF WINNECONNE



Chris Boucher, Village President

Attest: 
Ann Wasinger, Village Clerk