

Model Wisconsin Ordinance Requiring a Tobacco Retailer License

WITH ANNOTATIONS

This model ordinance analysis was developed by ChangeLab Solutions' staff attorneys to assist Wisconsin cities, towns, and villages interested in establishing local ordinances regulating tobacco retail licensing ("TRL") and sales to the extent permitted by Wisconsin state law. Communities have adopted TRL laws to ensure compliance with tobacco-related laws, reduce youth access to tobacco, and limit the negative public health effects associated with tobacco use.

The information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer licensed in their state.

Introduction and Report

This Introduction and Report summarizes our analysis and study of the public health problem surrounding tobacco use. It also provides a rationale for adopting tobacco retailer licensing and other youth-access restrictions to address this problem. It is intended for broad distribution to the public. Our presentation of this Model Ordinance, including this Introduction and Report, is based on our independent and objective analysis of relevant law, evidence, and available data. As we explain in this Introduction and Report, there are arguments on all sides of the debate about tobacco retailer licensing. Readers should consider all of the evidence and decide for themselves what approach is appropriate for their local jurisdictions.

This Model Ordinance was developed to assist Wisconsin cities, towns, and villages interested in establishing local ordinances regulating tobacco retail licensing (“TRL”) and sales to the extent permitted by Wisconsin state law. Communities have adopted TRL laws to ensure compliance with tobacco-related laws, reduce youth access to tobacco, and limit the negative public health effects associated with tobacco use.

Background

Tobacco use remains a significant public health problem in Wisconsin and the United States generally. Each year, tobacco-related diseases cause the deaths of more than 7,300 Wisconsinites¹ and 480,000 individuals in the U.S.,² making tobacco use the nation’s leading cause of preventable death.³ It is largely undisputed that tobacco use is extremely harmful. For decades, governments at the federal, state, and local levels have advanced various policies to tackle this significant public health problem. State and local governments have developed educational and media campaigns on the risks of tobacco use, offered resources to help smokers quit, increased cigarette excise taxes, and adopted restrictions on the sale and public use of cigarettes and other tobacco products. Although tobacco use has decreased over the years, it is estimated that 106,200 Wisconsinites under age 18 today will die from tobacco-related diseases.⁴ Tobacco use also has significant negative externalities, including a profound impact on the nation’s health care system. In Wisconsin, the combined health care costs and productivity losses resulting from tobacco use amounts to approximately \$4.6 billion annually.⁵

Tobacco Retailer Licensing: An Effective Tool for Public Health

Tobacco retailer licensing is a policy whereby government requires all stores that sell tobacco to obtain a special license for the privilege of selling these products to consumers. The government can impose specific performance standards and requirements as conditions of maintaining the license, and failure to meet the performance standards may result in license suspension or revocation. TRL is not unlike other types of licensing – like licensing for drivers, for instance – which are aimed at ensuring that licensees have sufficient training to meet performance standards, and that put in place a system to address the problem when licensees fail to meet those standards.⁶

At its most basic level, requiring tobacco retailers to obtain a specific license to operate allows a city, village, or town to maintain an inventory of all the businesses that are selling tobacco, including the different kinds of businesses that sell tobacco, and where they are located relative to schools, youth-populated areas, and each other.⁷ Local tobacco retail licensing laws have also proven effective at reducing illegal tobacco sales to minors, helping to finance effective enforcement programs, and providing a comprehensive enforcement mechanism.⁸

Some argue that it is unfair to charge retailers a fee to sell a legal product, that such fees could put small retailers out of business, and that some retailers are already required to obtain permits under Wisconsin state cigarette and tobacco tax laws.⁹ However, Wisconsin state law limits the annual local tobacco retail licensing fee to no more than \$100.¹⁰ Moreover, retailers generate tremendous income from the sale of tobacco products, with convenience stores generating an average of \$622,248 in cigarette sales per store in 2012.¹¹ Businesses in many industries, such as food services, are required to obtain licenses and permits before operating, and a local tobacco retailer licensing program is a way to ensure that sales of a deadly product are done lawfully.¹²

Moreover, Wisconsin state law already requires *all* retailers to obtain a local tobacco retailer license prior to selling cigarettes or tobacco products in any given city, village, or town.¹³ This Model Ordinance merely codifies these requirements in the local municipal code and allows the municipality to set the annual licensing fee, more easily enforce tobacco control laws, and use moneys from the licensing fees to support such enforcement.

Using This Model Ordinance

In some instances, italicized text within brackets (e.g., [*Name of City / Town / Village*]) prompt you to customize the language of the Model Ordinance to fit your community's needs. You must replace the italicized text with the appropriate information and remove the brackets. In other cases, the Model Ordinance provides options (e.g., [choice one / choice two / choice three]). You also must verify that all internal references (e.g., Sec. [_____ (*2)]) are correct. Removing or renumbering any provision will require updating internal references to the remaining provisions. Some degree of customization is always necessary to ensure the ordinance is consistent with a community's existing laws; however, as discussed in the Legal Authority section, the ordinance must strictly conform to state law. Your local government attorney will likely be the best person to accomplish this for you.

Legal Authority

Although Wisconsin state court decisions have limited the ability for communities to regulate the sale and distribution of cigarettes and tobacco products, local governments may still regulate these activities when state law explicitly authorizes local regulation.¹⁴ Tobacco retail licensing and tobacco youth access restrictions present two areas where Wisconsin state law explicitly preserves some local regulatory authority.

Under Wisconsin state law, individuals selling cigarettes or tobacco products to consumers must first obtain a license from the city, town, or village where the sales will occur.¹⁵ Cities, towns, and villages may adopt ordinances regulating the issuance, suspension, revocation, and renewal of these tobacco retailer licenses if the ordinance "strictly conforms" to state law.¹⁶ Communities may charge an annual fee between \$5 and \$100 for each tobacco retail license.¹⁷ Additionally, cities, towns, and villages may regulate in strict conformity with state law certain provisions related to:

- (1) Youth access to cigarettes, nicotine products, and tobacco products;¹⁸
- (2) The placement of cigarette vending machines;¹⁹
- (3) Signage requirements for tobacco retailers and cigarette vending machine operators;²⁰
- (4) Training requirements for tobacco retailers' employees whose duties will include the sale of cigarettes or tobacco products;²¹ and
- (5) Unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with youth-access restrictions.²²

This Model Ordinance has been carefully drafted to strictly conform to Wisconsin state law. A local ordinance does not strictly conform to state law when it operates outside the boundaries of state law by restricting what state law allows, permitting what state law prohibits, or imposing more severe penalties than state law.²³ Strict conformity does not, however, require that the local ordinance "be a carbon copy of the state statute."²⁴ While the phrasing and organization of this Model Ordinance differs from their corresponding state statutes, the Model Ordinance is no more restrictive or punitive than those state statutes, and the Model Ordinance does not permit any conduct prohibited by state law. However, all laws, even when carefully drafted to avoid conflicts with state and federal law, carry certain risks. Communities should consult with an attorney licensed to practice in their jurisdiction prior to adopting this ordinance.

Disclaimer

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AN ORDINANCE OF THE [CITY / TOWN / VILLAGE] OF [NAME OF CITY / TOWN / VILLAGE] REQUIRING THE LICENSURE OF TOBACCO RETAILERS AND AMENDING THE [NAME OF CITY / TOWN / VILLAGE] MUNICIPAL CODE

The [common council of the city / town board / village board] of [Name of the City / Town / Village] do ordain as follows:

COMMENT: This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

SECTION I. FINDINGS. The [common council of the city / town board / village board] of [Name of the City / Town / Village] hereby finds and declares as follows:

WHEREAS, based in part on the information contained in this section, the [common council of the city / town board / village board] of [Name of the City / Town / Village] finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the [City / Town / Village];

WHEREAS, the [common council of the city / town board / village board] of [Name of the City / Town / Village] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the state of Wisconsin and [City / Town / Village], to protect the health, safety, and welfare of our residents;

WHEREAS, approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation’s leading cause of preventable death;²⁵

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year and will be responsible for 10 percent of all deaths worldwide;²⁶

WHEREAS, 5.6 million of today’s Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;²⁷

WHEREAS, the Wisconsin Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

- State law prohibits the sale or provision of cigarettes, nicotine products, and tobacco products to minors,²⁸ as well as the purchase and possession of cigarettes, nicotine products, and tobacco products by minors;²⁹
- State law provides procedures for using minors to conduct onsite compliance checks of tobacco retailers;³⁰
- State law requires tobacco retailers and vending machine operators to post signs stating that cigarette and tobacco product sales to minors is unlawful;³¹
- State law prohibits the placement of cigarette vending machines within 500 feet of a school, as well as in locations where a minor may enter without being accompanied by the minor’s parent, guardian, or spouse who is at least 18 years of age;³²
- State law requires tobacco retailers to train their employees on compliance with youth-access restrictions and the penalties for violations;³³

WHEREAS, state law requires all tobacco retailers to be licensed by [City / Town / Village] before selling, exposing for sale, possessing with intent to sell, exchanging, disposing, or giving away cigarettes and tobacco products;³⁴

WHEREAS state law allows cities, villages, and towns to adopt an ordinance regulating the issuance, suspension, revocation, and renewal of a tobacco retailer license if the ordinance strictly conforms to state law;³⁵

WHEREAS state law allows cities, villages, and towns to set the annual tobacco retailer licensing fee to any amount between \$5 and \$100;³⁶

WHEREAS state law allows cities, villages, and towns to adopt ordinances in strict conformity with state law that (1) prohibit the sale or provision of cigarettes, nicotine products, and tobacco products to minors; (2) require retailers and vending machine operators to post signage regarding the minimum legal sales age for tobacco; (3) restrict the location of cigarette vending machines; (4) require retailers to train employees on tobacco youth access laws and penalties;³⁷

WHEREAS state law allows cities, villages, and towns to adopt ordinances and procedures in strict conformity with state law for conducting unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with tobacco youth-access laws;³⁸

WHEREAS strict conformity with state law does not require the local ordinance “be a carbon copy of the state statute,” but rather only prohibits local ordinances that operate outside the boundaries of state law by restricting what state law allows, permitting what state law prohibits, or imposing more severe penalties than state law;³⁹

WHEREAS, despite the state’s [and the City’s / Town’s / Village’s] efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

- [INSERT STATE AND/OR LOCAL DATA]

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example:

- A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth access laws;⁴⁰
- A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85 percent in 1994 to 43 percent in 1998;⁴¹
- A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8 percent to 4.9 percent in the number of youth able to purchase tobacco;⁴²

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes, nicotine products, or tobacco products to adults. It will, however, allow the [City / Town / Village] to regulate the operation of lawful businesses to discourage violations of state and local tobacco-related laws;

WHEREAS, [City / Town / Village] has a substantial interest in promoting compliance with state and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

NOW THEREFORE, it is the intent of the [common council of the city / town board / village board] of [Name of the City / Town / Village], in enacting this ordinance, to ensure compliance with the business standards and practices of the [City / Town / Village] and the State of Wisconsin and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

COMMENT: These findings lay out the policy and legal rationale for the ordinance. They also demonstrate why local licensing ordinances that strictly conform to state law are not preempted. It is not necessary to include all the findings in your ordinance, but policymakers and local government attorneys may find it helpful to state the ordinance’s rationale. The findings should be tailored to the needs of your community.

SECTION II: [Article / Chapter] of the [Name of City/Town/Village] Municipal Code is hereby amended to read as follows:

Sec. [_____ (*1)]. Definitions

The following words and phrases, whenever used in this [Article / Chapter], shall have the meanings defined in this subsection, except as provided in Sec. [_____ (*8)] or where context requires otherwise.

- (a) *Cigarette* means any roll of tobacco wrapped in paper or any substance other than tobacco.
- (b) *Direct marketer* means a bonded direct marketer or a nonbonded direct marketer, as those terms are defined in Wis. Stat. § 139.30.
- (c) *Distributor* means any of the following:
 - (1) A person specified under Wis. Stat. § 139.30(3).
 - (2) A person specified under Wis. Stat. § 139.75(4).
- (d) *Identification card* means any of the following:
 - (1) A license containing a photograph issued under Wis. Stat. ch. 343.
 - (2) An identification card issued under Wis. Stat. § 343.50.
 - (3) An identification card issued under Wis. Stat. § 125.08, 1987 stats.
- (e) *Jobber* means any person who acquires stamped cigarettes from manufacturers or distributors, stores them, and sells them to retailers for resale.
- (f) *Manufacturer* means any of the following:
 - (1) Any person who manufactures cigarettes for the purpose of sale, including the authorized agent of a person who manufactures cigarettes for the purpose of sale. “Manufacturer” includes a person who owns an automated roll-your-own machine that is used to make cigarettes, but does not include an individual who owns a roll-your-own machine and uses the machine in their home solely to make cigarettes for their personal use or for the use of other individuals who live in their home.
 - (2) Any person who manufactures and sells tobacco products.
- (g) *Nicotine product* means a product that contains nicotine and is not any of the following:
 - (1) A tobacco product.
 - (2) A cigarette.
 - (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.
- (h) *Retailer* means any person licensed under this [Article / Chapter] or Wis. Stat. § 134.65(1).
- (i) *School* means a public, parochial, private, or tribal school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school, or high school.
- (j) *Stamp* means the authorized indicia of cigarette tax payment including water transfer stamps and heat applied stamps.
- (k) *Subjobber* means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.
- (l) *Tobacco product* means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, 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 “tobacco products” does not include cigarettes.
- (m) *Tobacco retailer license* means a licensed issued under this [Article / Chapter] or Wis. Stat. § 134.65(1).

- (n) *Vending machine* means any mechanical device which automatically dispenses cigarettes upon the deposit therein of specified coins in payment for such cigarettes.
- (o) *Vending machine operator* means a person who acquires stamped cigarettes from manufacturers or permittees, stores them and sells them through the medium of vending machines which the person owns, operates or services and which are located on premises which are owned or under the control of other persons.

COMMENT ON VENDING MACHINE AND VENDING MACHINE OPERATOR DEFINITIONS The state definitions for “vending machine” and “vending machine operator” are specific to *cigarettes*, but the substantive provisions set forth in state law regulating vending machines and vending machine operators address both cigarettes *and* tobacco products. The effects of these inconsistencies remain unclear. However, to strictly conform to state law, this Model Ordinance must incorporate these inconsistencies.

Sec. [_____ (*2)]. License Required; Nontransferable

- (a) *License Required.* No person shall sell or possess with intent to sell any cigarettes or tobacco products within the [City / Town / Village] without first obtaining a tobacco retailer license. Such license shall be in addition to any other license required by state and/or federal law. This subsection shall not apply to a person who sells or possesses with intent to sell cigarettes or tobacco products only to persons: (1) licensed under this [Article / Chapter] or Wis. Stat. § 134.65; or (2) permitted under Wis. Stat. § 139.30 to 139.41 or Wis. Stat. § 139.79.

COMMENT: This is the primary operative section of the ordinance. The provision makes it unlawful to sell or possesses with intent to sell cigarettes or tobacco products to consumers without first obtaining a tobacco retailer license from the local municipality. Importantly, this provision does *not* require a person to obtain a local tobacco retailer license if they only sell cigarettes or tobacco products to other licensed or permitted tobacco companies, including: (1) cigarette manufacturers, jobbers, vending machine operators, and multiple retailers permitted under Wis. Stat. § 139.34; (2) tobacco product distributors and subjobbers permitted under Wis. Stat. § 139.79; and (3) tobacco retailers licensed under Wis. Stat. § 134.65 or a local ordinance in strict conformity to Wis. Stat. § 134.65.

- (b) *Nontransferable.* A tobacco retailer license is valid for one person at one premises and shall not be transferred from one person to another nor from one premises to another.

Sec. [_____ (*3)]. License Application; License Fee; Issuance of License; Term of License

- (a) *License Application.* Applications for a tobacco retailer license shall be made in writing to the [City / Town / Village] Clerk and shall contain the following information:
 - (1) The name, address, and telephone number of the person seeking the tobacco retailer license;
 - (2) The business name, address, and telephone number of the premises for which the tobacco retailer license is sought;
 - (3) Whether cigarettes or tobacco products will be sold over the counter, from a vending machine, or both;
 - (4) Whether the applicant has been found personally guilty of a failure to exercise due care to prevent violation of Sec. [_____ (*2)](a), Sec. [_____ (*5)](a), or Wis. Stat. § 134.65, and, if so, the dates and locations of all such violations within the previous five years; and
 - (5) Such other information as the [City / Town / Village] Clerk deems necessary.

COMMENT: State law requires tobacco retailer license applications to, at minimum, be in writing and specify whether the applicant will sell cigarettes or tobacco products over the counter, in a vending machine, or both. This provision requires applications to include additional information such as the applicant’s name, contact information, business information, and whether the applicant has been found personally guilty of failing to exercise due care to prevent violations of: (1) the requirement to maintain a tobacco retailer license; and (2) the recordkeeping requirements specified in Sec. [_____ (*5)](a) and Wis. Stat. § 134.65(4). State law prohibits any person convicted of two or more of these violations from receiving a tobacco retailer license for five years following their most recent conviction.

- (b) *License Fee.* A person seeking a tobacco retailer license shall pay to [Name of the Government Official/Office to Receive License Fee Payments] a fee of one hundred dollars (\$100) per year or the maximum amount permitted by state law, whichever is greater; provided, however, that such fee shall never exceed the maximum amount permitted by state law.

COMMENT: This provision establishes a fee of \$100 per year per tobacco retailer license, the maximum amount currently allowed by state law. The annual fee will automatically increase or decrease if the Wisconsin state legislature increases or decreases the maximum amount municipalities may charge for each tobacco retailer license.

- (c) *Issuance of License.* Upon receipt of a proper application for a tobacco retailer license and payment of the applicable licensing fee, the [City / Town / Village] Clerk shall issue a tobacco retailer license unless the person seeking the tobacco retailer license has been found personally guilty of a failure to exercise due care to prevent violation of Sec. [_____ (*2)](a), Sec. [_____ (*5)](a), or Wis. Stat. § 134.65 on two or more occasions and the most recent violation occurred within the previous five years. Any tobacco retail license shall contain, at minimum, the name of the licensee and a specific description of the premises to be licensed.

COMMENT: This provision requires the municipality's clerk to issue a license unless:

- (1) The applicant has not submitted a complete and proper written application;
- (2) The applicant has not paid the applicable licensing fee; or
- (3) The applicant is ineligible for the license. A person is ineligible for a tobacco retailer license if they have on two or more occasions been found personally guilty of failing to exercise due care to prevent a violation of tobacco retailer licensing and recordkeeping requirements, and their most recent violation occurred within the previous five years.

- (d) *Term of License.* Each tobacco retailer 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 pursuant to this [Article / Chapter] or Wis. Stat. § 134.65. If the application is filed after July 1, the license fee required by Sec. [_____ (*3)](b) shall not be prorated.

COMMENT ON LICENSE TERM

Wisconsin state law allows municipalities to specify whether:

- (1) All tobacco retailer licenses expire on June 30, regardless of their issuance date; or
- (2) Tobacco retailer licenses continue in effect for one year after issuance.

This provision adopts the first option, meaning that all tobacco retailer licenses issued by the municipality will expire on June 30 each year. Licensing fees are not prorated: a license issued on July 1 and a license issued on June 29 are both subject to the same fee.

Establishing a single expiration and renewal date for all tobacco retailer licenses reduces the overall administrative burden and allows the municipality to collect all licensing fees at the beginning of each fiscal year. However, some municipalities may not have the resources necessary to process all tobacco retailer license renewal applications at one time. If your community wishes to adopt the second option to allow tobacco retailer licenses to remain effective for one full calendar year following their issuance date, replace this provision with the following:

- *Term of License.* Each tobacco retailer license shall be issued and continue in force for one year from the date of issuance unless sooner revoked.

If your community wishes to adopt the first option (i.e. all tobacco retailer licenses expire on June 30) with prorated fees, replace the last sentence of this provision with:

- "If the application is filed after July 1, the license fee shall be prorated."

Sec. [_____] (*4)]. Use of Licensing Fees

- (a) At least [*Insert Minimum Percentage of Fees*] of all fees described in Sec. [_____] (*3) (b) shall be placed into a separate fund to be used exclusively for the administration and enforcement of this [Article / Chapter] and to support enforcement of programs related to compliance with restrictions on youth access to tobacco.

COMMENT: This provision requires that the municipality dedicate a certain percentage of collected tobacco retailer licensing fees dedicated to support the administration and enforcement of this Model Ordinance and to support enforcement of programs related to compliance with restrictions on youth access to tobacco.

Sec. [_____] (*5)]. Requirements and Prohibitions Applicable to Licensees

- (a) Every retailer shall keep complete and accurate records for 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.
- (b) No retailer, direct marketer, manufacturer, distributor, jobber, or subjobber, no agent, employee, or independent contractor thereof, and no agent or employee of an independent contractor may sell, provide for nominal consideration, or provide for no consideration cigarettes, nicotine products, or tobacco products to any person under the age of 18.
- (1) This subsection shall not apply where the person purchasing or receiving the cigarettes, nicotine products, or tobacco products is:
- (i). Under 18 years of age but at least 15 years of age;
 - (ii). Employed by a retailer; and
 - (iii). Purchasing or receiving the cigarettes, nicotine products, or tobacco products for the sole purpose of resale in the course of employment during the person's working hours.
- (2) A vending machine operator is not liable under this subsection for the purchase of cigarettes, nicotine products, or tobacco products from their vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

COMMENT: This provision makes it unlawful to sell or give cigarettes, nicotine products, or tobacco products to minors. There are two exceptions:

- (1) A person may sell these products to a 15, 16, or 17 year old employed by a licensed tobacco retailer and where the minor obtains the products to resell during the course of their employment.
- (2) A vending machine operator is not liable for sales to minors if the vending machine operator did not know about the purchase.

- (c) No retailer, direct marketer, manufacturer, distributor, jobber, or subjobber, no agent, employee, or independent contractor thereof, and no agent or employee of an independent contractor 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 their parent or guardian or by their spouse who has attained the age of 18 years.

COMMENT: This provision prohibits the distribution of free or nominally priced cigarettes, nicotine products, or tobacco products in any location where minors may enter without a parent, guardian, or spouse who is at least 18 years old. Importantly, this provision was enacted prior to the federal Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act"). The Tobacco Control Act prohibits *all* free tobacco product samples, with a narrow exception for small quantities of smokeless tobacco in qualified adult-only facilities.⁴³ Federal law does not restrict nominally priced tobacco products.⁴⁴

- (d) A retailer shall post a sign in areas within their 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 Wis. Stat. § 254.92.

COMMENT: This provision requires tobacco retailers to post signage stating that it is illegal to sell cigarettes or tobacco products to any person under the age of 18.

- (e) A vending machine operator shall attach a notice in a conspicuous place on the front of their vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under Wis. Stat. § 254.92 and that the purchaser is subject to a forfeiture of not more than \$50.

COMMENT: This provision requires vending machine operators to attach a notice on each vending machine that persons under the age of 18 are prohibited from purchasing cigarettes or tobacco products.

This provision addresses both cigarettes and tobacco products even though the definitions for “vending machine” and “vending machine operator” are specific to cigarettes (see the “Comment on Vending Machine and Vending Machine Operator Definitions”).⁴⁵ To strictly conform to state law, this Model Ordinance must incorporate these inconsistencies. However, most locations where cigarette and/or tobacco product vending machines are located will be required to comply with the general signage requirement in Sec. [_____ (*5)](d) that addresses the minimum legal sales age for both cigarettes and tobacco products.

- (f) 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 they are accompanied by their parent or guardian or by their spouse who has attained the age of 18 years.
- (g) Notwithstanding subsection (f), no retailer may place a vending machine within 500 feet of a school.

COMMENT: These provisions prohibits the placement of vending machines within 500 feet from a school and in a location where minors are permitted to enter without a parent, guardian, or spouse who is at least 18 years old. As in other provisions addressing vending machines and vending machine operators, the state law definitions for these terms are specific to cigarettes, but the substantive provisions set forth in state law address both cigarettes and tobacco products. To strictly conform to state law, this Model Ordinance must incorporate these inconsistencies.

- (h) 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 Wis. Stat. § 139.32(1).
- (i) *Training Requirements.*
 - (1) Except as provided in subsection (i)(2), 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 Sec. [_____ (*5)](b) and (c), including training on the penalties under Sec. [_____ (*7)](d) for a violation of Sec. [_____ (*5)](b) or (c). 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 subsection. A retailer may comply with this subsection 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.
 - (2) Subsection (i)(1) does not apply to an agent, employee, or independent contractor who has received the training described in subsection (i)(1) as part of a responsible beverage server training course or a comparable training course, as described in Wis. Stat. § 125.04(5)(a)5., that was successfully completed by the agent, employee, or independent contractor.

COMMENT: Tobacco retailers must provide training to employees whose duties will include the sale of cigarettes or

tobacco products. The training must, at minimum, address compliance with requirements related to the sale or provision of cigarettes, nicotine products, or tobacco products to minors and the penalties for violations. The retailer and employee must verify that they have met these training requirements by signing a form provided by the state Department of Health Services, and the retailer must retain the form in the employee's personnel file. The state Department of Health Services must make available upon request a training program that satisfies these requirements. This training program is accessible at <https://witobaccocheck.org/>. These requirements do not apply if the employee has successfully completed a responsible beverage server or comparable training course where that course includes the training required by this provision.

COMMENT ON YOUTH PURCHASE, USE, AND POSSESSION

Wisconsin state law prohibits minors from purchasing, attempting to purchase, or possessing any cigarette, nicotine product, or tobacco product, with limited exceptions for employment-related activities and youth decoy enforcement operations.⁴⁶ Well-enforced laws targeting retailers provide greater public health benefits than laws penalizing youth for the purchase, use, and possession of tobacco ("PUP Laws").⁴⁷ Studies show that PUP laws only minimally affect tobacco use, and prioritizing enforcement of other tobacco control laws can more effectively reduce youth access to tobacco.⁴⁸ PUP laws also raise significant equity concerns because their enforcement often disproportionately affects youth of color and youth from low-income communities.⁴⁹ For these reasons, some communities have chosen to repeal their PUP laws. While this Model Ordinance does not and cannot modify the application or effect of state law, it does not independently incorporate these prohibitions.

Sec. [_____ (*6)]. Enforcement

- (a) The [City / Town / Village] shall not issue a citation to an agent, employee, or independent contractor for a violation of Sec. [_____ (*5)](b) or (c) unless the agent, employee, or independent contractor has received the training described in Sec. [_____ (*5)](i)(1). The [City / Town / Village] may issue a citation based on that violation only to the retailer that hired or contracted with the agent, employee, or independent contractor.
- (b) If an agent, employee, or independent contractor that has received the training described in Sec. [_____ (*5)](i)(1) violates Sec. [_____ (*5)](b) or (c), the [City / Town / Village] shall not issue a citation based on that violation to the retailer that hired or contracted with the agent, employee, or independent contractor unless the [City / Town / Village] also issues a citation based on that violation to the agent, employee, or independent contractor who has received that training.

COMMENT ON TRAINING REQUIREMENTS AND YOUTH ACCESS CITATIONS:

Whether an employee has received the training required by this Model Ordinance affects whether or not they may be cited for (1) selling cigarettes, nicotine products, or tobacco products to minors; or (2) distributing free or nominally priced cigarettes, nicotine products, or tobacco products in non-age restricted areas. If the employee who violated these restrictions has *not* received the required training, the municipality may only cite the retailer, not the employee. If the employee who violated these restrictions *has* received the required training, the municipality may not cite the retailer unless it also cites the employee.

- (c) Proof of all of the following facts by a retailer, an agent, employee, or independent contractor of a retailer, 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 Sec. [_____ (*5)](b):
 - (1) That the purchaser falsely represented that they had attained the age of 18 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; and
 - (3) That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser, and in belief that the purchaser had attained the age of 18.
- (d) The provisions of Wis. Stat. § 254.916, as amended from time to time, and any standards for procedures and training established under Wis. Stat. § 254.916, are hereby adopted and made part of this subsection by reference.

Such provisions shall govern unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with Wis. Stat. § 134.66(2)(a) and (am) or this [Article / Chapter].

- (1) Notwithstanding any other provision of law, a person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase, or possess cigarettes, nicotine products, or tobacco products in the course of their participation in an investigation under this subsection or Wis. Stat. § 254.916 that is conducted in accordance with this subsection and Wis. Stat. § 254.916(3).

COMMENT: This provision incorporates state law governing unannounced inspections at retail outlets and allows 15, 16, and 17 year olds to participate in undercover youth decoy operations. Local jurisdictions should contact the Wisconsin Department of Health Services for more information on the requirements and standards for conducting unannounced inspections and youth decoy operations.

- (e) The following persons are authorized to enforce the provisions of this [Article / Chapter] and may issue citations in accordance with all applicable state and local requirements, including but not limited to Wis. Stat. §§ 66.0113 and 800.02, for violations of this [Article / Chapter]:

- (1) Any [City / Town / Village] law enforcement officer.
- (2) The [City / Town / Village] *[Title of Top Enforcement Agency Official [e.g. Health Officer or Administrator]]* and their designees.

COMMENT ON CITATION AUTHORITY

Under Wisconsin state law, local governments may authorize the use of citations for violations of ordinances.⁵⁰ Citations may be issued by law enforcement officers of the city, town, or village. The local governing body may also “designate by ordinance or resolution other “city, town, or village officials to “issue citations with respect to ordinances which are directly related to the official responsibilities of the officials.”⁵¹

This provision allows city, town, or village law enforcement officers to enforce this Model Ordinance and issue citations for violations. It also allows cities, towns, and villages to authorize other local agencies to enforce this Model Ordinance and issue citations for violations. To do so, replace the italicized text in subsection (e)(2) above with the name of the head official in the desired local enforcement agency. This could be, for example, the Health Officer in charge of the local health department.

Importantly, many municipalities in Wisconsin have existing “citation ordinances” that provide more general authority to enforce local ordinance violations through citations.⁵² You should verify that these existing citation ordinances do not limit which local agencies you may authorize to enforce this Model Ordinance. If your city, town, or village does not have an existing “citation ordinance,” you may need to adopt one prior to authorizing the use of citations to enforce violations of this Model Ordinance. Your local government attorney will likely be the best person to answer these questions for you.

Sec. [_____ (*7)]. Penalties

- (a) A person who violates Sec. [_____ (*2)](a) or Sec. [_____ (*5)](a) shall be fined:
 - (1) Not more than \$100 nor less than \$25 for a first offense; and
 - (2) Not more than \$200 nor less than \$25 for a second or subsequent offense.
- (b) Notwithstanding subsection (a), if upon a second or subsequent violation of Sec. [_____ (*2)](a) or Sec. [_____ (*5)](a), the person so violating these provisions 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. Conviction shall immediately terminate the tobacco retail 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 tobacco retail license for a period of five years thereafter, nor shall the person in that period act as the servant or agent of a person with a tobacco retail license for the performance of the acts authorized by such tobacco retail license.

COMMENT: This provision establishes the penalties for violating: (1) the requirement to maintain a tobacco retailer license before selling cigarettes or tobacco products to consumers; and (2) the recordkeeping requirements applicable to

tobacco retailers. In most cases, these penalties include a fine between \$25 to \$100 for a first offense and between \$25 and \$200 for a second offense. However, additional penalties apply when a person has on two or more occasions been found personally guilty of a failure to exercise due care to prevent violations of the licensing or recordkeeping requirements. Under these circumstances, the person is subject to: (1) a fine between \$25 and \$300; (2) the revocation of any tobacco retailer license they hold; and (3) a five year prohibition on obtaining any other tobacco retailer license or working for a tobacco retailer where their employment activities involve any action that requires a tobacco retailer license (e.g. selling cigarettes or tobacco products).

(c) A person who violates Sec. [_____ (*5)](d) or Sec. [_____ (*5)](e) shall forfeit not more than \$25.

COMMENT: This provision establishes a fine of up to \$25 for a retailer or vending machine operator that fails to post the signage required by this ordinance.

(d) For purposes of this subsection only, "violation" means a violation of Sec. [_____ (*5)](b), Sec. [_____ (*5)](c), Sec. [_____ (*5)](f), Sec. [_____ (*5)](g), or Sec. [_____ (*5)](h).

- (1) A person who commits a violation is subject to a forfeiture of not more than \$500; provided, however, that the forfeiture amount shall not be less than \$200 if the person has committed a previous violation within 12 months of the violation.
- (2) Pursuant to Wis. Stat. § 134.66, a court shall suspend any license or permit issued under this [Article / Chapter] or Wis. Stat. § 134.65, 139.34, or 139.79 to a person for:
 - i. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;
 - ii. 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
 - iii. 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.
- (3) Pursuant to Wis. Stat. § 134.66, a court shall promptly mail notice of a suspension under Sec. [_____ (*7)](d)(2) to the Department of Revenue and to the clerk of each municipality which has issued a license or permit to the person.

COMMENT: This provision establishes the penalties for the following violations: **(1)** Selling or providing cigarettes, nicotine products, or tobacco products to a minor; **(2)** Distributing free or nominally priced cigarettes, nicotine products, or tobacco products in a location where minors may enter without a parent, guardian, or spouse who is at least 18 years old; **(3)** Selling cigarettes or tobacco products from a vending machine within 500 feet of a school or in a location where minors may enter without a parent, guardian, or spouse who is at least 18 years old; and **(4)** Selling cigarettes unless they are in a package or container with a cigarette tax stamp affixed in accordance with state law. A person violating any of these provisions is subject to a fine up to \$500, and the fine may not be less than \$200 if the person has a previous violation within the past year. A court is also required to suspend the person's tobacco retailer license, with the suspension length determined by the number and date of any previous violations.

Sec. [_____ (*8)]. Interpretation and Strict Conformity

- (a) Nothing in this [Article / Chapter] shall be construed to regulate any conduct where the regulation of such conduct has been preempted by the State of Wisconsin.
- (b) It is the intention of this [Article / Chapter] to strictly conform to Wisconsin state law. Any future amendment, modifications, revisions, renumbering, recodification, additions, or deletions to the Wisconsin state statutes referenced in this subsection shall be incorporated herein and made part of this [Article / Chapter] to the extent necessary to ensure strict conformity to Wisconsin state law. In the event of any conflict between Wisconsin state law and this [Article / Chapter], Wisconsin state law shall apply.

- (1) The words and phrases defined in Sec. [_____ (*1)] are intended to strictly conform to Wis. Stat. § 134.66(1).
- (2) Sec. [_____ (*2)], Sec. [_____ (*3)], Sec. [_____ (*5)](a), and Sec. [_____ (*7)](a) and (b) are intended to strictly conform to Wis. Stat. § 134.65.
- (3) Sec. [_____ (*5)](b)-(i), Sec. [_____ (*6)](a)-(c), and Sec. [_____ (*7)](c) and (d) are intended to strictly conform to Wis. Stat. § 134.66.
- (4) Sec. [_____ (*6)](d)(1) is intended to strictly conform to Wis. Stat. § 254.92(2)(b).

COMMENT: This provision makes clear that this ordinance is intended to strictly conform to state law and that the ordinance should not be interpreted to regulate any conduct that the city, town, or village does not have the authority to regulate. It also provides that if changes to Wisconsin state law result in this ordinance not strictly conforming to state law, those changes to state law will automatically be incorporated into this ordinance to the extent necessary to ensure strict conformity. Prior to adopting this Model Ordinance, your local government attorney should verify that this provision complies with all applicable state and local requirements, including, but not limited to, requirements on incorporating state statutes and amendments by reference.

Sec. [_____ (*9)]. Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, or any other applicable administrative or governing body, such decision shall not effect the validity, constitutionality, or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The [Name of the Governing Body] of the [City / Town / Village] of [Name of the City / Town / Village] hereby declares that it would have passed this ordinance and adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid, unconstitutional, or unenforceable.

COMMENT: This is standard language. Often this “boilerplate” is found at the end of an ordinance but its location is irrelevant.

Sec. [_____ (*10)]. Effective Date

This ordinance shall take effect on [Date or Length of Time After Adoption].

COMMENT: You should check state and local requirements on the minimum amount of time between passing an ordinance and when a law can go into effect, as well as any additional requirements such as notice and publication.

¹ Palmersheim KA, Prosser EC. *Burden of Tobacco in Wisconsin: 2015 Edition*. University of Wisconsin-Milwaukee, Center for Urban Initiatives and Research, Milwaukee, WI: 2015. Available at <http://uwm.edu/cuir/wp-content/uploads/sites/111/2015/04/Burden-of-Tobacco-2015.pdf>.

² U.S. Department of Health and Human Services. (2014). *The Health Consequences of Smoking – 50 Years of Progress. A Report of the Surgeon General*. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf

³ U.S. Department of Health and Human Services. (2014). *The Health Consequences of Smoking – 50 Years of Progress. A Report of the Surgeon General*. Available at: www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf

⁴ Centers for Disease Control and Prevention. (2014). *Best Practices for Comprehensive Tobacco Control Programs – 2014*. Available at: www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.

⁵ Palmersheim KA, Prosser EC. *Burden of Tobacco in Wisconsin: 2015 Edition*. University of Wisconsin-Milwaukee, Center for Urban Initiatives and Research, Milwaukee, WI: 2015. Available at <http://uwm.edu/cuir/wp-content/uploads/sites/111/2015/04/Burden-of-Tobacco-2015.pdf>.

⁶ ChangeLab Solutions. *Tobacco Retailer Licensing Playbook: 10 Strategies for a Comprehensive TRL Policy*. May 2015. Available at: <http://www.changelabsolutions.org/node/5714/product/5458>.

⁷ ChangeLab Solutions. *Tobacco Retailer Licensing Playbook: 10 Strategies for a Comprehensive TRL Policy*. May 2015. Available at: <http://www.changelabsolutions.org/node/5714/product/5458>.

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- ⁸ ChangeLab Solutions. *Tobacco Retailer Licensing: An Effective Tool for Public Health*. Sept. 2012. Available at: <http://www.changelabsolutions.org/node/5713/product/4806>.
- ⁹ See Wis. Stat. §§ 139.34(1)(a) (requiring state cigarette tax permit of cigarette manufacturers, distributors, jobbers, vending machine operators, and multiple retailers), 139.79 (requiring state tobacco tax permit for tobacco product distributors and subjobbers).
- ¹⁰ Wis. Stat. § 134.65(2).
- ¹¹ Center for Tobacco Policy and Organizing, *Cigarettes Generate Big Revenue for Convenience Stores: Analysis of 2013 State of the Industry Report*. September 2013. Available at: <http://center4tobaccopolicy.org/wp-content/uploads/2016/10/Cigarettes-Generate-Big-Revenue-September-2013.pdf>.
- ¹² ChangeLab Solutions. *Show Me Your License: The Basics of Tobacco Retailer Licensing*. August 2015. Available at: <http://www.changelabsolutions.org/node/5713/product/5545>.
- ¹³ Wis. Stat. § 134.65(1).
- ¹⁴ See *U.S. Oil, Inc. v. City of Fond Du Lac*, 544 N.W.2d 589 (Wis. 1996) (“‘Strictly conforms’ language in state statutes prohibiting purchase or possession of tobacco products by children and prohibiting retailers, manufacturers, and distributors from selling or giving tobacco products to children withdraws municipalities’ ability to act outside state mandates.”).
- ¹⁵ Wis. Stat. § 134.65(1).
- ¹⁶ Wis. Stat. § 134.65(8).
- ¹⁷ Wis. Stat. § 134.65(2).
- ¹⁸ Wis. Stat. §§ 134.66(2)(a), (2)(am), (3), (5).
- ¹⁹ Wis. Stat. §§ 134.66(2)(cm), (5).
- ²⁰ Wis. Stat. §§ 134.66(2)(b), (5).
- ²¹ Wis. Stat. §§ 134.66(2m), (5).
- ²² Wis. Stat. § 254.916.
- ²³ *City of Janesville v. Walker*, 183 N.W.2d 158, 160-161 (Wis. 1971).
- ²⁴ *City of Janesville v. Walker*, 183 N.W.2d 158, 160 (Wis. 1971).
- ²⁵ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking — 50 Years of Progress. A Report of the Surgeon General*, www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf
- ²⁶ World Health Organization. 2007. *World Health Statistics 2007, Part 1: Ten Statistical Highlights in Global Public Health*, p. 12, www.who.int/whosis/whostat2007_10highlights.pdf
- ²⁷ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking — 50 Years of Progress. A Report of the Surgeon General*, www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf
- ²⁸ Wis. Stat. §§ 134.66(2)(a), 254.92(2m).
- ²⁹ Wis. Stat. § 254.92(2).
- ³⁰ Wis. Stat. § 254.916.
- ³¹ Wis. Stat. § 134.66(b).
- ³² Wis. Stat. § 134.66(cm).
- ³³ Wis. Stat. § 134.66(2m)(a).
- ³⁴ Wis. Stat. § 134.65(1).
- ³⁵ Wis. Stat. § 134.65(8).
- ³⁶ Wis. Stat. § 134.65(2).
- ³⁷ Wis. Stat. § 134.66(5).
- ³⁸ Wis. Stat. § 254.916(1)(a).
- ³⁹ *City of Janesville v. Walker*, 183 N.W.2d 158, 160-161 (Wis. 1971).
- ⁴⁰ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/
- ⁴¹ Ma GX, Shive S and Tracy M. 2001. “The Effects of Licensing and Inspection Enforcement to Reduce Tobacco Sales to Minors in Greater Philadelphia, 1994-1998.” *Addictive Behaviors* 26(5): 677-687.
- ⁴² Forster JL, Murray DM, Wolfson M, et al. 1988. “The Effects of Community Policies to Reduce Youth Access to Tobacco.” *American Journal of Public Health* 88(8): 1193-1197.
- ⁴³ 21 C.F.R. § 1140.16(d)(1).
- ⁴⁴ See U.S. Food and Drug Administration. 2017. *Draft Guidance for Industry on The Prohibition of Distributing Free Samples of Tobacco Products*, <https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM537082.pdf>.
- ⁴⁵ Wisconsin state law does separately define “tobacco vending machine” and “tobacco vending machine operator” in statutes addressing investigations of tobacco retail outlets and the purchase or possession of cigarettes or tobacco products by minors. See Wis. Stat. § 254.911(9)-(10). However, because these definitions are not incorporated into either the provisions relating to the sale of cigarettes and tobacco products to minors or the provisions mandating vending machine operators post signage about the minimum legal sales age, this Model Ordinance likely cannot apply the broader definition to these provisions while maintaining strict conformity to state law.
- ⁴⁶ Wis. Stat. § 254.92(2).
- ⁴⁷ DiFranza JR. Which interventions against the sale of tobacco to minors can be expected to reduce smoking? *Tob Control*. 2012;21(4):436-442. doi:10.1136/tobaccocontrol-2011-050145. Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tob Control*. 2003;12(Suppl. 1):i6-i13. doi:10.1136/tc.12.suppl_1.i6.

⁴⁸ DiFranza JR. Which interventions against the sale of tobacco to minors can be expected to reduce smoking? *Tob Control*. 2012;21(4):436-442. doi:10.1136/tobaccocontrol-2011-050145. Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tob Control*. 2003;12(Suppl. 1):i6-i13. doi:10.1136/tc.12.suppl_1.i6.

⁴⁹ Gottlieb NH. Minors' tobacco possession law violations and intentions to smoke: implications for tobacco control. *Tob Control*. 2004;13(3):237-243. doi:10.1136/tc.2003.003988.

⁵⁰ Wis. Stat. §§ 66.0113(1)(a), 800.02(1)-(2).

⁵¹ Wis. Stat. §§ 66.0113(2)(a), 800.02(2)(a).

⁵² See, e.g., Racine Municipal Code § 2-551 to 556 (https://library.municode.com/wi/racine/codes/code_of_ordinances?nodeId=PTIIMUCO_CH2AD_ARTVICI); Wauwatosa Municipal Code § 1.24.010 (https://library.municode.com/wi/Wauwatosa/codes/code_of_ordinances?nodeId=TIT1GEPR_CH1.24C1); Merrill Municipal Code § 2-19 to -25 (https://library.municode.com/wi/Merrill/codes/code_of_ordinances?nodeId=PTICOOR_CH2AD_ARTIENORISCI).