

602.300 - Prohibition of Sale of Tobacco Products and Electronic Smoking Devices to Persons Less Than 21.

—1. It shall be unlawful for any person to give, barter, sell, cause to be sold, buy for, distribute samples of or furnish tobacco products or electronic smoking devices to any person under twenty-one (21) years of age.

(O. No. 27399, 5-16-19)

602.310 - Prohibition of Vending of Tobacco Products and Electronic Smoking Devices Without a Sign.

—1. It shall be unlawful for any person to give, barter, sell, cause to be sold, distribute, furnish or permit the sale or distribution of tobacco products or electronic smoking devices, unless the premises upon which such items are sold or distributed prominently displays a sign which shall contain in red lettering at least one-half (½) inch high on white background:

1. "IT IS A VIOLATION OF THE LAW FOR TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES TO BE SOLD TO ANY PERSON UNDER THE AGE OF 21.
2. The sign referred to in subparagraph 1 above shall be provided without cost by the Department of Public Health.

(O. No. 26522, 9-6-16)

602.320 - Prohibition of Smoking in or Adjacent to School Buildings.

—It shall be unlawful for any person under the age of eighteen (18) to use or possess any tobacco or other nicotine-containing products or paraphernalia, including electronic smoking devices, in or on school property or within three hundred (300) feet of any elementary, middle or secondary school building, including both public and private school buildings and school buildings operated by the Special School District of St. Louis County.

Any person in violation of the provisions in this section:

1. Shall have any tobacco products or electronic smoking devices confiscated. Confiscated tobacco products or electronic smoking devices shall be held until a parent or legal guardian claims the confiscated products or devices in person. Parents or legal guardians shall be notified of confiscated products or devices and ability to claim confiscated property. Any tobacco products or electronic smoking devices not claimed within 60 days shall be discarded.
2. Educational resources, approved by the department, if available, shall be provided to the parent or legal guardians claiming confiscated products or devices.

(O. No. 27399, 5-16-19)

602.330 - Prohibition of Smoking in Day Care Centers.

—It shall be unlawful for any person to smoke any cigarettes, cigars, pipes or other tobacco products inside any day care center, in any area or room in which child care is provided, during the hours of operation of the day care center.

(O. No. 15247, 11-15-90)

602.350 - Scope.

—The provisions of Sections 602.300 through 602.370 shall apply throughout St. Louis County except within cities having both a population of seventy-five thousand (75,000) or more and organized health departments.

(O. No. 17981, 4-4-96)

602.360 - Definitions.

—The following specific definitions apply to Sections 602.300 through 602.370:

1. "Tobacco product" means any product that is made from or derived from tobacco, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. The term includes any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, or liquids used in electronic smoking devices. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act;
2. "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine or other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. "Electronic smoking device" includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. "Electronic smoking device" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act;
3. "Vending machine" means any mechanical, electric or electronic self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products or electronic smoking devices;
4. "Department" shall mean the St. Louis County Department of Public Health;
5. "Proof of age" means a driver's license or other documentary or written evidence that the individual is twenty-one (21) years of age or older;
6. "Samples" means a tobacco product or electronic smoking device distributed to members of the general public at no charge for purposes of promoting the product;
7. "Sampling" means the distribution of samples to members of the general public in a public place;
8. "Day care center" shall include the entirety of any house or other building in any part of which care is provided for any part of the twenty-four-hour day for five (5) or more children who do not live on the premises, including but not limited to all day care homes licensed under Chapter 819 SLCRO 1974 as amended;

9. "School property" shall include any public or private elementary school, middle school, secondary school, preschool or early childhood education center building, including school buildings operated by the Special School District of St. Louis County; and all property owned or leased by such schools where student activities occur, including but not limited to athletic fields and appurtenant facilities.

(O. No. 27399, 5-16-19)

602.361 - License required.

—1. No person shall sell tobacco products or electronic smoking devices unless the person is authorized to do so by a license issued by the Department, or is an employee or agent of a person who has been issued a license by the Department. Following the date on which this section becomes effective, no licenses will be issued to persons selling tobacco products within one thousand (1,000) feet of school property as measured by a straight line from the nearest point of the property line of the parcel on which the school property is located to the nearest point of the property line of the parcel on which the person's business is located. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location prior to the date on which this section becomes effective. Licenses issued to persons within one thousand (1,000) feet of school property prior to the date on which this section becomes effective, cannot be transferred to a new owner upon sale of business. Licenses issued to persons within one thousand (1,000) feet of school property prior to the date on which this section becomes effective, will be subject to license suspension and revocation as outlined in Section 602.362. For the purposes of this section, the person deemed to sell tobacco products or electronic smoking devices through a vending machine shall be the owner of the business establishment in which the vending machine is located. The prohibition of this subsection shall not apply to a manufacturer of tobacco products or electronic smoking devices or a wholesaler of same unless such manufacturer or wholesaler is selling to the ultimate consumer of same.

2. i. The annual license fee for the retail sale of tobacco products is as follows:
 - a. One hundred twenty-five (\$125.00) for each retail establishment where tobacco products are sold other than by vending machine. A separate license shall be required for each such retail establishment;
 - b. Twenty-five dollars (\$25.00) for each vending machine which dispenses tobacco products or electronic smoking devices. A separate license shall be required for each vending machine through which such products are sold. Licensees within the boundaries of a municipality shall receive a credit in the amount of any license fee imposed by the municipality on vending machines through which such products are sold.

Funds collected pursuant to subsection 2.i on the sale of tobacco products shall be appropriated into an account assigned by the Accounting Officer and used for enforcement of the sections of this chapter pertaining to sale of tobacco products to persons under twenty-one (21). The Department shall submit to the County Council an annual report summarizing the results of its enforcement efforts.

- ii. The annual license fee for the retail sale of electronic smoking devices shall be twenty-five dollars (\$25.00).
3. A license for the sale of tobacco products or electronic smoking devices shall be valid for a term to expire with the thirtieth day of June next succeeding the date of such license. Application for renewal of licenses for the sale of tobacco products or electronic smoking devices must be filed on or before the first day of May of each calendar year.

4. Every application for a license under this section shall be made in writing upon a form provided by the Department, and shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business or vending machine for which the license is to be issued, and any other identifying information that the Department may require. Nothing in this section precludes the owner of a vending machine from obtaining and completing the retail license application for the owner of the business establishment in which the vending machine is to be located. However, in such a case, the owner of the business establishment in which the vending machine is to be located is the retail licensee, and must sign the application and is subject to all obligations, requirements, penalties and conditions of said licensees imposed by this chapter.
5. Every license for sale of tobacco products or electronic smoking devices issued by the Department shall be renewed upon application except as otherwise provided in this section. Upon notification of a change of address if required by the Department, a license shall be reissued for the new address without the filing of a new application.
6. The Department shall issue a license or renewal of a license within thirty (30) days of receiving a properly completed application and the applicable license fee. A license or renewal thereof shall not be withheld or denied except pursuant to section 602.362; provided, however, that no license shall be issued for the sale of tobacco products or electronic smoking devices through a vending machine unless the applicant certifies compliance with the restrictions set forth in section 602.364 with respect to the machine for which the license is requested. No terms or conditions shall be imposed for the issuance, maintenance or renewal of a license except as specified in this section.

(O. No. 27399, 5-16-19)

602.362 - Suspension and Revocation of Licenses—Hearing Required.

—1. The Director or his designee shall have the power to suspend or revoke any license issued pursuant to this code for the reasons set forth herein.

2. No license shall be suspended or revoked until the licensee has been afforded an opportunity for a hearing before the Director or his designee after notice of at least ten (10) days.
3. Notice shall be served either personally or by First Class Mail, Postage Pre-Paid, to the licensee's address of record and shall state the date, time, and place of hearing and set forth the charges against the licensee.
4. A licensee shall have the opportunity to present evidence and/or witnesses before the Director in person or by counsel. A record of the hearing shall be made. The Director shall issue a decision in writing, denying or compelling suspension or revocation within ten (10) days of the conclusion of the hearing.
5. A license issued under section 602.361 for a particular place of business or vending machine not within one thousand (1,000) feet of school property shall be:
 - a. Suspended for a period of thirty (30) business days upon a determination by the Director that there has been a second violation of either Section 602.300-1 or Sections 602.362 to 602.366 involving the same place of business or vending machine location within three (3) years; or
 - b. Suspended for a period of one hundred twenty (120) business days upon a determination by the Director that there has been a third violation of either Section 602.300-1 or Sections 602.362 to 602.366 involving the same place of business or vending machine location within three (3) years; or
 - c. Revocation upon a determination by the Director that there has been a fourth violation of either Section 602.300-1 or Sections 602.362 to 602.366 involving the same place of business or vending machine location within three (3) years.

6. A license issued under Section 602.361 for a particular place of business or vending machine that is within one thousand (1,000) feet of school property shall be suspended or revoked, and not renewed, for a period of:
 - a. Thirty (30) business days upon a determination by the Director that there has been a first violation of either Section 602.300-1 or Sections 602.362 to 602.366 involving the same place of business or vending machine location within three (3) years;
 - b. Revocation upon a determination by the Director that there has been a second violation of either Section 602.300-1 or Sections 602.362 to 602.366 involving the same place of business or vending machine location within three (3) years.
7. A violation committed by an employee or agent, and attributed to a license holder, shall be counted only once for purposes of subsection 5 of this section.

(O. No. 27399, 5-16-19)

602.363 - Proof of age.

—A person selling or distributing tobacco products or electronic smoking devices shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth demonstrating that the purchaser is twenty-one (21) years old or older. That a person appeared to be over the age of twenty-one (21) shall not constitute a defense to a violation of this section. If a person fails to provide adequate proof of age, the Tobacco Retailer or Tobacco Retailer's agent, employee, or representative shall not sell any tobacco product to the person.

(O. No. 27399, 5-16-19)

602.364 - Sales through vending machines.

—No person shall sell tobacco products or electronic smoking devices in St. Louis County through a vending machine unless the vending machine is located:

1. In areas of factories, businesses, offices or other places that are not open to the public;
2. In places that are open to the public but to which persons under the age of twenty-one (21) years are denied access;
3. In other places, but only if the machine:
 - a. Is under the continuous active supervision of the owner or lessee of the premises or an employee thereof; or
 - b. Can be operated only by the activation of an electronic switch by the owner or lessee of the premises or an employee thereof prior to such purchase; and
 - c. Is inaccessible to the public when the establishment is closed.
4. In any place where continuous active supervision of a vending machine, or activation of an electronic switch, is required by subsection 3 of this section, the person responsible for that supervision or the activation of the switch shall demand proof of age from a prospective purchaser unless such person has reasonable and certain knowledge to believe that the prospective purchaser is twenty-one (21) years of age or older.

(O. No. 26522, 9-6-16)

602.366 - Joint Responsibility; Vicarious Responsibility.

—1. If a sale is made in violation of this ordinance by an employee of the owner of a retail establishment at which tobacco products are sold, both the employee and the owner shall be guilty of the violation and be subject to the fine. If the sale is made through a vending machine, the owner of the establishment where the machine is located shall be guilty of the violation and be subject to the fine; provided, however, that if the proprietor has made an employee responsible for supervising the machine, such employee shall also be guilty of the violation and be subject to the fine.

2. Except as otherwise provided herein, every act or omission of whatsoever nature, constituting a violation of any of the provisions of this Chapter by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of such licensee; and such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally.
3. A person who holds a license issued under Section 602.361 shall not be subject to the suspension provided under subsection 5(a) of Section 602.362 for a violation committed by an employee or agent if the license holder affirmatively demonstrates that the license holder has in place a system of ongoing education and training, internal compliance checks and disciplinary actions reasonably designed to prevent such violations.

(O. No. 27399, 5-16-19)

602.367 - Free Distribution of Tobacco Products or Electronic Smoking Devices Restricted.

—1. It shall be unlawful for any person to distribute samples of tobacco products or electronic smoking devices in or on any public street, sidewalk or park that is within five hundred (500) feet of any playground, school or other facility when the facility is being used primarily by persons under the age of twenty-one (21) years.

2. A person engaged in sampling shall demand proof of age from a prospective recipient if such person has reason to believe that the prospective recipient is under the age of twenty-one (21) years.
3. It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promotion or advertising tobacco products or electronic smoking devices, or any employee or agent of any such licensee or person, in the course of such licensee's or person's business, to distribute, give away or deliver tobacco products or electronic smoking devices free of charge to any person on any public right-of-way, park, playground or other property owned by St. Louis County.

(O. No. 26522, 9-6-16)

602.368 - Sale of Single Cigarettes Prohibited.

—No person shall sell cigarettes individually.

(O. No. 18000, 4-29-96)

602.369 - Enforcement.

- 1. The Department shall have the authority)to enforce sections 602.300 and 602.362 to 602.368 in a manner that can reasonably be expected to reduce the extent to which tobacco products or electronic smoking devices are sold or distributed to persons under the age of twenty-one (21) years, and shall conduct a minimum of two (2) random, unannounced enforcement checks per year at locations where tobacco products or electronic smoking devices are sold or distributed, some of which will be compliance checks involving minors. However, it shall be required that the Department perform compliance checks involving minors annually on no less than fifty (50) percent of all locations licensed by the Department to sell tobacco products or electronic smoking devices. The results of all compliance checks and inspections shall be published by the Department at least annually and made available to the public upon request.
2. Persons under the age of twenty-one (21) years may be enlisted to test compliance with sections 602.300 and 602.362 to 602.368; provided, however, that persons who are under the age of eighteen (18) may be used to test compliance only if written consent of such person's parents or parent or lawful guardian is on file with the Department, and only under the auspices and supervision of the Department.
3. Private organizations may involve themselves in enforcement activities through the Department. Any activities to test compliance with the provisions of this chapter shall be under the supervision or auspices of the Department.

(O. No. 27399, 5-16-19)

602.370 - Penalties

- 1. Except as otherwise provided in this section, every person who shall be convicted of any violation of Section 602.300, 602.330 or 602.368 shall be fined not more than one hundred fifty dollars (\$150.00) for the first such conviction; not more than two hundred fifty dollars (\$250.00) for the second such conviction; and not more than five hundred dollars (\$500.00) for any subsequent conviction.
2. Every person who shall be convicted of any violation of Section 602.310 shall be fined not more than two hundred fifty dollars (\$250.00).
3. Any licensed holder, employee or agent that violates any provision of Section 602.300-1 or Section 602.362 through Section 602.367 shall be subject to:
 - a. A fine of not less than five hundred dollars (\$500.00) for the first violation within a three-year period;
 - b. A fine of not less than seven hundred fifty dollars (\$750.00) for the second violation within a three-year period;
 - c. A fine of one thousand dollars (\$1,000.00) for any additional violation within a three-year period.
4. Any person who violates section 602.361-1 shall be subject to a fine of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00).
5. Any person who violates the provisions of section 602.367 shall be subject to a fine of not less than five hundred dollars (\$500.00).

If the tobacco product or electronic smoking device is distributed by an employee engaged in the business of sampling, the employer shall be guilty of the violation and shall be subject to the fine.

6. A court shall notify the Director of the Department of any fine imposed for violations of sections 602.362 to 602.366.
7. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations for a second or subsequent violation under this section, each individual franchise or business location shall be deemed a separate entity.
8. The funds derived from any penalty collected pursuant to this section shall be appropriated into the fund designated by the Accounting Officer pursuant to Subsection 602.361.2.i(b).

(O. No. 27399, 5-16-19)