

GENESEE COUNTY

REGULATION TO REQUIRE LICENSE FOR RETAIL SALE OF TOBACCO AND TO PROHIBIT THE SALE OF TOBACCO TO MINORS

EFFECTIVE FEBRUARY 14, 1994

GENESEE COUNTY

REGULATION TO REQUIRE LICENSE FOR RETAIL SALE OF TOBACCO AND TO PROHIBIT THE SALE OF TOBACCO TO MINORS

SECTION 1000 – TITLE

This regulation shall be known as the Regulation to Require License for Retail Sale of Tobacco and to Prohibit the Sale of Tobacco to Minors.

SECTION 1001 - AUTHORITY

This regulation is adopted pursuant to authority conferred upon local health departments by Section 2441(1) of the Michigan Public Health Code, Act 368, P.A. of 1978 as amended, MCL 333.2441(1).

SECTION 1002 – JURISDICTION AND ADMINISTRATION

- (1) This regulation shall have effect throughout Genesee County in all areas incorporated and unincorporated, which includes cities, villages and townships.
- (2) The Health Officer shall have responsibility for administering and enforcing this regulation, including all amendments hereafter adopted unless otherwise specifically stated.
- (3) Nothing in this regulation shall be construed to restrict or abrogate the authority of any municipality in Genesee County to adopt more restrictive regulations or ordinances.

SECTION 1003 – PURPOSE AND FINDINGS

Genesee County does hereby find that:

The U.S. Surgeon General has identified cigarette smoking as the single most important preventable cause of premature morbidity and mortality; and

The Director of the National Institute on Drug Abuse has concluded that the majority of the 390,000 Americans who die each year from cigarette smoking “became addicted to nicotine as adolescents before the legal age of consent”; and

The selling, giving or furnishing of tobacco products to a person under eighteen (18) years of age is prohibited in Michigan by Public Act 314 of 1988; and Studies have shown that a significant number of children under the legal age to purchase tobacco are still able to do so.

Therefore, this regulation is adopted to safeguard the public health by requiring a license to engage in the retail sale of tobacco, and by prohibiting the sale of tobacco to minors.

SECTION 1004 – DEFINITIONS

Person means an individual, partnership, corporation, governmental entity, receiver, trustee, assignee, or any other legal entity.

Public Health Code means the Public Health Code of Michigan, Act 368, P.A. 1978, as amended (MCL 333.1101 et seq.; MSA 14.15(1101) et seq.)

Specialty Retail Tobacco Store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Tobacco Retailer means any person who operates a store, stand, booth, concession, or other place at which sales of tobacco are made.

SECTION 1005 – PROHIBITION OF TOBACCO SALES TO MINORS

As of the effective date of this regulation, it shall be unlawful for a person to sell tobacco to an individual under eighteen (18) years of age.

SECTION 1006 – SIGNS REQUIRED

Signs informing the public of the age restrictions provided for herein shall be posted by every retailer at or near every display of tobacco products and at the point of sale. Each such sign shall be plainly visible and shall state:

“THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE IS PROHIBITED BY LAW.”

SECTION 1007 – IDENTIFICATION REQUIRED

As of the effective date of this regulation, it shall be unlawful for a tobacco retailer to sell or permit to be sold tobacco to any individual without requesting and examining identification from the purchaser positively establishing the purchaser's age of eighteen (18) years or greater unless the seller has some other conclusive basis for determining the buyer is over the age of eighteen (18) years. In the event the seller does not request and examine identification from the purchaser, the seller shall be deemed to have not had “a conclusive basis” under this section if the purchaser is in fact a minor. Identification shall be by means of an officially issued card accepted as proof of age in the State of Michigan.

SECTION 1008 – LICENSE REQUIRED

As of the effective date of this regulation, it shall be unlawful for any tobacco retailer in Genesee County to sell tobacco unless that retailer possesses a valid tobacco retailer's license from the Genesee County Health Department for each location where tobacco sales are conducted. The license shall expire one year after the date issued.

SECTION 1009 – LICENSE APPLICATION AND ISSUANCE

Application for a tobacco retailer's license shall be submitted in the name of the person proposing to conduct retail sales of tobacco and shall be signed by such person or his/her agent. All applications shall be submitted on a form supplied by the Genesee County Health Department and accompanied by the required license fee.

The application form shall contain at least the following information:

- (1) The name, home address, home telephone number, date and place of birth, and social security number of the applicant if the applicant is an individual.
- (2) The names, addresses, telephone numbers and social security numbers of any partners or corporate officers.
- (3) The business name, address, and telephone number of the establishment where tobacco is retailed.

SECTION 1010 – LICENSE FEE

The license fee shall be established by the Genesee County Board of Commissioners in accordance with Section 2444 of the Public Health Code. Fees may be adjusted from time to time by the Genesee County Board of Commissioners.

SECTION 1011 – NON-TRANSFERABILITY

A tobacco retailer's license is non-transferable, except, if a tobacco retailer changes location, a new tobacco retailer's license will be issued for the new address upon receipt of an application for change of location. The license will retain the same expiration date as that previously issued.

SECTION 1012 – LICENSE DISPLAY

A current tobacco retailer's license shall be displayed in a conspicuous place in each location where tobacco sales are conducted.

SECTION 1013 – EXCLUSION OF VENDING MACHINES

This regulation shall not apply to tobacco vending machines.

SECTION 1014 – SCHEDULE OF MONETARY CIVIL PENALTIES

Under authority of Section 2461 of the Public Health Code, the following schedule of monetary civil penalties is adopted:

- (1) Any licensed tobacco retailer or individual who violates any provision of this Regulation shall be assessed a monetary civil penalty of Fifty Dollars (\$50.00) for the first violation within the license period.
- (2) Any licensed tobacco retailer or individual who violates any provision of this Regulation shall be assessed a monetary civil penalty of One Hundred Dollars (\$100.00) for a second violation within the license period.
- (3) Any licensed tobacco retailer or individual who violates any provision of this Regulation shall be assessed a monetary civil penalty of Two Hundred Dollars (\$200.00) for a third or subsequent violation within the license period.
- (4) Any person who sells tobacco without a valid tobacco retailer's license shall be assessed a monetary civil penalty of Two Hundred Dollars (\$200.00).
- (5) Each day that a violation exists shall be deemed as a separate violation.

A civil penalty may be appealed to the Health Department within 20 days of receipt of the citation, in accordance with Section 2462 of the Public Health Code. A civil penalty is payable to the Genesee County Health Department and shall be deposited with the Genesee County Treasurer.

An unpaid civil penalty shall be assessed against a tobacco retailer in addition to the regular license fee for the next licensing period.

SECTION 1015 – VIOLATION—MISDEMEANOR

- (1) Any person who violates this regulation is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than Two Hundred Dollars (\$200.00), or both.
- (2) Each day that a violation exists shall be deemed as a separate offense.

SECTION 1016 – APPEARANCE TICKETS

The Health Officer and his/her designees are hereby designated as public servants authorized to issue and serve appearance tickets, in accordance with Section 2463 of the Public Health Code, for violations of this regulation.

SECTION 1017 – LICENSE SUSPENSION AND REVOCATION

A tobacco retailer's license may be suspended or revoked by the Health Officer for cause if the licensee fails to

comply with the provisions of this regulation. These sanctions are in addition to the monetary civil penalties provided for in Section 1013 or criminal penalties which may be pursued. A license may be suspended or revoked as follows:

- (1) In the case of a first and single violation of this regulation, the licensee will be given notification, in writing, of provisions for license suspension or revocation in the event of additional or further violations; and
- (2) In the case of two (2) violations within a single licensing term, the license may be suspended for thirty (30) days; and
- (3) In the case of three (3) violations within a single licensing term, the license may be suspended for ninety (90) days; and
- (4) In the case of four (4) violations within a single licensing term the license may be revoked. A person whose license has been revoked will not be considered for relicensure until one year after the revocation is final.
- (5) Each sale of tobacco to a minor for which a civil citation is issued and becomes final or for which a misdemeanor appearance ticket is issued and for which a penalty is imposed shall constitute a separate violation for purposes of this section.
- (6) Decisions of the Health Officer may be appealed to the Genesee County Health Department Board of Review. An appeal shall stay all proceedings until a final decision by the Board of Review.

The Health Department shall provide prompt written notice to a licensed tobacco retailer of the assessment of any monetary civil penalty under section 1014 against an individual for conduct as an employee of such retailer, the charging of an individual with a misdemeanor under section 1015 for such conduct or the issuance of an appearance ticket under section 1017 to an individual for such conduct.

SECTION 1018 – ESTABLISHMENT OF HEALTH DEPARTMENT BOARD OF REVIEW

The Board of Health and the Health Officer shall comprise the Genesee County Health Department Board of Review. The procedures which follow apply to persons who seek administrative review of a decision to deny, suspend or revoke a tobacco retailer's license.

A quorum of the Board of Review shall consist of at least two Board of Health members, one of whom is also a member of the Board of Commissioners, and the Health Officer.

A decision of the Board of Review requires an affirmative vote of, at least, a majority of a quorum.

SECTION 1019 – BOARD OF REVIEW PROCEDURES

Except as otherwise herein provided, notice of a decision to deny, suspend or revoke a license must be personally served on, or sent by first class mail to the last known address of, the licensee or applicant for a license.

The notice must state the reasons for the decision to deny, suspend or revoke a license. The statement of reasons shall include a citation to a specific violation of this Regulation.

The notice must also advise the licensee or applicant for license of the right to seek review of the decision by the Genesee County Health Department Board of Review and of the procedures for obtaining such review.

Following service of the notice as provided above and, except as otherwise herein provided, an aggrieved licensee or applicant for license shall have ten (10) business days in which to file a Petition for Review of the Decision.

Failure by the licensee or applicant for license to timely file a petition for review shall cause the decision to become a Final Order of Immediate Effect.

Except as otherwise herein provided, hearings shall be scheduled not more than fourteen (14) days following the day on which a petition for review is filed. Notice of the date, time, and place of the hearing shall be personally served on the licensee or applicant for license.

An aggrieved licensee or applicant for license shall not discuss details of the case with any member of the Board of Review prior to the hearing or shall not attempt to influence Board of Review members in any way preparatory to release of a Final Order.

SECTION 1020 – CONDUCT OF BOARD OF REVIEW HEARING

The conduct of hearing before the Genesee County Health Department Board of Review shall conform as nearly as practicable to the Procedures in Contested Cases, Chapter 4, of the “Administrative Procedures Act,” being Act 306, P.A. 1969, as amended [MCLA 24.271 et seq; MSA 3.560(171) et seq].

The Health Officer shall be the presiding officer of hearings before the Genesee County Health Department Board of Review.

The presiding officer shall perform the typical duties of a presiding officer in a contested case including, but not limited to, administering oaths and affirmations and ruling on objections, motions and the admissibility of evidence, with the assistance of legal counsel.

The parties (i.e., the Health Department and the aggrieved applicant or licensee) to a contested case before the Genesee County Health Department Board of Review shall, among other things, have the right to direct and cross-examine witnesses, submit documentary evidence, redirect or recross-examine witnesses and submit rebuttal evidence.

The Genesee County Health Department Board of Review may request the technical assistance of governmental agencies and/or other experts in the appeals hearing.

SECTION 1021 – FINAL ORDER

A Final Order issued following a hearing shall be supported by and made in accordance with competent, material and substantial evidence in accordance with Act 306, P.A. 1969, as amended [MCLA 24.285 et seq; MSA 3.560(185) et seq]. The order may take the form of a decision to affirm, modify, or rescind the original decision. The Final Order may be issued before the Board of Review adjourns or within fifteen (15) calendar days following the hearing.

If the disposition of a Final Order is to uphold a license denial, suspension or revocation without extenuating circumstance, the Health Officer shall verify the status of the subject matter of the license or permit on the next working day and periodically thereafter. Upon discovery of a failure to comply with the Final Order, the Health Officer may seek appropriate remedy through the courts as may be determined with legal counsel.

SECTION 1022 – INJUNCTIVE PROCEEDINGS

Notwithstanding the existence and pursuit of any other remedy, the Health Officer or his/her designee, without posting bond, may maintain an action in a court of competent jurisdiction for an injunction or other process against any person to restrain or prevent a violation of this regulation.

SECTION 1023 – SEVERABILITY

In any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions are declared to be severable.

SECTION 1024 – EFFECTIVE DATE

This regulation shall take effect ninety (90) days from and after the date of its approval by the Genesee County Board of Commissioners.

APPROVAL

The foregoing provisions were adopted by the Genesee County Board of Health and approved by the Genesee County Board of Health and approved by the Genesee County Board of Commissioners on November 16, 1993. The Regulations shall become effective February 14, 1994.

GENESEE COUNTY
BOARD OF HEALTH:

Comm. Randy C. Ensley, Chairperson
Thomas Howes
Comm. Deborah Cherry
Comm. Vera B. Rison
Michael Boucree, M.D.

GENESEE COUNTY
BOARD OF COMMISSIONERS:

Deborah L. Cherry, Chairperson
Willa J. Hawkins
Roselyn Bogardus
James D. Cole
Randy C. Ensley
Ken Hardin
Daniel T. Kildee
Vera B. Rison
Fred Shaltz

Resolution #93-747

U:\Word97\Tobacco\Genesee County Tobacco Regulations.doc