



State of Wisconsin
2019 - 2020 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 422**

February 10, 2020 - Offered by Representative SPIROS.

1 **AN ACT** *to amend* 134.66 (2) (a), (am), (b) and (cm) 1m., 134.66 (3), 139.345 (3)
2 (a) (intro.), 139.345 (3) (b) 2., 139.345 (7) (a), subchapter IX (title) of chapter 254
3 [precedes 254.911], 254.916 (2) (intro.), 254.916 (3) (a), (b), (c) and (d), 254.916
4 (3) (f) 2., 254.92 (title), 254.92 (1), 254.92 (2), 254.92 (2m) (intro.) and 254.92 (3);
5 and **to create** 254.916 (2) (d) of the statutes; **relating to:** raising the legal age
6 for sale, purchase, and possession of cigarettes and nicotine and tobacco
7 products, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill changes the age for purchasing cigarettes, tobacco products, or nicotine products from 18 to the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act, which is currently 21. Nicotine products are products that contain nicotine and that are not tobacco products, cigarettes, or products that have been approved by the federal Food and Drug Administration for sale as a smoking cessation product. Tobacco products include products such as cigars, chewing tobacco, and smoking tobacco.

Currently, no person under the age of 18 may purchase, attempt to purchase, possess, or falsely represent his or her age for the purpose of receiving any cigarette,

nicotine product, or tobacco product, with certain limited exceptions. Current law also prohibits any person from purchasing cigarettes, tobacco products, or nicotine products on behalf of a person who is under the age of 18 and subjects that purchaser to a penalty. Current law also prohibits a person from delivering a package of cigarettes unless the person making the delivery verifies that the person receiving the package is at least 18 years of age. The bill changes these ages from 18 to the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act, which is currently 21.

Current law prohibits a retailer, manufacturer, distributor, jobber, subjobber, or independent contractor or an employee or agent of any of these persons from selling or providing cigarettes or tobacco or nicotine products to an individual who is under the age of 18 and from providing cigarettes or tobacco or nicotine products to any person for free unless the cigarettes or products are provided in a place where persons under 18 years of age are generally not permitted to enter. Current law also prohibits a retailer or vending machine operator from selling cigarettes or tobacco or nicotine products from a vending machine unless the retailer or vending machine operator ensures that no person under 18 years of age is present on or permitted to enter the premises where the machine is located. The bill changes these ages from 18 to the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act, which is currently 21.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.66 (2) (a), (am), (b) and (cm) 1m. of the statutes are amended
2 to read:

3 **134.66 (2) (a)** No retailer, direct marketer, manufacturer, distributor, jobber or
4 subjobber, no agent, employee or independent contractor of a retailer, direct
5 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
6 of an independent contractor may sell or provide for nominal or no consideration
7 cigarettes, nicotine products, or tobacco products to any person under the age of 18
8 minimum age for purchasing a tobacco product under the federal Food, Drug, and
9 Cosmetic Act, except as provided in s. 254.92 (2) (a). A vending machine operator is
10 not liable under this paragraph for the purchase of cigarettes, nicotine products, or
11 tobacco products from his or her vending machine by a person under the age of 18

1 minimum age for purchasing a tobacco product under the federal Food, Drug, and
2 Cosmetic Act if the vending machine operator was unaware of the purchase.

3 (am) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber,
4 no agent, employee or independent contractor of a retailer, direct marketer,
5 manufacturer, distributor, jobber or subjobber and no agent or employee of an
6 independent contractor may provide for nominal or no consideration cigarettes,
7 nicotine products, or tobacco products to any person except in a place where no
8 person younger than 18 years of age the minimum age for purchasing a tobacco
9 product under the federal Food, Drug, and Cosmetic Act is present or permitted to
10 enter unless the person who is younger than 18 years of age the minimum age for
11 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act is
12 accompanied by his or her parent or guardian or by his or her spouse who has
13 attained the age of 18 years minimum age for purchasing a tobacco product under
14 the federal Food, Drug, and Cosmetic Act.

15 (b) 1. A retailer shall post a sign in areas within his or her premises where
16 cigarettes or tobacco products are sold to consumers stating that the sale of any
17 cigarette or tobacco product to a person under the age of 18 minimum age for
18 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act is
19 unlawful under this section and s. 254.92.

20 2. A vending machine operator shall attach a notice in a conspicuous place on
21 the front of his or her vending machines stating that the purchase of any cigarette
22 or tobacco product by a person under the age of 18 minimum age for purchasing a
23 tobacco product under the federal Food, Drug, and Cosmetic Act is unlawful under
24 s. 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.

(cm) 1m. 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 the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act.

SECTION 2. 134.66 (3) of the statutes is amended to read:

134.66 (3) DEFENSE; SALE TO MINOR. Proof of all of the following facts by a retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act is a defense to any prosecution, or a complaint made under s. 134.65 (7), for a violation of sub. (2) (a):

(a) That the purchaser falsely represented that he or she had attained the age of 18 minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act and presented an identification card.

(b) 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 minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act.

(c) That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the

1 purchaser had attained the age of 18 minimum age for purchasing a tobacco product
2 under the federal Food, Drug, and Cosmetic Act.

3 **SECTION 3.** 139.345 (3) (a) (intro.) of the statutes is amended to read:

4 139.345 (3) (a) (intro.) Verifies the consumer's name and address and that the
5 consumer is at least 18 years of age the minimum age for purchasing a tobacco
6 product under the federal Food, Drug, and Cosmetic Act by any of the following
7 methods:

8 **SECTION 4.** 139.345 (3) (b) 2. of the statutes is amended to read:

9 139.345 (3) (b) 2. That the consumer understands that no person who is under
10 18 years of age the minimum age for purchasing a tobacco product under the federal
11 Food, Drug, and Cosmetic Act may purchase or possess cigarettes or falsely
12 represent his or her age for the purpose of receiving cigarettes, as provided under s.
13 254.92.

14 **SECTION 5.** 139.345 (7) (a) of the statutes is amended to read:

15 139.345 (7) (a) No person may deliver a package of cigarettes sold by direct
16 marketing to a consumer in this state unless the person making the delivery receives
17 a government issued identification card from the person receiving the package and
18 verifies that the person receiving the package is at least 18 years of age the minimum
19 age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act.
20 If the person receiving the package is not the person to whom the package is
21 addressed, the person delivering the package shall have the person receiving the
22 package sign a statement that affirms that the person to whom the package is
23 addressed is at least 18 years of age the minimum age for purchasing a tobacco
24 product under the federal Food, Drug, and Cosmetic Act.

SECTION 6. Subchapter IX (title) of chapter 254 [precedes 254.911] of the statutes is amended to read:

CHAPTER 254

SUBCHAPTER IX

SALE OR GIFT OF CIGARETTES,

NICOTINE PRODUCTS, OR TOBACCO

PRODUCTS TO MINORS

SECTION 7. 254.916 (2) (intro.) of the statutes is amended to read:

254.916 (2) (intro.) ~~With the permission of his or her parent or guardian, a~~ A person under 18 years of age the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act, but not under 15 years of age, may buy, attempt to buy, or possess any cigarette, nicotine product, or tobacco product if all of the following are true:

SECTION 8. 254.916 (2) (d) of the statutes is created to read:

254.916 (2) (d) If the person is under 18 years of age, he or she has obtained permission from his or her parent or guardian to participate in the investigation.

SECTION 9. 254.916 (3) (a), (b), (c) and (d) of the statutes are amended to read:

254.916 (3) (a) If questioned about his or her age during the course of an investigation, the ~~minor person under the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act used in the investigation~~ shall state his or her true age.

(b) ~~A minor person under the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act~~ may not be used for the purposes of an investigation at a retail outlet at which the ~~minor person~~ is a regular customer.

1 (c) The appearance of a minor person under the minimum age for purchasing
2 a tobacco product under the federal Food, Drug, and Cosmetic Act may not be
3 materially altered so as to indicate greater age.

4 (d) A photograph or videotape of the minor person under the minimum age for
5 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act used
6 in the investigation shall be made before or after the investigation or series of
7 investigations on the day of the investigation or series of investigations. If a
8 prosecution results from an investigation, the photograph or videotape shall be
9 retained until the final disposition of the case.

10 **SECTION 10.** 254.916 (3) (f) 2. of the statutes is amended to read:

11 254.916 (3) (f) 2. The age of the minor person under the minimum age for
12 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act used
13 in the investigation.

14 **SECTION 11.** 254.92 (title) of the statutes is amended to read:

15 **254.92 (title) Purchase or possession of cigarettes or tobacco or**
16 **nicotine products by person under 18 certain age prohibited.**

17 **SECTION 12.** 254.92 (1) of the statutes is amended to read:

18 254.92 (1) No person under 18 years of age the minimum age for purchasing
19 a tobacco product under the federal Food, Drug, and Cosmetic Act may falsely
20 represent his or her age for the purpose of receiving any cigarette, nicotine product,
21 or tobacco product.

22 **SECTION 13.** 254.92 (2) of the statutes is amended to read:

23 254.92 (2) No person under 18 years of age the minimum age for purchasing
24 a tobacco product under the federal Food, Drug, and Cosmetic Act may purchase,

1 attempt to purchase, or possess any cigarette, nicotine product, or tobacco product
2 except as follows:

3 (a) A person under ~~18 years of age~~ the minimum age for purchasing a tobacco
4 product under the federal Food, Drug, and Cosmetic Act may purchase or possess
5 cigarettes, nicotine products, or tobacco products for the sole purpose of resale in the
6 course of employment during his or her working hours if employed by a retailer.

7 (b) A person under ~~18 years of age~~ the minimum age for purchasing a tobacco
8 product under the federal Food, Drug, and Cosmetic Act, but not under 15 years of
9 age, may purchase, attempt to purchase or possess cigarettes, nicotine products, or
10 tobacco products in the course of his or her participation in an investigation under
11 s. 254.916 that is conducted in accordance with s. 254.916 (3).

12 **SECTION 14.** 254.92 (2m) (intro.) of the statutes is amended to read:

13 254.92 **(2m)** (intro.) No person may purchase cigarettes, tobacco products, or
14 nicotine products on behalf of, or to provide to, any person who is under 18 years of
15 age the minimum age for purchasing a tobacco product under the federal Food, Drug,
16 and Cosmetic Act. Any person who violates this subsection may be:

17 **SECTION 15.** 254.92 (3) of the statutes is amended to read:

18 254.92 **(3)** A law enforcement officer shall seize any cigarette, nicotine product,
19 or tobacco product that has been sold to and is in the possession of a person under
20 ~~18 years of age~~ the minimum age for purchasing a tobacco product under the federal
21 Food, Drug, and Cosmetic Act.

22 **SECTION 16. Initial applicability.**

23 (1) This act first applies to purchases, attempts to purchase, possession, and
24 false representations of age for the purpose of receiving any cigarette, nicotine
25 product, or tobacco product by persons under the minimum age for purchasing a

1 tobacco product under the federal Food, Drug, and Cosmetic Act on the effective date
2 of this subsection and to sales or the provision of cigarettes or nicotine or tobacco
3 products to persons under the minimum age for purchasing a tobacco product under
4 the federal Food, Drug, and Cosmetic Act on the effective date of this subsection.

5 (END)