



State of Wisconsin
2019 - 2020 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 364**

February 27, 2020 - Offered by Senator MARKLEIN.

1 **AN ACT** *to amend* 134.66 (title), 134.66 (1) (g), 134.66 (2) (a), (am), (b) and (cm)
2 1m., 134.66 (2m) (a), 134.66 (3), 139.345 (3) (a) (intro.), 139.345 (3) (b) 2.,
3 139.345 (7) (a), subchapter IX (title) of chapter 254 [precedes 254.911], 254.916
4 (2) (intro.), 254.916 (3) (a), (b), (c) and (d), 254.916 (3) (f) 2., 254.92 (title), 254.92
5 (1), 254.92 (2), 254.92 (2m) (intro.) and 254.92 (3); and **to create** 134.66 (1) (jm),
6 254.911 (11) and 254.916 (2) (d) of the statutes; **relating to:** raising the legal
7 age for sale, purchase, and possession of cigarettes and nicotine and tobacco
8 products; providing a legal age for sale, purchase, and possession of vapor
9 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, and imposes a minimum age for purchasing vapor products. 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. Vapor products are noncombustible products that produce a vapor or aerosol for inhalation from the application of a heating element, regardless of whether the liquid or other substance contains nicotine.

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. The bill similarly prohibits the purchase of vapor products by or on behalf of a person under the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act.

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 bill similarly prohibits the sale or provision of vapor products to a person under the minimum age for purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act.

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

1 **SECTION 1.** 134.66 (title) of the statutes is amended to read:

2 **134.66 (title) Restrictions on sale or gift of cigarettes or nicotine, vapor,**
3 **or tobacco products.**

4 **SECTION 2.** 134.66 (1) (g) of the statutes is amended to read:

1 134.66 (1) (g) “Retailer” means any person licensed under s. 134.65 (1) and any
2 person that sells, exposes for sale, possesses with intent to sell, exchanges, barter,
3 disposes of, or gives away any vapor products to any person not holding a license
4 under s. 134.65 (1), 139.30 to 139.41, or 139.79.

5 **SECTION 3.** 134.66 (1) (jm) of the statutes is created to read:

6 134.66 (1) (jm) “Vapor product” has the meaning given in s. 139.75 (14).

7 **SECTION 4.** 134.66 (2) (a), (am), (b) and (cm) 1m. of the statutes are amended
8 to read:

9 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
10 subjobber, no agent, employee or independent contractor of a retailer, direct
11 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
12 of an independent contractor may sell or provide for nominal or no consideration
13 cigarettes, nicotine products, ~~or~~ tobacco products, or vapor products to any person
14 under the age of 18 minimum age for purchasing a tobacco product under the federal
15 Food, Drug, and Cosmetic Act, except as provided in s. 254.92 (2) (a). A vending
16 machine operator is not liable under this paragraph for the purchase of cigarettes,
17 nicotine products, ~~or~~ tobacco products, or vapor products from his or her vending
18 machine by a person under the age of 18 minimum age for purchasing a tobacco
19 product under the federal Food, Drug, and Cosmetic Act if the vending machine
20 operator was unaware of the purchase.

21 (am) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber,
22 no agent, employee or independent contractor of a retailer, direct marketer,
23 manufacturer, distributor, jobber or subjobber and no agent or employee of an
24 independent contractor may provide for nominal or no consideration cigarettes,
25 nicotine products, ~~or~~ tobacco products, or vapor products to any person except in a

1 place where no person younger than 18 years of age the minimum age for purchasing
2 a tobacco product under the federal Food, Drug, and Cosmetic Act is present or
3 permitted to enter unless the person who is younger than 18 years of age the
4 minimum age for purchasing a tobacco product under the federal Food, Drug, and
5 Cosmetic Act is accompanied by his or her parent or guardian or by his or her spouse
6 who has attained the age of 18 years minimum age for purchasing a tobacco product
7 under the federal Food, Drug, and Cosmetic Act.

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

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

19 (cm) 1m. A retailer or vending machine operator may not sell cigarettes ~~or~~,
20 tobacco products, or vapor products from a vending machine unless the vending
21 machine is located in a place where the retailer or vending machine operator ensures
22 that no person younger than 18 years of age the minimum age for purchasing a
23 tobacco product under the federal Food, Drug, and Cosmetic Act is present or
24 permitted to enter unless he or she is accompanied by his or her parent or guardian

1 or by his or her spouse who has attained the age of 18 years minimum age for
2 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act.

3 **SECTION 5.** 134.66 (2m) (a) of the statutes is amended to read:

4 134.66 **(2m)** (a) Except as provided in par. (b), at the time that a retailer hires
5 or contracts with an agent, employee, or independent contractor whose duties will
6 include the sale of cigarettes, vapor products, or tobacco products, the retailer shall
7 provide the agent, employee, or independent contractor with training on compliance
8 with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for
9 a violation of sub. (2) (a) or (am). The department of health services shall make
10 available to any retailer on request a training program developed or approved by that
11 department that provides the training required under this paragraph. A retailer
12 may comply with this paragraph by providing the training program developed or
13 approved by the department of health services or by providing a comparable training
14 program approved by that department. At the completion of the training, the retailer
15 and the agent, employee, or independent contractor shall sign a form provided by the
16 department of health services verifying that the agent, employee, or independent
17 contractor has received the training, which the retailer shall retain in the personnel
18 file of the agent, employee, or independent contractor.

19 **SECTION 6.** 134.66 (3) of the statutes is amended to read:

20 134.66 **(3)** DEFENSE; SALE TO MINOR. Proof of all of the following facts by a
21 retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or
22 independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber,
23 or an agent or employee of an independent contractor who sells cigarettes ~~or~~, tobacco
24 products, or vapor products to a person under the age of 18 minimum age for
25 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act is a

1 defense to any prosecution, or a complaint made under s. 134.65 (7), for a violation
2 of sub. (2) (a):

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

6 (b) That the appearance of the purchaser was such that an ordinary and
7 prudent person would believe that the purchaser had attained the ~~age of 18~~
8 minimum age for purchasing a tobacco product under the federal Food, Drug, and
9 Cosmetic Act.

10 (c) That the sale was made in good faith, in reasonable reliance on the
11 identification card and appearance of the purchaser and in the belief that the
12 purchaser had attained the ~~age of 18~~ minimum age for purchasing a tobacco product
13 under the federal Food, Drug, and Cosmetic Act.

14 **SECTION 7.** 139.345 (3) (a) (intro.) of the statutes is amended to read:

15 139.345 (3) (a) (intro.) Verifies the consumer's name and address and that the
16 consumer is at least ~~18 years of age~~ the minimum age for purchasing a tobacco
17 product under the federal Food, Drug, and Cosmetic Act by any of the following
18 methods:

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

20 139.345 (3) (b) 2. That the consumer understands that no person who is under
21 ~~18 years of age~~ the minimum age for purchasing a tobacco product under the federal
22 Food, Drug, and Cosmetic Act may purchase or possess cigarettes or falsely
23 represent his or her age for the purpose of receiving cigarettes, as provided under s.
24 254.92.

25 **SECTION 9.** 139.345 (7) (a) of the statutes is amended to read:

1 buy, attempt to buy, or possess any cigarette, nicotine product, ~~or~~ tobacco product, or
2 vapor product if all of the following are true:

3 **SECTION 13.** 254.916 (2) (d) of the statutes is created to read:

4 254.916 (2) (d) If the person is under 18 years of age, he or she has obtained
5 permission from his or her parent or guardian to participate in the investigation.

6 **SECTION 14.** 254.916 (3) (a), (b), (c) and (d) of the statutes are amended to read:

7 254.916 (3) (a) If questioned about his or her age during the course of an
8 investigation, the ~~minor person under the minimum age for purchasing a tobacco~~
9 product under the federal Food, Drug, and Cosmetic Act used in the investigation
10 shall state his or her true age.

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

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

17 (d) A photograph or videotape of the ~~minor person under the minimum age for~~
18 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act used
19 in the investigation shall be made before or after the investigation or series of
20 investigations on the day of the investigation or series of investigations. If a
21 prosecution results from an investigation, the photograph or videotape shall be
22 retained until the final disposition of the case.

23 **SECTION 15.** 254.916 (3) (f) 2. of the statutes is amended to read:

1 254.916 (3) (f) 2. The age of the ~~minor~~ person under the minimum age for
2 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act used
3 in the investigation.

4 **SECTION 16.** 254.92 (title) of the statutes is amended to read:

5 **254.92 (title) Purchase or possession of cigarettes ~~or~~ tobacco products,**
6 **nicotine products, or vapor products by person under 18 certain age**
7 **prohibited.**

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

9 254.92 (1) No person under 18 years of age the minimum age for purchasing
10 a tobacco product under the federal Food, Drug, and Cosmetic Act may falsely
11 represent his or her age for the purpose of receiving any cigarette, nicotine product,
12 ~~or tobacco product, or vapor product.~~

13 **SECTION 18.** 254.92 (2) of the statutes is amended to read:

14 254.92 (2) No person under 18 years of age the minimum age for purchasing
15 a tobacco product under the federal Food, Drug, and Cosmetic Act may purchase,
16 attempt to purchase, or possess any cigarette, nicotine product, ~~or tobacco product,~~
17 or vapor product except as follows:

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

23 (b) A person under 18 years of age the minimum age for purchasing a tobacco
24 product under the federal Food, Drug, and Cosmetic Act, but not under 15 years of
25 age, may purchase, attempt to purchase or possess cigarettes, nicotine products, ~~or~~

1 tobacco products, or vapor products in the course of his or her participation in an
2 investigation under s. 254.916 that is conducted in accordance with s. 254.916 (3).

3 **SECTION 19.** 254.92 (2m) (intro.) of the statutes is amended to read:

4 254.92 **(2m)** (intro.) No person may purchase cigarettes, tobacco products, ~~or~~
5 nicotine products, or vapor products on behalf of, or to provide to, any person who is
6 under 18 years of age the minimum age for purchasing a tobacco product under the
7 federal Food, Drug, and Cosmetic Act. Any person who violates this subsection may
8 be:

9 **SECTION 20.** 254.92 (3) of the statutes is amended to read:

10 254.92 **(3)** A law enforcement officer shall seize any cigarette, nicotine product,
11 ~~or tobacco product,~~ or vapor product that has been sold to and is in the possession of
12 a person under 18 years of age the minimum age for purchasing a tobacco product
13 under the federal Food, Drug, and Cosmetic Act.

14 **SECTION 21. Initial applicability.**

15 (1) This act first applies to purchases, attempts to purchase, possession, and
16 false representations of age for the purpose of receiving any cigarette, nicotine
17 product, tobacco product, or vapor product by persons under the minimum age for
18 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act on the
19 effective date of this subsection and to sales or the provision of cigarettes, nicotine
20 products, tobacco products, or vapor products to persons under the minimum age for
21 purchasing a tobacco product under the federal Food, Drug, and Cosmetic Act on the
22 effective date of this subsection.

23 (END)