

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB93)

Received: 09/27/2011

Received By: **fknepp**

Wanted: As time permits

Companion to LRB:

For: **Garey Bies (608) 266-5350**

By/Representing: **Mary Matthias**

May Contact:

Drafter: **fknepp**

Subject: **Health - tobacco**
Health - public health

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Bies@legis.wisconsin.gov**

Carbon copy (CC:) to: **fern.knepp@legis.wisconsin.gov**
tamara.dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Purchase of tobacco or nicotine products for a minor

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	fknepp 09/28/2011	jdye 09/29/2011		_____			
/1			rschluet 09/29/2011	_____	sbasford 09/29/2011	sbasford 09/29/2011	

FE Sent For:

<END>

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Wanted: ~~As time permits~~ **Oct 4, 2011**

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1/?	fknepp	1 9/29 jld		_____	_____		

FE Sent For:

<END>

Knepp, Fern

From: Matthias, Mary
Sent: Tuesday, September 27, 2011 1:54 PM
To: Knepp, Fern
Subject: AB 93-amendment request

Hi-

Andrew in Rep. Bies' office asked me to send you drafting instructions for an amendment to AB 93 (simple or sub, whichever is easiest for you).

They would like an amendment to AB 93 that would prohibit any person from buying "nicotine products" for a minor or providing "nicotine products" to a minor. The amendment would define nicotine product to include any product containing nicotine that is not a tobacco product, other than a smoking cessation product (or possibly other legit products such as medications that contain nicotine, if there are any).

The amendment should also prohibit the retail sale of "nicotine products" to minors.

I have to run off to a meeting right now but feel free to give me a call to discuss this anytime- I should be back at my desk by 3:00. Maybe I can help with the definition, or at least explain what was talked about at the hearing.

Thanks!

Mary

Mary Matthias
Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph.(608)266-0932;Fax (608)266-3830

*Telephone Call with Mary
9/28/11*

*don't want additional
burdens on retailers ←
(signage, etc)*

- *Prohibition on retail sale to minors only affect 134.66(2)(a)-(am)*
- *O.K to add nicotine products to investigations under 254.916*



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs01900
FFK:.....

In 9-28-11

Out 10-4-11

JLD
EMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY SUBSTITUTE AMENDMENT,

TO 2011 ASSEMBLY BILL 93

By Tues
Oct 4

LX

Gen

1 AN ACT ...; relating to: minors obtaining tobacco or nicotine products and
2 providing a penalty. ✓

Analysis by the Legislative Reference Bureau

Under current law, purchasing cigarettes on behalf of, or to provide to, a minor is punishable by a forfeiture of not more than \$500 for a violation that is not committed within 30 months of a previous violation; a fine of not more than \$500 or imprisonment for not more than 30 days, or both, for a violation that is committed within 30 months of a previous violation; a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both, for a violation that is committed within 30 months of two previous violations; and a fine of not more than \$10,000 or imprisonment for not more than nine months, or both, for a violation that is committed within 30 months of three previous violations.

This bill expands the prohibition on purchasing cigarettes on behalf of, or to provide to, a minor, to include purchasing tobacco products and nicotine products for the same purpose. Under this bill, a nicotine product is a product that contains nicotine but is not a tobacco product, a cigarette, or a product that is approved by the U.S. Food and Drug Administration for sale as a smoking cessation product or for another medical purpose.

* Under current law, a retailer, manufacturer, distributor, jobber, subjobber, or independent contractor, or the agent or employee of any of these persons, is

INSERT 2-1

prohibited from selling or giving cigarettes or tobacco products to a minor unless the minor purchased or possessed the cigarettes or tobacco products in the course of the minor's employment. In addition, these persons are prohibited from giving cigarettes or tobacco products to any person unless the cigarettes or tobacco products are provided in a place where minors are not permitted to enter. This bill expands these prohibitions to include the sale or giving of nicotine products to minors.

Under current law, the Department of Health Services, a local health department, a state agency, or a state or local law enforcement agency is authorized conduct unannounced investigations of retail outlets where cigarettes or tobacco products are sold to survey overall levels of compliance with the prohibitions against selling cigarettes or tobacco products to minors. Under this bill, an authorized entity may also investigate retail outlets where nicotine products are sold to survey overall levels of compliance with the prohibitions against selling nicotine products to minors.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

1 SECTION 1. 134.66 (1) (f) of the statutes is created to read:

2 134.66 (1) (f) "Nicotine product" means a product that contains nicotine and is
3 not any of the following:

4 1. A tobacco product

5 2. A cigarette

6 3. A product that has been approved by the U.S. Food and Drug Administration
7 for sale as a smoking cessation product or for another medical purpose and is being
8 marketed and sold solely for such an approved purpose.

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

10 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
11 subjobber, no agent, employee or independent contractor of a retailer, direct
12 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee

1 of an independent contractor may sell or provide for nominal or no consideration
2 cigarettes, nicotine products,[✓] or tobacco products to any person under the age of 18,
3 except as provided in s. 254.92 (2) (a). A vending machine operator is not liable under
4 this paragraph for the purchase of cigarettes, nicotine products,[✓] or tobacco products
5 from his or her vending machine by a person under the age of 18 if the vending
6 machine operator was unaware of the purchase.

7 **History:** 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352;[✓] 1997 a. 214; 1999 a. 9; 2001 a. 75; 2003 a. 326; 2005 a. 25; 2007 a. 20 s. 9121 (6) (a).

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

9 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
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 provide for nominal or no consideration cigarettes,
13 nicotine products,[✓] or tobacco products to any person except in a place where no
14 person younger than 18 years of age is present or permitted to enter unless the
15 person who is younger than 18 years of age is accompanied by his or her parent or
guardian or by his or her spouse who has attained the age of 18 years.

16 **History:** 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; ~~1995 a. 352;~~[✓] 1997 a. 214; 1999 a. 9; 2001 a. 75; 2003 a. 326; 2005 a. 25; 2007 a. 20 s. 9121 (6) (a).

17 **SECTION 4.** 254.911 (3m) of the statutes is created to read:

18 254.911 (3m) "Nicotine product" has the meaning given in s. 134.66 (1) (f).[✓]

19 **SECTION 5.** 254.911 (5) of the statutes is amended to read:

20 254.911 (5) "Retail outlet" means a place of business from which cigarettes,
nicotine products,[✓] or tobacco products are sold at retail to consumers.

21 **History:** 1999 a. 9; 2001 a. 75; 2005 a. 25.

22 **SECTION 6.** 254.916 (2) (intro.) of the statutes is amended to read:

23 254.916 (2) (intro.) With the permission of his or her parent or guardian, a
person under 18 years of age, but not under 15 years of age, may buy, attempt to buy

1 or possess any cigarette, nicotine product,[✓] or tobacco product if all of the following
2 are true:

3 History: 1999 a. 9, 84, 185; 2001 a. 75.

SECTION 7. 254.92 (1) of the statutes is amended to read:

4 254.92 (1) No person under 18 years of age may falsely represent his or her age
5 for the purpose of receiving any cigarette, nicotine product,[✓] or tobacco product.

6 History: 1987 a. 336; 1991 a. 32, 95, 315; 1995 a. 352, s. 20; Stats. 1995 s. 938.983; 1999 a. 9 ss. 2485L, 3176m, 3176p to 3176s; 2001 a. 75; 2005 a. 25.

SECTION 8. 254.92 (2) of the statutes is amended to read:

7 254.92 (2) No person under 18 years of age may purchase, attempt to purchase,
8 or possess any cigarette, nicotine product,[✓] or tobacco product except as follows:

9 (a) A person under 18 years of age may purchase or possess cigarettes, nicotine
10 products,[✓] or tobacco products for the sole purpose of resale in the course of
11 employment during his or her working hours if employed by a retailer.

12 (b) A person under 18 years of age, but not under 15 years of age, may purchase,
13 attempt to purchase or possess cigarettes, nicotine products,[✓] or tobacco products in
14 the course of his or her participation in an investigation under s. 254.916 that is
15 conducted in accordance with s. 254.916 (3).

16 History: 1987 a. 336; 1991 a. 32, 95, 315; 1995 a. 352, s. 20; Stats. 1995 s. 938.983; 1999 a. 9 ss. 2485L, 3176m, 3176p to 3176s; 2001 a. 75; 2005 a. 25.

SECTION 9. 254.92 (2m) (intro.) of the statutes is amended to read:

17 254.92 (2m) (intro.) No person may purchase cigarettes, tobacco products,[✓] or
18 nicotine products on behalf of, or to provide to, any person who is under 18 years of
19 age. Any person who violates this subsection may be:

20 History: 1987 a. 336; 1991 a. 32, 95, 315; 1995 a. 352, s. 20; Stats. 1995 s. 938.983; 1999 a. 9 ss. 2485L, 3176m, 3176p to 3176s; 2001 a. 75; 2005 a. 25.

SECTION 10. 254.92 (3) of the statutes is amended to read:

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0190/lins
MDK:.....

1

INSERT 2-1:

2

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

3

134.66 (title) Restrictions on sale or gift of cigarettes or nicotine or

4

tobacco products.

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352; 1997 a. 214; 1999 a. 9; 2001 a. 75; 2003 a. 326; 2005 a. 25; 2007 a. 20 s. 9121 (6) (a).

(end ins 2-1)