



## 2019 SENATE BILL 364

August 22, 2019 - Introduced by Senators MARKLEIN, BEWLEY, DARLING, OLSEN, SHILLING, JOHNSON, LARSON, RISSER, SCHACHTNER, L. TAYLOR, WANGGAARD, WIRCH and COWLES, cosponsored by Representatives SPIROS, CROWLEY, DITTRICH, L. MYERS, OLDENBURG, RODRIGUEZ, ROHRKASTE, SARGENT, VRUWINK, BOWEN, CONSIDINE, DOYLE, EMERSON, GOYKE, HAYWOOD, JAMES, KOLSTE, B. MEYERS, MILROY, MURSAU, OHNSTAD, POPE, SINICKI, SPREITZER, STEFFEN, STUBBS, SUBECK, C. TAYLOR, WITTKER, ZAMARRIPA and FIELDS. Referred to Committee on Health and Human Services.

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.

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### ***Analysis by the Legislative Reference Bureau***

This bill changes the age for purchasing cigarettes, tobacco products, or nicotine products from 18 to 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

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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 21. The bill similarly prohibits the purchase of vapor products by or on behalf of a person under the age of 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 21. The bill similarly prohibits the sale or provision of vapor products to a person under the age of 21.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*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:

5           134.66 (1) (g) “Retailer” means any person licensed under s. 134.65 (1) and any  
6           person that sells, exposes for sale, possesses with intent to sell, exchanges, barter,  
7           disposes of, or gives away any vapor products to any person not holding a license  
8           under s. 134.65 (1), 139.30 to 139.41, or 139.79.

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

2           134.66 (1) (jm) “Vapor product” has the meaning given in s. 139.75 (14).

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

5           134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or  
6 subjobber, no agent, employee or independent contractor of a retailer, direct  
7 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee  
8 of an independent contractor may sell or provide for nominal or no consideration  
9 cigarettes, nicotine products, ~~or tobacco products,~~ or vapor products to any person  
10 under the age of ~~18~~ 21, except as provided in s. 254.92 (2) (a). A vending machine  
11 operator is not liable under this paragraph for the purchase of cigarettes, nicotine  
12 products, or tobacco products from his or her vending machine by a person under the  
13 age of ~~18~~ 21 if the vending machine operator was unaware of the purchase.

14           (am) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber,  
15 no agent, employee or independent contractor of a retailer, direct marketer,  
16 manufacturer, distributor, jobber or subjobber and no agent or employee of an  
17 independent contractor may provide for nominal or no consideration cigarettes,  
18 nicotine products, ~~or tobacco products,~~ or vapor products to any person except in a  
19 place where no person younger than ~~18~~ 21 years of age is present or permitted to  
20 enter unless the person who is younger than ~~18~~ 21 years of age is accompanied by his  
21 or her parent or guardian or by his or her spouse who has attained the age of ~~18~~ 21  
22 years.

23           (b) 1. A retailer shall post a sign in areas within his or her premises where  
24 cigarettes ~~or~~, tobacco products, or vapor products are sold to consumers stating that

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1 the sale of any cigarette ~~or~~, tobacco product, or vapor product to a person under the  
2 age of ~~18~~ 21 is unlawful under this section and s. 254.92.

3 2. A vending machine operator shall attach a notice in a conspicuous place on  
4 the front of his or her vending machines stating that the purchase of any cigarette  
5 ~~or~~, tobacco product, or vapor product by a person under the age of ~~18~~ 21 is unlawful  
6 under s. 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.

7 (cm) 1m. A retailer or vending machine operator may not sell cigarettes ~~or~~,  
8 tobacco products, or vapor products from a vending machine unless the vending  
9 machine is located in a place where the retailer or vending machine operator ensures  
10 that no person younger than ~~18~~ 21 years of age is present or permitted to enter unless  
11 he or she is accompanied by his or her parent or guardian or by his or her spouse who  
12 has attained the age of ~~18~~ 21 years.

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

14 134.66 (2m) (a) Except as provided in par. (b), at the time that a retailer hires  
15 or contracts with an agent, employee, or independent contractor whose duties will  
16 include the sale of cigarettes, vapor products, or tobacco products, the retailer shall  
17 provide the agent, employee, or independent contractor with training on compliance  
18 with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for  
19 a violation of sub. (2) (a) or (am). The department of health services shall make  
20 available to any retailer on request a training program developed or approved by that  
21 department that provides the training required under this paragraph. A retailer  
22 may comply with this paragraph by providing the training program developed or  
23 approved by the department of health services or by providing a comparable training  
24 program approved by that department. At the completion of the training, the retailer  
25 and the agent, employee, or independent contractor shall sign a form provided by the

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1 department of health services verifying that the agent, employee, or independent  
2 contractor has received the training, which the retailer shall retain in the personnel  
3 file of the agent, employee, or independent contractor.

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

5 134.66 (3) DEFENSE; SALE TO MINOR. Proof of all of the following facts by a  
6 retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or  
7 independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber,  
8 or an agent or employee of an independent contractor who sells cigarettes ~~or~~ tobacco  
9 products, or vapor products to a person under the age of ~~18~~ 21 is a defense to any  
10 prosecution, or a complaint made under s. 134.65 (7), for a violation of sub. (2) (a):

11 (a) That the purchaser falsely represented that he or she had attained the age  
12 of ~~18~~ 21 and presented an identification card.

13 (b) That the appearance of the purchaser was such that an ordinary and  
14 prudent person would believe that the purchaser had attained the age of ~~18~~ 21.

15 (c) That the sale was made in good faith, in reasonable reliance on the  
16 identification card and appearance of the purchaser and in the belief that the  
17 purchaser had attained the age of ~~18~~ 21.

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

19 139.345 (3) (a) (intro.) Verifies the consumer's name and address and that the  
20 consumer is at least ~~18~~ 21 years of age by any of the following methods:

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

22 139.345 (3) (b) 2. That the consumer understands that no person who is under  
23 ~~18~~ 21 years of age may purchase or possess cigarettes or falsely represent his or her  
24 age for the purpose of receiving cigarettes, as provided under s. 254.92.

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

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1           139.345 (7) (a) No person may deliver a package of cigarettes sold by direct  
2 marketing to a consumer in this state unless the person making the delivery receives  
3 a government issued identification card from the person receiving the package and  
4 verifies that the person receiving the package is at least ~~18~~ 21 years of age. If the  
5 person receiving the package is not the person to whom the package is addressed, the  
6 person delivering the package shall have the person receiving the package sign a  
7 statement that affirms that the person to whom the package is addressed is at least  
8 ~~18~~ 21 years of age.

9           **SECTION 10.** Subchapter IX (title) of chapter 254 [precedes 254.911] of the  
10 statutes is amended to read:

**CHAPTER 254**

## SUBCHAPTER IX

## SALE OR GIFT OF CIGARETTES,

NICOTINE PRODUCTS, VAPORPRODUCTS, OR TOBACCO

## PRODUCTS TO MINORS

17           **SECTION 11.** 254.911 (11) of the statutes is created to read:

18           254.911 (11) "Vapor product" has the meaning given in s. 139.75 (14).

19           **SECTION 12.** 254.916 (2) (intro.) of the statutes is amended to read:

20           254.916 (2) (intro.) ~~With the permission of his or her parent or guardian, a~~ A  
21 person under ~~18~~ 21 years of age, but not under 15 years of age, may buy, attempt to  
22 buy, or possess any cigarette, nicotine product, ~~or tobacco product,~~ or vapor product  
23 if all of the following are true:

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

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1           254.916 (2) (d) If the person is under 18 years of age, he or she has obtained  
2 permission from his or her parent or guardian to participate in the investigation.

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

4           254.916 (3) (a) If questioned about his or her age during the course of an  
5 investigation, the ~~minor~~ person under 21 years of age used in the investigation shall  
6 state his or her true age.

7           (b) A ~~minor~~ person under 21 years of age may not be used for the purposes of  
8 an investigation at a retail outlet at which the ~~minor~~ person is a regular customer.

9           (c) The appearance of a ~~minor~~ person under 21 years of age may not be  
10 materially altered so as to indicate greater age.

11           (d) A photograph or videotape of the ~~minor~~ person under 21 years of age used  
12 in the investigation shall be made before or after the investigation or series of  
13 investigations on the day of the investigation or series of investigations. If a  
14 prosecution results from an investigation, the photograph or videotape shall be  
15 retained until the final disposition of the case.

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

17           254.916 (3) (f) 2. The age of the ~~minor~~ person under 21 years of age used in the  
18 investigation.

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

20           **254.92 (title) Purchase or possession of cigarettes or, tobacco products,**  
21 **nicotine products, or vapor products by person under 18 21 prohibited.**

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

23           254.92 (1) No person under ~~18~~ 21 years of age may falsely represent his or her  
24 age for the purpose of receiving any cigarette, nicotine product, ~~or~~ tobacco product,  
25 or vapor product.

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

2           254.92 (2) No person under ~~18~~ 21 years of age may purchase, attempt to  
3 purchase, or possess any cigarette, nicotine product, ~~or tobacco product,~~ or vapor  
4 product except as follows:

5           (a) A person under ~~18~~ 21 years of age may purchase or possess cigarettes,  
6 nicotine products, ~~or tobacco products,~~ or vapor products for the sole purpose of resale  
7 in the course of employment during his or her working hours if employed by a  
8 retailer.

9           (b) A person under ~~18~~ 21 years of age, but not under 15 years of age, may  
10 purchase, attempt to purchase or possess cigarettes, nicotine products, ~~or tobacco~~  
11 products, or vapor products in the course of his or her participation in an  
12 investigation under s. 254.916 that is conducted in accordance with s. 254.916 (3).

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

14           254.92 (2m) (intro.) No person may purchase cigarettes, tobacco products, ~~or~~  
15 nicotine products, or vapor products on behalf of, or to provide to, any person who is  
16 under ~~18~~ 21 years of age. Any person who violates this subsection may be:

17           **SECTION 20.** 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,~~ or vapor product that has been sold to and is in the possession of  
20 a person under ~~18~~ 21 years of age.

21           **SECTION 21. Initial applicability.**

22           (1) This act first applies to purchases, attempts to purchase, possession, and  
23 false representations of age for the purpose of receiving any cigarette, nicotine  
24 product, tobacco product, or vapor product by persons under the age of 21 on the  
25 effective date of this subsection and to sales or the provision of cigarettes, nicotine



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1 products, tobacco products, or vapor products to persons under the age of 21 on the  
2 effective date of this subsection.

3 **SECTION 22. Effective date.**

4 (1) This act takes effect on the first day of the 7th month beginning after  
5 publication.

6 (END)