



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0724/1
JAM:kjf

2021 SENATE BILL 355

May 25, 2021 - Introduced by Senators MARKLEIN, BALLWEG, COWLES, DARLING, LARSON, PFAFF, ROTH, ROYS, WANGGAARD, AGARD and L. TAYLOR, cosponsored by Representatives SPIROS, BALDEH, BILLINGS, BOWEN, CABRAL-GUEVARA, CABRERA, DOYLE, KERKMAN, MURSAU, L. MYERS, OLDENBURG, ROZAR, SHELTON, SUBECK, ALLEN and SPREITZER. Referred to Committee on Judiciary and Public Safety.

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), 139.30 (10), 139.345 (3) (a) (intro.), 139.345 (3)
3 (b) 2., 139.345 (7) (a), subchapter IX (title) of chapter 254 [precedes 254.911],
4 254.916 (2) (intro.), 254.916 (3) (a), (b), (c) and (d), 254.916 (3) (f) 2., 254.916 (11),
5 254.92 (title), 254.92 (1), 254.92 (2), 254.92 (2m) (intro.) and 254.92 (3); and **to**
6 **create** 134.66 (1) (jm), 254.911 (11) and 254.916 (2) (d) of the statutes; **relating**
7 **to:** raising the legal age for sale, purchase, and possession of cigarettes and
8 nicotine and tobacco products, providing a legal age for sale, purchase, and
9 possession of vapor 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 21, and imposes the same 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

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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 21. The bill similarly prohibits the purchase of vapor products by or on behalf of a person who is 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 who is under 21.

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

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) or 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,~~ or vapor products from his or her vending machine by
13 a person under the age of ~~18~~ 21 if the vending machine operator was unaware of the
14 purchase.

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

24 (b) 1. A retailer shall post a sign in areas within his or her premises where
25 cigarettes ~~or,~~ 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.** 139.30 (10) of the statutes is amended to read:

19 139.30 (10) "Retailer" ~~has the meaning given in s. 134.66 (1) (g)~~ means any
20 person licensed under s. 134.65 (1).

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

22 139.345 (3) (a) (intro.) Verifies the consumer's name and address and that the
23 consumer is at least ~~18~~ 21 years of age by any of the following methods:

24 **SECTION 9.** 139.345 (3) (b) 2. of the statutes is amended to read:

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

3 **SECTION 14.** 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 15.** 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 21 years of age used in the investigation~~ shall
9 state his or her true age.

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

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

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

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

20 254.916 (3) (f) 2. The age of the ~~minor person under 21 years of age used in the~~
21 investigation.

22 **SECTION 17.** 254.916 (11) of the statutes is amended to read:

23 254.916 (11) A person conducting an investigation under this section may not
24 have a financial interest in a regulated cigarette and tobacco product retailer, a vapor
25 product retailer, a tobacco vending machine operator, a tobacco vending machine

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1 premises, or a tobacco vending machine that may interfere with his or her ability to
2 properly conduct that investigation. A person who is investigated under this section
3 may request the local health department or local law enforcement agency that
4 contracted for the investigation to conduct a review under ch. 68 to determine
5 whether the person conducting the investigation is in compliance with this
6 subsection or, if applicable, may request the state agency or state law enforcement
7 agency that contracted for the investigation to conduct a contested case hearing
8 under ch. 227 to make that determination. The results of an investigation that is
9 conducted by a person who is not in compliance with this subsection may not be used
10 to prosecute a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted under
11 s. 134.66 (5).

12 **SECTION 18.** 254.92 (title) of the statutes is amended to read:

13 **254.92 (title) Purchase or possession of cigarettes ~~or~~ tobacco products,**
14 **nicotine products, or vapor products by person under 18 21 prohibited.**

15 **SECTION 19.** 254.92 (1) of the statutes is amended to read:

16 254.92 (1) No person under ~~18~~ 21 years of age may falsely represent his or her
17 age for the purpose of receiving any cigarette, nicotine product, ~~or~~ tobacco product,
18 or vapor product.

19 **SECTION 20.** 254.92 (2) of the statutes is amended to read:

20 254.92 (2) No person under ~~18~~ 21 years of age may purchase, attempt to
21 purchase, or possess any cigarette, nicotine product, ~~or~~ tobacco product, or vapor
22 product except as follows:

23 (a) A person under ~~18~~ 21 years of age may purchase or possess cigarettes,
24 nicotine products, ~~or~~ tobacco products, or vapor products for the sole purpose of resale

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1 in the course of employment during his or her working hours if employed by a
2 retailer.

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

7 **SECTION 21.** 254.92 (2m) (intro.) of the statutes is amended to read:

8 254.92 **(2m)** (intro.) No person may purchase cigarettes, tobacco products, ~~or~~
9 nicotine products, or vapor products on behalf of, or to provide to, any person who is
10 under ~~18~~ 21 years of age. Any person who violates this subsection may be:

11 **SECTION 22.** 254.92 (3) of the statutes is amended to read:

12 254.92 **(3)** A law enforcement officer shall seize any cigarette, nicotine product,
13 ~~or~~ tobacco product, or vapor product that has been sold to and is in the possession of
14 a person under ~~18~~ 21 years of age.

15 **SECTION 23. Initial applicability.**

16 (1) This act first applies to purchases, attempts to purchase, possession, and
17 false representations of age for the purpose of receiving any cigarette, nicotine
18 product, tobacco product, or vapor product by persons under 21 years of age 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 21 years of age on the
21 effective date of this subsection.

22 (END)