



## ENGROSSED 1997 SENATE BILL 313

November 24, 1997 - Printed by direction of ASSEMBLY CHIEF CLERK.

1     **AN ACT to repeal** 134.66 (2) (cm) 2. and 3. and 938.983 (1) (b); **to renumber and**  
2     **amend** 134.66 (2) (cm) 1.; **to amend** 134.65 (1), 134.66 (2) (a), 134.66 (2) (e),  
3     134.66 (3) (intro.), 134.66 (4) (a) 2. (intro.), 938.983 (2) (intro.) and 938.983 (4);  
4     **to repeal and recreate** 134.66 (2) (c); and **to create** 134.65 (2) (c), 134.66 (2)  
5     (cm) 1m., 134.66 (4) (am), 938.343 (11), 938.983 (2m) and 938.983 (3m) of the  
6     statutes; **relating to:** restrictions on the sale or giving away of cigarettes or  
7     tobacco products and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

#### ***Engrossment information:***

The text of Engrossed 1997 Senate Bill 313 consists of the following documents adopted in the senate on November 19: the bill as affected by Senate Amendment 1, Senate Amendment 2, Senate Amendment 3, Senate Amendment 8, Senate Amendment 9, Senate Amendment 13, Senate Amendment 16 and Senate Amendment 18. Items 5 and 7 of Senate Amendment 13 could not be given effect because Senate Amendment 8 had earlier deleted that text from the bill.

#### ***Content of Engrossed 1997 Senate Bill 313:***

Under current law, a person engaged in the retail sale of cigarettes or tobacco products must be licensed by the city, village or town in which the privilege is

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exercised. The annual fee for the license is \$5. This bill authorizes the city, village or town to charge the licensee an additional fee to be used by the city, village or town or its agent for the purpose of determining compliance by retailers with the state law or local ordinance that prohibits the sale of cigarettes or tobacco products to persons under the age of 18. If a city, village or town elects not to charge the fee, the bill authorizes the county in which the retailer is located to charge the licensee a fee to be used by the county or its agent for the purpose of determining compliance by retailers with the state law or local ordinance that prohibits the sale of cigarettes or tobacco products to persons under the age of 18.

Under current law, a retailer, manufacturer or distributor of cigarettes or tobacco products is prohibited from selling or giving such products to any person under the age of 18, except in the circumstance where the person handles cigarettes or tobacco products in the course of employment. A vending machine operator is immune from liability under this prohibition if cigarettes or tobacco products are obtained from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase. Additionally, current law recognizes a defense to the violation of the prohibition against sales to persons under the age of 18, if the retailer, manufacturer or distributor of cigarettes or tobacco products proves all of the following: 1) that the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card; 2) 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; and 3) 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 purchaser had attained the age of 18.

The bill prohibits vending machine sales 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 is present, or permitted to enter, unless the person is accompanied by a parent, guardian or adult spouse.

Except for the limited authority to sell cigarettes from a vending machine accessible only to adults, the bill prohibits a retailer from offering for sale cigarettes or tobacco products in a manner that results in their being accessible to the public. The bill also prohibits a retailer or retailer's employe or agent from selling, bartering or exchanging cigarettes or tobacco products to another person unless the retailer or his or her employe or agent assists that person in obtaining the cigarettes or tobacco products. The bill exempts facilities where the retailer ensures that no persons under the age of 18 are permitted to enter. The bill specifically prohibits employes and agents of retailers from selling or giving cigarettes to persons under the age of 18 and imposes a forfeiture of \$250 for these violations.

Under current law, a retailer is prohibited from selling cigarettes in a form other than as a package or a container on which a cigarette tax stamp has been affixed. Although tax stamps are usually affixed to packages of 20 cigarettes, state law does not preclude the purchase and affixing of tax stamps to packages with fewer than 20 cigarettes. The bill prohibits a retailer, manufacturer, distributor, jobber or vending machine operator from selling or giving away cigarettes in a package or container with fewer than 20 cigarettes.

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Under current law, a person who is younger than 18 years of age is prohibited from: buying or attempting to buy a cigarette or tobacco product; falsely representing his or her age for the purpose of receiving any cigarette or tobacco product; and possessing any cigarette or tobacco product. Such a person is permitted, however, to purchase or possess cigarettes or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a licensed retailer. The bill creates an additional exemption from these prohibitions that permits a person under the age of 18 to buy, attempt to buy, possess or falsely represent his or her age orally for the purpose of determining whether or not a retailer is in compliance with the prohibition against selling or giving cigarettes or tobacco products to persons under the age of 18. The exemption applies if the person has the permission of his or her parent or guardian and the written approval to engage in this compliance check from a law enforcement agency, the department of health and family services, a local health department or a district attorney. A local health department, however, may authorize a person under the age of 18 to engage in a compliance check only if the local health department is permitted to under a local ordinance or if a law enforcement agency approves that authorization.

Lastly, in addition to the various penalties that currently apply to a juvenile who violates any of the prohibitions against the purchase, attempt to purchase or possession of cigarettes or tobacco products, the bill permits a court to order the offender to attend a course relating to the health risks associated with the use of cigarettes or tobacco products, if such a course is available within a reasonable distance from his or her residence. The bill also specifies that the penalties that apply to a juvenile, that is, a person under 17 years of age, who violates any of these prohibitions also apply to a person under 18 years of age who violates any of these prohibitions. Under current law, the penalties specified in the juvenile justice code for a violation of any of these prohibitions only apply to a "juvenile", as defined in current law. Thus 17-year-olds are not currently included.

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

1           **SECTION 1g.** 134.65 (1) of the statutes is amended to read:  
2           134.65 (1) No person ~~shall, or the person's agent or employe, may~~ in any  
3           manner, or upon any pretense, or by any device, directly or indirectly sell, expose for  
4           sale, possess with intent to sell, exchange, barter, dispose of or give away any  
5           cigarettes or tobacco products to any person not holding a license as herein provided  
6           or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a license from  
7           the clerk of the city, village or town wherein such privilege is sought to be exercised.

**ENGROSSED SENATE BILL 313****SECTION 1m**

1           **SECTION 1m.** 134.65 (2) (c) of the statutes is created to read:

2           134.65 (2) (c) In addition to the fee under par. (a), the city, village or town may  
3 charge the licensee a fee to be used by the city, village or town or its agent for the  
4 purposes of determining and enforcing compliance with s. 134.66 (2), or an ordinance  
5 enacted under s. 134.66 (5), by retailers. If a city, village or town elects not to charge  
6 a fee, the county in which the retailer is located may charge the licensee a fee to be  
7 used by the county or its agent for these purposes.

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

9           134.66 (2) (a) No retailer, or employe or agent of a retailer, manufacturer or  
10 distributor may sell or give cigarettes or tobacco products to any a person under who  
11 has not attained the age of 18 years, except as provided in s. 938.983 (3). A vending  
12 machine operator is not liable under this paragraph for the purchase of cigarettes or  
13 tobacco products from his or her vending machine by a person under the age of 18  
14 if the vending machine operator was unaware of the purchase.

15           **SECTION 3.** 134.66 (2) (c) of the statutes is repealed and recreated to read:

16           134.66 (2) (c) 1. No retailer may offer for sale cigarettes or tobacco products in  
17 a manner that results in their being directly accessible to the public.

18           2. No retailer or retailer's employe or agent may sell, exchange or barter  
19 cigarettes or tobacco products to another person unless the retailer or his or her  
20 employe or agent assists that person in obtaining the cigarettes or tobacco products.

21           3. Subdivisions 1. and 2. do not apply to the sale of cigarettes or tobacco  
22 products from vending machines that are in compliance with par. (cm).

23           4. Subdivisions 1. and 2. do not apply to the sale of cigarettes or tobacco  
24 products in facilities in which the retailer ensures that no person under the age of  
25 18 years is present, or is able to enter, at any time.

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

3           134.66 **(2)** (cm) 2. Notwithstanding ~~par. (e)~~ subd. 1m., no retailer may place a  
4 vending machine within 500 feet of a school.

5           **SECTION 5.** 134.66 (2) (cm) 1m. of the statutes is created to read:

6           134.66 **(2)** (cm) 1m. A retailer or vending machine operator may not sell  
7 cigarettes or tobacco products from a vending machine unless the vending machine  
8 is located in a place where the retailer or vending machine operator ensures that no  
9 person younger than 18 years of age is present or permitted to enter unless he or she  
10 is accompanied by his or her parent or guardian or by his or her spouse who has  
11 attained the age of 18 years.

12           **SECTION 6.** 134.66 (2) (cm) 2. and 3. of the statutes are repealed.

13           **SECTION 7.** 134.66 (2) (e) of the statutes is amended to read:

14           134.66 **(2)** (e) No retailer may sell cigarettes in a form other than as a package  
15 or container on which a stamp is affixed under s. 139.32 (1). No retailer,  
16 manufacturer, distributor, jobber or vending machine operator, or their employes or  
17 agents, may sell or give away cigarettes in a package or container with fewer than  
18 20 cigarettes.

19           **SECTION 7q.** 134.66 (3) (intro.) of the statutes is amended to read:

20           134.66 **(3)** DEFENSE OF RETAILER, MANUFACTURER AND DISTRIBUTOR. (intro.) Proof  
21 of all of the following facts by a retailer, an employe or agent of a retailer, a  
22 manufacturer or a distributor who sells cigarettes or tobacco products to a person  
23 under the age of 18 is a defense to any prosecution for a violation of sub. (2) (a):

24           **SECTION 8g.** 134.66 (4) (a) 2. (intro.) of the statutes is amended to read:

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1           134.66 (4) (a) 2. (intro.) A person, other than an employe or agent of a retailer,  
2 who commits a violation is subject to a forfeiture of:

3           **SECTION 8m.** 134.66 (4) (am) of the statutes is created to read:

4           134.66 (4) (am) 1. In this paragraph, "violation" means a violation of sub. (2)  
5 (a), (c), (d) or (e) or a local ordinance that strictly conforms to sub. (2) (a), (c), (d) or  
6 (e).

7           2. An agent or employe of a retailer who commits a violation is subject to a  
8 forfeiture of not more than \$250.

9           **SECTION 9.** 938.343 (11) of the statutes is created to read:

10           938.343 (11) If the violation is of s. 938.983 (2) or an ordinance enacted under  
11 s. 938.983 (5), order the juvenile to attend a course relating to the health risks  
12 associated with the use of cigarettes or tobacco products if such a course is available  
13 within a reasonable distance from the juvenile's residence.

14           **SECTION 10.** 938.983 (1) (b) of the statutes is repealed.

15           **SECTION 11.** 938.983 (2) (intro.) of the statutes is amended to read:

16           938.983 (2) (intro.) Except as provided in ~~sub.~~ subs. (3) and (3m), no person  
17 under 18 years of age may do any of the following:

18           **SECTION 12.** 938.983 (2m) of the statutes is created to read:

19           938.983 (2m) Notwithstanding s. 938.02 (10m), the dispositions under s.  
20 938.343 apply to persons under 18 years of age who violate sub. (2) or an ordinance  
21 enacted under sub. (5).

22           **SECTION 13.** 938.983 (3m) of the statutes is created to read:

23           938.983 (3m) With permission of their parent or guardian a person under 18  
24 years of age may buy, attempt to buy, possess or falsely represent orally his or her  
25 age for the purpose of receiving any cigarette or tobacco product if the person

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1 commits the act for the purpose of determining compliance with s. 134.66 (2) or an  
2 ordinance enacted under s. 134.66 (5) and if the person has prior written  
3 authorization to commit the act from a law enforcement agency, as defined in s.  
4 165.83 (1) (b), the department of health and family services, a local health  
5 department, as defined in s. 250.01 (4) or a district attorney or from an authorized  
6 agent of a law enforcement agency, the department of health and family services, a  
7 local health department or a district attorney. A local health department may  
8 authorize a person under 18 years of age to commit an act described in this subsection  
9 only if a local ordinance permits or a law enforcement agency approves that  
10 authorization.

11 **SECTION 14.** 938.983 (4) of the statutes is amended to read:

12 938.983 (4) A law enforcement officer, as defined in s. 30.50 (4s), shall seize any  
13 cigarette or tobacco product involved in any violation of sub. (2) committed in his or  
14 her presence.

15 **SECTION 15. Nonstatutory provisions.**

16 (1) REMOVAL OF SELF-SERVICE CIGARETTES AND TOBACCO PRODUCTS.  
17 Notwithstanding section 134.66 (2) (c) of the statutes, as affected by this act, if a  
18 written agreement in effect on the effective date of this subsection that is binding on  
19 a retailer requires the placement of cigarettes or tobacco products in a location that  
20 is prohibited under section 134.66 (2) (c) of the statutes, as affected by this act, the  
21 retailer shall remove the cigarettes or tobacco products on or before the date that the  
22 written agreement expires or would be extended or renewed, whichever occurs first.

23 (2) REMOVAL OF VENDING MACHINES. Notwithstanding section 134.66 (2) (cm) 1m.  
24 of the statutes, as created by this act, if a written agreement in effect on the effective  
25 date of this subsection that is binding on a vending machine operator requires the

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1 placement of the vending machine operator's vending machine in a location that is  
2 prohibited under section 134.66 (2) (cm) 1m. of the statutes, as affected by this act,  
3 the vending machine operator shall remove the vending machine on or before the  
4 date that the written agreement expires or would be extended or renewed, whichever  
5 occurs first.

6 **SECTION 16. Initial applicability.**

7 (1) PURCHASE OR POSSESSION OF CIGARETTE PRODUCTS BY PERSONS UNDER 18 YEARS  
8 OF AGE. The treatment of sections 938.343 (11) and 938.983 (1) (b), (2) (intro.), (2m)  
9 and (4) of the statutes first applies to violations of section 938.983 (2) of the statutes,  
10 as affected by this act, occurring on the effective date of this subsection.

11 (END)