

1987 Assembly Bill 390

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1987 Wisconsin Act 336

AN ACT to amend 778.25 (title) and 778.25 (2) (e); and to create 48.983, 134.66 and 778.25 (1) (a) 4 of the statutes, relating to prohibiting cigarette and tobacco products sales to and purchase by certain persons, distribution of cigarettes and tobacco products for nominal or no consideration to certain persons, cigarette vending machine locations and providing a penalty.

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

SECTION 1. 48.983 of the statutes is created to read:

48.983 Use of cigarettes and tobacco products prohibited. (1) In this section:

(a) "Cigarette" has the meaning given in s. 139.30 (1).

(b) "Law enforcement officer" has the meaning given in s. 30.50 (4s).

(c) "Tobacco products" has the meaning given in s. 139.75 (12).

(2) Except as provided in sub. (3), no child may do any of the following:

(a) Buy or attempt to buy any cigarette or tobacco product.

(b) Falsely represent his or her age for the purpose of receiving any cigarette or tobacco product.

(3) A child may purchase 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 retailer licensed under s. 134.65 (1).

(4) A law enforcement officer shall seize any cigarette or tobacco product involved in any violation of sub. (2) committed in his or her presence.

(5) A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section. A county ordinance adopted under this section does not apply within any town, village or city that has adopted or adopts an ordinance under this subsection.

SECTION 2. 134.66 of the statutes is created to read:

134.66 Restrictions on sale or gift of cigarettes or tobacco products. (1) **DEFINITIONS.** In this section:

(a) "Cigarette" has the meaning given in s. 139.30 (1).

(b) "Distributor" means any of the following:

1. A person specified under s. 139.30 (3).

2. A person specified under s. 139.75 (4).

(c) "Identification card" means any of the following:

1. A license containing a photograph issued under ch. 343.

2. An identification card issued under s. 343.50.

3. An identification card issued under s. 125.08.

(d) "Jobber" has the meaning given in s. 139.30 (6).

(e) "Manufacturer" means any of the following:

1. A person specified under s. 139.30 (7).

2. A person specified under s. 139.75 (5).

(f) "Place of business" means any place where cigarettes or tobacco products are sold, manufactured, or stored for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.

(g) "Retailer" means any person licensed under s. 134.65 (1).

(h) "School" has the meaning given in s. 118.257 (1) (c).

(i) "Subjobber" has the meaning given in s. 139.75 (11).

(j) "Tobacco products" has the meaning given in s. 139.75 (12).

(k) "Vending machine" has the meaning given in s. 139.30 (14).

(L) "Vending machine operator" has the meaning given in s. 139.30 (15).

(2) **RESTRICTIONS.** (a) No retailer may sell or give cigarettes or tobacco products to any person under the age of 18, except as provided in s. 48.983 (3). A vending machine operator is not liable under this paragraph for the purchase of cigarettes or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

(b) 1. A retailer shall post a sign in areas within his or her premises where cigarettes or tobacco products

are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under this section and s. 48.983.

2. A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under s. 48.983 and that the purchaser is subject to a forfeiture of not to exceed \$25.

(c) 1. No person may place a vending machine within 500 feet of a school.

2. Except as provided in subd. 3, a vending machine operator shall remove all of his or her vending machines which are located within 500 feet of a school by the first day of the 2nd month beginning after the effective date of this subdivision [revisor inserts date].

3. Notwithstanding subd. 2, if a written agreement binding on a vending machine operator governs the location of his or her vending machine which is located within 500 feet of a school, the vending machine owner shall remove the vending machine on the date that the written agreement expires or would be extended or renewed.

(d) No manufacturer, distributor, jobber, subjobber or retailer, or their employes or agents, may provide cigarettes or tobacco products for nominal or no consideration to any person under the age of 18.

(3) **DEFENSE OF RETAILER.** Proof of all of the following facts by a retailer who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of sub. (2) (a):

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

(b) 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.

(c) That 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.

(4) **PENALTIES.** (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a), (c) or (d) or a local ordinance which strictly conforms to sub. (2) (a), (c) or (d).

2. A person who commits a violation is subject to a forfeiture of:

a. Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or

b. Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.

3. A court shall suspend any license or permit issued under s. 134.65, 139.34 or 139.79 to a person for:

a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

b. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or

c. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 or more other violations.

4. The court shall promptly mail notice of a suspension under subd. 3 to the department of revenue and to the clerk of each municipality which has issued a license or permit to the person.

(b) Whoever violates sub. (2) (b) shall forfeit not more than \$25.

(5) LOCAL ORDINANCE. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section. A county ordinance adopted under this subsection does not apply within any town, village or city that has adopted or adopts an ordinance under this subsection.

SECTION 3. 778.25 (title) of the statutes is amended to read:

778.25 (title) Citation procedure; certain alcohol beverages, tobacco, harassment and safety violations.

SECTION 4. 778.25 (1) (a) 4 of the statutes is created to read:

778.25 (1) (a) 4. Under s. 48.983 brought against a minor in the court assigned to exercise jurisdiction under ch. 48.

SECTION 5. 778.25 (2) (e) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

778.25 (2) (e) The maximum forfeiture, penalty assessment and jail assessment for which the defendant might be found liable and other penalties which may be imposed including, for a violation of a statute or ordinance specified under sub. (1) (a) 1, suspension or revocation under s. 343.30 (6). ~~Suspension or revocation under s. 343.30 (6) is not an option for violation of a statute or ordinance specified under sub. (1) (a) 2 or 3.~~

SECTION 6. **Effective date.** This act takes effect on July 1, 1989.