



1997 SENATE BILL 313

October 8, 1997 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

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

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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:

PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on minors and tobacco.

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 exercised. The annual fee for the license is \$5. This bill authorizes the city, village or town to charge

SENATE BILL 313

the licensee an additional fee of \$50 per year 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 \$50 fee, the bill authorizes the county in which the retailer is located to charge the licensee a fee of \$50 per year 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, at any time.

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 retains the current defenses to a prosecution for a violation of the prohibition against sales or gifts of cigarettes or tobacco products to persons under the age of 18, but specifically requires the retailer, manufacturer or distributor to comply with age verification requirements that apply to sales other than through vending machines. In this regard, the bill requires each retailer, manufacturer or distributor of cigarettes or tobacco products to verify that purchasers have attained the age of 18 by checking identification that includes the bearer's date of birth and photograph. Under the bill, age verification is not required of any purchaser whose appearance is such that an ordinary and prudent person would believe that the purchaser had attained the age of 27.

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.

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

SENATE BILL 313

during his or her working hours if employed by a licensed retailer. The bill creates an additional exemption from these prohibitions for a person under the age of 18 who is involved in 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 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.

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.

1 **SECTION 1.** 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 of \$50 per year to be used by the city, village or town or its
4 agent for the purpose of determining compliance by retailers with s. 134.66 (2) or an
5 ordinance enacted under s. 134.66 (5). If a city, village or town elects not to charge
6 the \$50 fee, the county in which the retailer is located may charge the licensee a fee
7 of \$50 per year to be used by the county or its agent for the purpose of determining
8 compliance by retailers with s. 134.66 (2) or an ordinance enacted under s. 134.66 (5).

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

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

SENATE BILL 313**SECTION 2**

1 means of an identification card that the person purchasing cigarettes or tobacco
2 products has attained the age of 18 years. Age verification is not required of any
3 purchaser whose appearance is such that an ordinary and prudent person would
4 believe that the purchaser had attained the age of 27 years.

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

6 134.66 (2) (c) 1. No retailer may offer for sale cigarettes or tobacco products in
7 a manner that results in their being directly accessible to the public.

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

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

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

15 134.66 (2) (cm) 2. Notwithstanding par. (e) subd. 1m., no retailer may place a
16 vending machine within 500 feet of a school.

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

18 134.66 (2) (cm) 1m. A retailer or vending machine operator may not sell
19 cigarettes or tobacco products from a vending machine unless the vending machine
20 is located in a place where the retailer or vending machine operator ensures that no
21 person younger than 18 years of age is present, or permitted to enter, at any time.

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

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

24 134.66 (2) (e) No retailer may sell cigarettes in a form other than as a package
25 or container on which a stamp is affixed under s. 139.32 (1). No retailer,

SENATE BILL 313

1 manufacturer, distributor, jobber or vending machine operator, or their employes or
2 agents, may sell or give away cigarettes in a package or container with fewer than
3 20 cigarettes.

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

5 134.66 (3) (a) That the retailer, manufacturer or distributor complied with the
6 age verification requirements of sub. (2) (a) and the purchaser falsely represented
7 that he or she had attained the age of 18 and presented an identification card.

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

9 938.343 (11) If the violation is of s. 938.983 (2) or an ordinance enacted under
10 s. 938.983 (5), order the juvenile to attend a course relating to the health risks
11 associated with the use of cigarettes or tobacco products if such a course is available
12 within a reasonable distance from the juvenile's residence.

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

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

15 938.983 (2) (intro.) Except as provided in sub. subs. (3) and (3m), no person
16 under 18 years of age may do any of the following:

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

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

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

22 938.983 (3m) A person under 18 years of age may buy, attempt to buy, possess
23 or falsely represent his or her age for the purpose of receiving any cigarette or tobacco
24 product if the person commits the act for the purpose of determining compliance with
25 s. 134.66 (2) or an ordinance enacted under s. 134.66 (5) and if the person has prior

1 written authorization to commit the act from a law enforcement agency, as defined
2 in s. 165.83 (1) (b), the department of health and family services, a local health
3 department, as defined in s. 250.01 (4) or a district attorney or from an authorized
4 agent of a law enforcement agency, the department of health and family services, a
5 local health department or a district attorney.

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

7 938.983 (4) A law enforcement officer, as defined in s. 30.50 (4s), shall seize any
8 cigarette or tobacco product involved in any violation of sub. (2) committed in his or
9 her presence.

10 **SECTION 15. Nonstatutory provisions.**

11 (1) REMOVAL OF SELF-SERVICE CIGARETTES AND TOBACCO PRODUCTS.

12 Notwithstanding section 134.66 (2) (c) of the statutes, as affected by this act, if a
13 written agreement in effect on the effective date of this subsection that is binding on
14 a retailer requires the placement of cigarettes or tobacco products in a location that
15 is prohibited under section 134.66 (2) (c) of the statutes, as affected by this act, the
16 retailer shall remove the cigarettes or tobacco products on or before the date that the
17 written agreement expires or would be extended or renewed, whichever occurs first.

18 (2) REMOVAL OF VENDING MACHINES. Notwithstanding section 134.66 (2) (cm) 1m.
19 of the statutes, as created by this act, if a written agreement in effect on the effective
20 date of this subsection that is binding on a vending machine operator requires the
21 placement of the vending machine operator's vending machine in a location that is
22 prohibited under section 134.66 (2) (cm) 1m. of the statutes, as affected by this act,
23 the vending machine operator shall remove the vending machine on or before the
24 date that the written agreement expires or would be extended or renewed, whichever
25 occurs first.

