

1999 SENATE BILL 334

January 21, 2000 – Introduced by Senators ROBSON, ROESSLER, PLACHE and ROSENZWEIG, cosponsored by Representatives BOCK, LA FAVE, STASKUNAS, BLACK, YOUNG and BERCEAU. Referred to Committee on Human Services and Aging.

1 **AN ACT to repeal** 227.01 (13) (zu), subchapter IX (title) of chapter 254 [precedes
2 254.911], 254.911, 254.916 and 254.92 (2) (b); **to renumber** 254.92 (title); **to**
3 **renumber and amend** 254.92 (1), 254.92 (2) (intro.), 254.92 (2) (a) and 254.92
4 (3); **to amend** 111.35 (2) (d), 134.66 (2) (a), 134.66 (2) (b) 1. and 134.66 (2) (b)
5 2.; and **to create** 778.25 (1) (a) 4m., 938.984 (1) and 938.984 (5) of the statutes;
6 **relating to:** investigations of compliance with prohibitions on the sale or
7 gifting of cigarettes or tobacco products to minors.

Analysis by the Legislative Reference Bureau

Under current federal law, state receipt of certain amounts of the substance abuse block grant is conditioned upon the state having in effect a law prohibiting manufacturers, retailers or distributors of tobacco products from selling or distributing tobacco products to minors, annual conduct by the state of random, unannounced inspections to ensure compliance with the prohibition and annual submittal of a report on activities to enforce the prohibition, success achieved and strategies utilized.

Before enactment of 1999 Wisconsin Act 9 (the biennial budget act), state law prohibited a retailer, manufacturer, distributor, jobber or subjobber or an agent or employe of any of these from selling or giving cigarettes or tobacco products to a minor unless the minor was an employe and bought or possessed the cigarettes or

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tobacco products in the course of employment. However, proof of certain facts, including that the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained age 18, were a defense to any prosecution for a violation of this prohibition. A minor was prohibited from purchasing, attempting to purchase or possessing a cigarette or tobacco product, except for the sole purpose of resale during the minor's working hours in the course of employment by a licensed retailer of cigarettes or tobacco products. An employer was not prohibited from discriminating in employment against a minor who violated this exception. A minor was also prohibited from falsely representing his or her age for the purpose of receiving a cigarette or tobacco product. A county, town, village or city was authorized to adopt an ordinance regulating the prohibition against purchase or possession of cigarettes or tobacco products only if the ordinance strictly conformed to the statutory provisions. A county ordinance was inapplicable within any town, village or city that had adopted such an ordinance.

The biennial budget act eliminated provisions relating to adoption of county, town, village or city ordinances concerning the purchase or possession of cigarettes or tobacco products by minors. The biennial budget act also eliminated the provision relating to discrimination in employment against a minor who violated the exception to the prohibition against purchase or possession of cigarettes or tobacco products. Under the biennial budget act, a second exception is created to the prohibition against purchase or possession of cigarettes or tobacco products, for minors aged 15 to 17, for any purchase or attempt to purchase or the possession of cigarettes or tobacco products in the course of the minor's participation in an authorized, unannounced investigation of a retail outlet that is conducted under the public health laws. Under the public health laws, the department of health and family services (DHFS) is authorized to contract with local health departments, as agents of DHFS, with a state agency or with state or local law enforcement agencies to conduct these investigations annually at retail outlets, including the sites of tobacco vending machines, to survey overall levels of compliance with the prohibition on selling or gifting cigarettes or tobacco products to minors. Except for surveys that are conducted as required by the federal food and drug administration, the surveys must cover a range of retail outlets that are not preselected on the basis of previous violations and must be conducted so as to provide a sample of retail outlets that reflects the distribution of minors and retail outlets throughout the state. Minors who are aged at least 15, who have the permission of a parent or guardian and prior written authorization and who are directly supervised by an adult employe of a governmental regulatory authority are authorized to buy, attempt to buy or possess cigarettes or tobacco products, if they do so in the course of an investigation. Specific requirements must be met during the course of an investigation or the results of the investigation may not be included in the survey. No retailer may be subject to the investigations more than twice annually unless the retailer is found in violation of the prohibition during both investigations. A governmental regulatory authority must make a good faith effort to make known to a retailer the results of an investigation within 72 hours after the occurrence of a violation during the conduct of the investigation. Within 10 days after an investigation is conducted, the

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governmental regulatory authority must report to the retailer the name and position of the governmental regulatory authority employe who supervised the investigation, the age of the minor, the date and time of the investigation and a description of the circumstances giving rise to a violation or written notice that no violation occurred.

Also under the biennial budget act, DHFS must compile the results of investigations and prepare an annual report reflecting these results for submittal with the state's application for federal funds. DHFS must also strive annually to negotiate with the federal department of health and human services realistic and attainable interim performance targets for compliance with federal prohibitions on distribution of tobacco products to minors.

This bill restores the provisions deleted, eliminates the provisions created and eliminates amendments to provisions concerning the sale or gifting of tobacco products to minors under the biennial budget act.

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.** 111.35 (2) (d) of the statutes, as affected by 1999 Wisconsin Act 9,
2 is amended to read:

3 111.35 **(2)** (d) Constitutes a violation of s. ~~254.92~~ 938.984 (2).

4 **SECTION 2.** 134.66 (2) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
5 is amended to read:

6 134.66 **(2)** (a) No retailer, manufacturer, distributor, jobber or subjobber, no
7 agent, employe or independent contractor of a retailer, manufacturer, distributor,
8 jobber or subjobber and no agent or employe of an independent contractor may sell
9 or provide for nominal or no consideration cigarettes or tobacco products to any
10 person under the age of 18, except as provided in s. ~~254.92 (2) (a)~~ 938.984 (3). A
11 vending machine operator is not liable under this paragraph for the purchase of
12 cigarettes or tobacco products from his or her vending machine by a person under the
13 age of 18 if the vending machine operator was unaware of the purchase.

SENATE BILL 334**SECTION 3**

1 **SECTION 3.** 134.66 (2) (b) 1. of the statutes, as affected by 1999 Wisconsin Act
2 9, is amended to read:

3 134.66 **(2)** (b) 1. A retailer shall post a sign in areas within his or her premises
4 where cigarettes or tobacco products are sold to consumers stating that the sale of
5 any cigarette or tobacco product to a person under the age of 18 is unlawful under
6 this section and s. ~~254.92~~ 938.984.

7 **SECTION 4.** 134.66 (2) (b) 2. of the statutes, as affected by 1999 Wisconsin Act
8 9, is amended to read:

9 134.66 **(2)** (b) 2. A vending machine operator shall attach a notice in a
10 conspicuous place on the front of his or her vending machines stating that the
11 purchase of any cigarette or tobacco product by a person under the age of 18 is
12 unlawful under s. ~~254.92~~ 938.984 and that the purchaser is subject to a forfeiture of
13 not to exceed \$25.

14 **SECTION 5.** 227.01 (13) (zu) of the statutes, as created by 1999 Wisconsin Act
15 9, is repealed.

16 **SECTION 6.** Subchapter IX (title) of chapter 254 [precedes 254.911] of the
17 statutes, as created by 1999 Wisconsin Act 9, is repealed.

18 **SECTION 7.** 254.911 of the statutes, as created by 1999 Wisconsin Act 9, is
19 repealed.

20 **SECTION 8.** 254.916 of the statutes, as created by 1999 Wisconsin Act 9, is
21 repealed.

22 **SECTION 9.** 254.92 (title) of the statutes, as affected by 1999 Wisconsin Act 9,
23 is renumbered 938.984 (title).

24 **SECTION 10.** 254.92 (1) of the statutes, as affected by 1999 Wisconsin Act 9, is
25 renumbered 938.984 (2) (b) and amended to read:

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1 938.984 (2) (b) ~~No person under 18 years of age may falsely~~ Falsely represent
2 his or her age for the purpose of receiving any cigarette or tobacco product.

3 **SECTION 11.** 254.92 (2) (intro.) of the statutes, as affected by 1999 Wisconsin
4 Act 9, is renumbered 938.984 (2) (intro.) and amended to read:

5 938.984 (2) (intro.) ~~No~~ Except as provided in sub. (3), no person under 18 years
6 of age may purchase, do any of the following:

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

8 (c) Possess any cigarette or tobacco product except as follows: .

9 **SECTION 12.** 254.92 (2) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
10 is renumbered 938.984 (3) and amended to read:

11 938.984 (3) A person under 18 years of age may purchase or possess cigarettes
12 or tobacco products for the sole purpose of resale in the course of employment during
13 his or her working hours if employed by a retailer licensed under s. 134.65 (2).

14 **SECTION 13.** 254.92 (2) (b) of the statutes, as created by 1999 Wisconsin Act 9,
15 is repealed.

16 **SECTION 14.** 254.92 (3) of the statutes, as affected by 1999 Wisconsin Act 9, is
17 renumbered 938.984 (4) and amended to read:

18 938.984 (4) A law enforcement officer shall seize any cigarette or tobacco
19 product ~~that has been sold to and is in the possession of a person under 18 years of~~
20 age involved in any violation of sub. (2) committed in his or her presence.

21 **SECTION 15.** 778.25 (1) (a) 4m. of the statutes is created to read:

22 778.25 (1) (a) 4m. Under s. 938.984 brought against an adult in circuit court
23 or against a minor in the court assigned to exercise jurisdiction under chs. 48 and
24 938.

25 **SECTION 16.** 938.984 (1) of the statutes is created to read:

