



State of Wisconsin
2011 – 2012 LEGISLATURE



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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2011 ASSEMBLY BILL 93**

October 3, 2011 – Offered by Representative BIES.

1 **AN ACT *to amend*** 134.66 (title), 134.66 (2) (a), 134.66 (2) (am), 254.911 (5),
2 254.916 (2) (intro.), 254.92 (1), 254.92 (2), 254.92 (2m) (intro.) and 254.92 (3);
3 and ***to create*** 134.66 (1) (f) and 254.911 (3m) of the statutes; **relating to:**
4 minors obtaining tobacco or nicotine products and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, purchasing cigarettes on behalf of, or to provide to, a minor is punishable by a forfeiture of not more than \$500 for a violation that is not committed within 30 months of a previous violation; a fine of not more than \$500 or imprisonment for not more than 30 days, or both, for a violation that is committed within 30 months of a previous violation; a fine of not more than \$1,000 or imprisonment for not more than 90 days, or both, for a violation that is committed within 30 months of two previous violations; and a fine of not more than \$10,000 or imprisonment for not more than nine months, or both, for a violation that is committed within 30 months of three previous violations.

This bill expands the prohibition on purchasing cigarettes on behalf of, or to provide to, a minor, to include purchasing tobacco products and nicotine products for the same purpose. Under this bill, a nicotine product is a product that contains nicotine but is not a tobacco product, a cigarette, or a product that is approved by the U.S. Food and Drug Administration for sale as a smoking cessation product or for another medical purpose.

Under current law, a retailer, manufacturer, distributor, jobber, subjobber, or independent contractor, or the agent or employee of any of these persons, is prohibited from selling or giving cigarettes or tobacco products to a minor unless the minor purchased or possessed the cigarettes or tobacco products in the course of the minor's employment. In addition, these persons are prohibited from giving cigarettes or tobacco products to any person unless the cigarettes or tobacco products are provided in a place where minors are not permitted to enter. This bill expands these prohibitions to include the sale or giving of nicotine products to minors.

Under current law, the Department of Health Services, a local health department, a state agency, or a state or local law enforcement agency is authorized conduct unannounced investigations of retail outlets where cigarettes or tobacco products are sold to survey overall levels of compliance with the prohibitions against selling cigarettes or tobacco products to minors. Under this bill, an authorized entity may also investigate retail outlets where nicotine products are sold to survey overall levels of compliance with the prohibitions against selling nicotine products to minors.

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 or**
3 **tobacco products.**

4 **SECTION 2.** 134.66 (1) (f) of the statutes is created to read:

5 **134.66 (1) (f)** “Nicotine product” means a product that contains nicotine and is
6 not any of the following:

7 1. A tobacco product.

8 2. A cigarette.

9 3. A product that has been approved by the U.S. food and drug administration
10 for sale as a smoking cessation product or for another medical purpose and is being
11 marketed and sold solely for such an approved purpose.

12 **SECTION 3.** 134.66 (2) (a) of the statutes is amended to read:

1 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
2 subjobber, no agent, employee or independent contractor of a retailer, direct
3 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
4 of an independent contractor may sell or provide for nominal or no consideration
5 cigarettes, nicotine products, or tobacco products to any person under the age of 18,
6 except as provided in s. 254.92 (2) (a). A vending machine operator is not liable under
7 this paragraph for the purchase of cigarettes, nicotine products, or tobacco products
8 from his or her vending machine by a person under the age of 18 if the vending
9 machine operator was unaware of the purchase.

10 **SECTION 4.** 134.66 (2) (am) of the statutes is amended to read:

11 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
12 subjobber, no agent, employee or independent contractor of a retailer, direct
13 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
14 of an independent contractor may provide for nominal or no consideration cigarettes,
15 nicotine products, or tobacco products to any person except in a place where no
16 person younger than 18 years of age is present or permitted to enter unless the
17 person who is younger than 18 years of age is accompanied by his or her parent or
18 guardian or by his or her spouse who has attained the age of 18 years.

19 **SECTION 5.** 254.911 (3m) of the statutes is created to read:

20 254.911 (3m) “Nicotine product” has the meaning given in s. 134.66 (1) (f).

21 **SECTION 6.** 254.911 (5) of the statutes is amended to read:

22 254.911 (5) “Retail outlet” means a place of business from which cigarettes,
23 nicotine products, or tobacco products are sold at retail to consumers.

24 **SECTION 7.** 254.916 (2) (intro.) of the statutes is amended to read:

1 254.916 **(2)** (intro.) With the permission of his or her parent or guardian, a
2 person under 18 years of age, but not under 15 years of age, may buy, attempt to buy
3 or possess any cigarette, nicotine product, or tobacco product if all of the following
4 are true:

5 **SECTION 8.** 254.92 (1) of the statutes is amended to read:

6 254.92 **(1)** No person under 18 years of age may falsely represent his or her age
7 for the purpose of receiving any cigarette, nicotine product, or tobacco product.

8 **SECTION 9.** 254.92 (2) of the statutes is amended to read:

9 254.92 **(2)** No person under 18 years of age may purchase, attempt to purchase,
10 or possess any cigarette, nicotine product, or tobacco product except as follows:

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

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

18 **SECTION 10.** 254.92 (2m) (intro.) of the statutes is amended to read:

19 254.92 **(2m)** (intro.) No person may purchase cigarettes, tobacco products, or
20 nicotine products on behalf of, or to provide to, any person who is under 18 years of
21 age. Any person who violates this subsection may be:

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

