



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-1096/P1
JAM:emw

DOA:.....Bollhorst, BB0167 - Minimum age for cigarettes, nicotine products, tobacco products, and vapor products

FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT

COMMERCE

Changing the minimum age for cigarettes, tobacco products, and nicotine products; imposing a minimum age for vapor products

This bill changes the minimum age in Wisconsin for purchasing cigarettes, tobacco products, or nicotine products from 18 to 21 and imposes the same minimum age for purchasing vapor products.

In December 2019, enacted legislation amending the Federal Food, Drug, and Cosmetic Act raised the federal minimum age for the sale of tobacco products from 18 to 21. Under current federal law, it is illegal for a retailer to sell any tobacco product—including cigarettes, cigars, and e-cigarettes—to anyone under the age of 21.

Under current state law, “nicotine products” are products that contain nicotine and that are not tobacco products, cigarettes, or products that have been approved by the federal Food and Drug Administration for sale as a smoking cessation product. “Tobacco products” include products such as cigars, chewing tobacco, and smoking tobacco. “Vapor products” are noncombustible products that produce a vapor or aerosol for inhalation from the application of a heating element, regardless of whether the liquid or other substance contains nicotine.

Under current state law, no person under the age of 18 may purchase, attempt to purchase, possess, or falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product with certain limited exceptions. Current state law also prohibits any person from purchasing cigarettes, tobacco products, or nicotine products on behalf of a person who is under the age of 18 and subjects that purchaser to a penalty. A person is also prohibited under current state law from delivering a package of cigarettes unless the person making the delivery verifies that the person receiving the package is at least 18 years of age. The bill changes these ages from 18 to 21. The bill similarly prohibits the purchase of vapor products by or on behalf of a person who is under the age of 21.

Current state law prohibits a retailer, manufacturer, distributor, jobber, subjobber, or independent contractor or an employee or agent of any of these persons from selling or providing cigarettes or tobacco or nicotine products to an individual who is under the age of 18 and from providing cigarettes or tobacco or nicotine products to any person for free unless the cigarettes or products are provided in a place where persons under 18 years of age are generally not permitted to enter. Current state law also prohibits a retailer or vending machine operator from selling cigarettes or tobacco or nicotine products from a vending machine unless the retailer or vending machine operator ensures that no person under 18 years of age is present on or permitted to enter the premises where the machine is located. The bill changes these ages from 18 to 21. The bill similarly prohibits the sale or provision of vapor products to a person who is under the age of 21.

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:

SECTION 1. 134.66 (title) of the statutes is amended to read:

134.66 (title) Restrictions on sale or gift of cigarettes or nicotine, vapor, or tobacco products.

SECTION 2. 134.66 (1) (jm) of the statutes is created to read:

134.66 (1) (jm) “Vapor product” has the meaning given in s. 139.75 (14).

SECTION 3. 134.66 (2) (a), (am), (b) and (cm) 1m. of the statutes are amended to read:

134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct

marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes, nicotine products, ~~or tobacco products,~~ or vapor products to any person under the age of ~~18~~ 21, except as provided in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph for the purchase of cigarettes, nicotine products, ~~or tobacco products,~~ or vapor products from his or her vending machine by a person under the age of ~~18~~ 21 if the vending machine operator was unaware of the purchase.

(am) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may provide for nominal or no consideration cigarettes, nicotine products, ~~or tobacco products,~~ or vapor products to any person except in a place where no person younger than ~~18~~ 21 years of age is present or permitted to enter unless the person who is younger than ~~18~~ 21 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of ~~18~~ 21 years.

(b) 1. A retailer shall post a sign in areas within his or her premises where cigarettes ~~or,~~ tobacco products, or vapor products are sold to consumers stating that the sale of any cigarette ~~or,~~ tobacco product, or vapor product to a person under the age of ~~18~~ 21 is unlawful under this section and s. 254.92.

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, or vapor product by a person under the age of ~~18~~ 21 is unlawful under s. 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.

(cm) 1m. A retailer or vending machine operator may not sell cigarettes ~~or~~, tobacco products, vapor products from a vending machine unless the vending machine is located in a place where the retailer or vending machine operator ensures that no person younger than ~~18~~ 21 years of age is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of ~~18~~ 21 years.

SECTION 4. 134.66 (2m) (a) of the statutes is amended to read:

134.66 **(2m)** (a) Except as provided in par. (b), at the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes, vapor products, or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for a violation of sub. (2) (a) or (am). The department of health services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this paragraph. A retailer may comply with this paragraph by providing the training program developed or approved by the department of health services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the department of health services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee, or independent contractor.

SECTION 5. 134.66 (3) of the statutes is amended to read:

134.66 **(3)** DEFENSE; SALE TO MINOR. Proof of all of the following facts by a retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or

independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes ~~or~~ tobacco products, or vapor products to a person under the age of ~~18~~ 21 is a defense to any prosecution, or a complaint made under s. 134.65 (7), for a violation of sub. (2) (a):

(a) That the purchaser falsely represented that he or she had attained the age of ~~18~~ 21 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~~ 21.

(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~~ 21.

SECTION 6. 139.345 (3) (a) (intro.) of the statutes is amended to read:

139.345 (3) (a) (intro.) Verifies the consumer's name and address and that the consumer is at least ~~18~~ 21 years of age by any of the following methods:

SECTION 7. 139.345 (3) (b) 2. of the statutes is amended to read:

139.345 (3) (b) 2. That the consumer understands that no person who is under ~~18~~ 21 years of age may purchase or possess cigarettes or falsely represent his or her age for the purpose of receiving cigarettes, as provided under s. 254.92.

SECTION 8. 139.345 (7) (a) of the statutes is amended to read:

139.345 (7) (a) No person may deliver a package of cigarettes sold by direct marketing to a consumer in this state unless the person making the delivery receives a government issued identification card from the person receiving the package and verifies that the person receiving the package is at least ~~18~~ 21 years of age. If the person receiving the package is not the person to whom the package is addressed, the person delivering the package shall have the person receiving the package sign a

statement that affirms that the person to whom the package is addressed is at least ~~18~~ 21 years of age.

SECTION 9. Subchapter IX (title) of chapter 254 [precedes 254.911] of the statutes is amended to read:

CHAPTER 254

SUBCHAPTER IX

SALE OR GIFT OF CIGARETTES,

NICOTINE PRODUCTS, VAPOR

PRODUCTS, OR TOBACCO

PRODUCTS TO MINORS

SECTION 10. 254.911 (11) of the statutes is created to read:

254.911 (11) "Vapor product" has the meaning given in s. 139.75 (14).

SECTION 11. 254.916 (2) (intro.) of the statutes is amended to read:

254.916 (2) (intro.) ~~With the permission of his or her parent or guardian, a~~ A person under ~~18~~ 21 years of age, but not under 15 years of age, may buy, attempt to buy, or possess any cigarette, nicotine product, ~~or tobacco product, or vapor product~~ if all of the following are true:

SECTION 12. 254.916 (2) (d) of the statutes is created to read:

254.916 (2) (d) If the person is under 18 years of age, he or she has obtained permission from his or her parent or guardian to participate in the investigation.

SECTION 13. 254.916 (3) (a), (b), (c) and (d) of the statutes are amended to read:

254.916 (3) (a) If questioned about his or her age during the course of an investigation, the ~~minor~~ person under 21 years of age shall state his or her true age.

(b) A ~~minor~~ person under 21 years of age may not be used for the purposes of an investigation at a retail outlet at which the ~~minor~~ person is a regular customer.

(c) The appearance of a ~~minor~~ person under 21 years of age may not be materially altered so as to indicate greater age.

(d) A photograph or videotape of the ~~minor~~ person under 21 years of age shall be made before or after the investigation or series of investigations on the day of the investigation or series of investigations. If a prosecution results from an investigation, the photograph or videotape shall be retained until the final disposition of the case.

SECTION 14. 254.916 (3) (f) 2. of the statutes is amended to read:

254.916 (3) (f) 2. The age of the ~~minor~~ person under 21 years of age.

SECTION 15. 254.916 (11) of the statutes is amended to read:

254.916 (11) A person conducting an investigation under this section may not have a financial interest in a regulated cigarette and tobacco product retailer, a vapor product retailer, a tobacco vending machine operator, a tobacco vending machine premises, or a tobacco vending machine that may interfere with his or her ability to properly conduct that investigation. A person who is investigated under this section may request the local health department or local law enforcement agency that contracted for the investigation to conduct a review under ch. 68 to determine whether the person conducting the investigation is in compliance with this subsection or, if applicable, may request the state agency or state law enforcement agency that contracted for the investigation to conduct a contested case hearing under ch. 227 to make that determination. The results of an investigation that is conducted by a person who is not in compliance with this subsection may not be used to prosecute a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5).

SECTION 16. 254.92 (title) of the statutes is amended to read:

254.92 (title) Purchase or possession of cigarettes ~~or~~, tobacco products, nicotine products, or vapor products by person under 18 21 prohibited.

SECTION 17. 254.92 (1) of the statutes is amended to read:

254.92 (1) No person under ~~18~~ 21 years of age may falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, ~~or~~ tobacco product, or vapor product.

SECTION 18. 254.92 (2) of the statutes is amended to read:

254.92 (2) No person under ~~18~~ 21 years of age may purchase, attempt to purchase, or possess any cigarette, nicotine product, ~~or~~ tobacco product, or vapor product except as follows:

(a) A person under ~~18~~ 21 years of age may purchase or possess cigarettes, nicotine products, ~~or~~ tobacco products, or vapor products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.

(b) A person under ~~18~~ 21 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess cigarettes, nicotine products, ~~or~~ tobacco products, or vapor products in the course of his or her participation in an investigation under s. 254.916 that is conducted in accordance with s. 254.916 (3).

SECTION 19. 254.92 (2m) (intro.) of the statutes is amended to read:

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

SECTION 20. 254.92 (3) of the statutes is amended to read:

254.92 (3) A law enforcement officer shall seize any cigarette, nicotine product, ~~or tobacco product, or vapor product~~ that has been sold to and is in the possession of a person under ~~18~~ 21 years of age.

SECTION 9302. Initial applicability; Agriculture, Trade and Consumer Protection.

(1) MINIMUM AGE FOR CIGARETTES, NICOTINE PRODUCTS, TOBACCO PRODUCTS, AND VAPOR PRODUCTS. The treatment of ss. 134.66 (title), (1) (jm), (2) (a), (am), (b), and (cm) 1m., (2m) (a), and (3), 139.345 (3) (a) (intro.) and (b) 2. and (7) (a), 254.911 (11), 254.916 (2) (intro.) and (d), (3) (a), (b), (c), (d), and (f) 2., and (11), and 254.92 (title), (1), (2), (2m) (intro.), and (3) and subch. IX (title) of ch. 254 first applies to purchases, attempts to purchase, possession, and false representations of age for the purpose of receiving any cigarette, nicotine product, tobacco product, or vapor product by persons under 21 years of age on the effective date of this subsection and to sales or the provision of cigarettes, nicotine products, tobacco products, or vapor products to persons under 21 years of age on the effective date of this subsection.

(END)