



2019 SENATE BILL 73

March 1, 2019 - Introduced by Senators JACQUE, L. TAYLOR, CARPENTER, JOHNSON, KOOYENGA and MARKLEIN, cosponsored by Representatives BRANDTJEN, DITTRICH, BROOKS, CROWLEY, DUCHOW, HORLACHER, KERKMAN, KITCHENS, KUGLITSCH, KULP, MURSAU, MYERS, OLDENBURG, PLUMER, QUINN, RAMTHUN, ROHRKASTE, SINICKI, SKOWRONSKI, SPREITZER, SUBECK, C. TAYLOR, THIESFELDT, TITTL, TUSLER and WICHGERS. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to amend* 134.66 (title), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2) (b),
2 134.66 (2) (cm) 1m., 134.66 (2m) (a), 134.66 (3) (intro.), subchapter IX (title) of
3 chapter 254 [precedes 254.911], 254.916 (2) (intro.), 254.92 (title), 254.92 (1),
4 254.92 (2), 254.92 (2m) (intro.) and 254.92 (3); and **to create** 134.66 (1) (jm) and
5 254.911 (11) of the statutes; **relating to:** prohibiting the sale of vapor products
6 to minors and the purchase of those products by minors.

Analysis by the Legislative Reference Bureau

This bill prohibits the sale of vapor products to minors and the purchase of those products by or for minors.

Current law prohibits certain actors, such as retailers and manufacturers, from selling cigarettes, tobacco products, or nicotine products to a person who is under the age of 18 (a minor), and from providing cigarettes, tobacco products, or nicotine products for free to any person unless the cigarettes or products are provided in a place where minors are generally not permitted to enter. This bill similarly prohibits the sale or provision of vapor products, such as e-cigarettes and vape pens, to minors.

Current law also prohibits a minor from purchasing, attempting to purchase, possessing, or falsely representing his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product, with certain limited exceptions. Current law also prohibits any person from purchasing cigarettes, nicotine products, or tobacco products on behalf of a minor. This bill similarly prohibits the purchase of vapor products by or on behalf of minors.

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

2 **134.66 (title) Restrictions on sale or gift of cigarettes or nicotine, vapor,**
3 **or tobacco products.**

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

5 134.66 (1) (jm) In this section, “vapor product” means any noncombustible
6 product or device, regardless of whether it contains nicotine, that employs a heating
7 element, power source, electronic circuit, or other electronic, chemical, or mechanical
8 means, regardless of shape or size, that can be used to produce a vapor that is
9 intended to be inhaled by the person using the product. “Vapor product” includes an
10 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar
11 product or device; and any cartridge or other container of a solution or other
12 substance, regardless of whether it contains nicotine, that is intended to be used with
13 or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or
14 similar product or device.

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

16 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or
17 subjobber, no agent, employee or independent contractor of a retailer, direct
18 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
19 of an independent contractor may sell or provide for nominal or no consideration
20 cigarettes, nicotine products, vapor products, or tobacco products to any person
21 under the age of 18, except as provided in s. 254.92 (2) (a). A vending machine

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1 operator is not liable under this paragraph for the purchase of cigarettes, nicotine
2 products, vapor products, or tobacco products from his or her vending machine by a
3 person under the age of 18 if the vending machine operator was unaware of the
4 purchase.

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

6 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
7 subjobber, no agent, employee or independent contractor of a retailer, direct
8 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
9 of an independent contractor may provide for nominal or no consideration cigarettes,
10 nicotine products, vapor products, or tobacco products to any person except in a place
11 where no person younger than 18 years of age is present or permitted to enter unless
12 the person who is younger than 18 years of age is accompanied by his or her parent
13 or guardian or by his or her spouse who has attained the age of 18 years.

14 **SECTION 5.** 134.66 (2) (b) of the statutes is amended to read:

15 134.66 (2) (b) 1. A retailer shall post a sign in areas within his or her premises
16 where cigarettes, vapor products, or tobacco products are sold to consumers stating
17 that the sale of any cigarette, vapor products, or tobacco product to a person under
18 the age of 18 is unlawful under this section and s. 254.92.

19 2. A vending machine operator shall attach a notice in a conspicuous place on
20 the front of his or her vending machines stating that the purchase of any cigarette,
21 vapor product, or tobacco product by a person under the age of 18 is unlawful under
22 s. 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.

23 **SECTION 6.** 134.66 (2) (cm) 1m. of the statutes is amended to read:

24 134.66 (2) (cm) 1m. A retailer or vending machine operator may not sell
25 cigarettes, vapor products, or tobacco products from a vending machine unless the

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1 vending machine is located in a place where the retailer or vending machine operator
2 ensures that no person younger than 18 years of age is present or permitted to enter
3 unless he or she is accompanied by his or her parent or guardian or by his or her
4 spouse who has attained the age of 18 years.

5 **SECTION 7.** 134.66 (2m) (a) of the statutes is amended to read:

6 134.66 **(2m)** (a) Except as provided in par. (b), at the time that a retailer hires
7 or contracts with an agent, employee, or independent contractor whose duties will
8 include the sale of cigarettes, vapor products, or tobacco products, the retailer shall
9 provide the agent, employee, or independent contractor with training on compliance
10 with sub. (2) (a) and (am), including training on the penalties under sub. (4) (a) 2. for
11 a violation of sub. (2) (a) or (am). The department of health services shall make
12 available to any retailer on request a training program developed or approved by that
13 department that provides the training required under this paragraph. A retailer
14 may comply with this paragraph by providing the training program developed or
15 approved by the department of health services or by providing a comparable training
16 program approved by that department. At the completion of the training, the retailer
17 and the agent, employee, or independent contractor shall sign a form provided by the
18 department of health services verifying that the agent, employee, or independent
19 contractor has received the training, which the retailer shall retain in the personnel
20 file of the agent, employee, or independent contractor.

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

22 134.66 **(3)** DEFENSE; SALE TO MINOR. (intro.) Proof of all of the following facts
23 by a retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or
24 independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber,
25 or an agent or employee of an independent contractor who sells cigarettes, vapor

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1 products, or tobacco products to a person under the age of 18 is a defense to any
2 prosecution, or a complaint made under s. 134.65 (7), for a violation of sub. (2) (a):

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

CHAPTER 254**SUBCHAPTER IX****SALE OR GIFT OF CIGARETTES,****NICOTINE PRODUCTS, VAPOR PRODUCTS,****OR TOBACCO PRODUCTS TO MINORS**

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

11 254.911 (11) "Vapor product" has the meaning given in s. 134.66 (1) (jm).

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

13 254.916 (2) (intro.) With the permission of his or her parent or guardian, a
14 person under 18 years of age, but not under 15 years of age, may buy, attempt to buy
15 or possess any cigarette, nicotine product, vapor product, or tobacco product if all of
16 the following are true:

17 **SECTION 12.** 254.92 (title) of the statutes is amended to read:

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

21 **SECTION 13.** 254.92 (1) of the statutes is amended to read:

22 254.92 (1) No person under 18 years of age may falsely represent his or her age
23 for the purpose of receiving any cigarette, nicotine product, vapor product, or tobacco
24 product.

25 **SECTION 14.** 254.92 (2) of the statutes is amended to read:

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1 254.92 (2) No person under 18 years of age may purchase, attempt to purchase,
2 or possess any cigarette, nicotine product, vapor product, or tobacco product except
3 as follows:

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

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

11 **SECTION 15.** 254.92 (2m) (intro.) of the statutes is amended to read:

12 254.92 (2m) (intro.) No person may purchase cigarettes, tobacco products, or
13 nicotine products, or vapor products on behalf of, or to provide to, any person who is
14 under 18 years of age. Any person who violates this subsection may be:

15 **SECTION 16.** 254.92 (3) of the statutes is amended to read:

16 254.92 (3) A law enforcement officer shall seize any cigarette, nicotine product,
17 vapor product, or tobacco product that has been sold to and is in the possession of a
18 person under 18 years of age.

19 **SECTION 17. Initial applicability.**

20 (1) This act first applies to sales or the provision of vapor products to persons
21 under the age of 18 and to purchases, attempts to purchase, and false
22 representations of age for the purpose of receiving any vapor product by persons
23 under the age of 18 on the effective date of this subsection.

24 **SECTION 18. Effective date.**

