



THE SALE OF CIGARETTES
TO MINORS IN WISCONSIN,
LEGISLATIVE HISTORY
OF RESTRICTIONS ON

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Introduction

In 1955 the statutes prohibiting the sale of tobacco to minors were repealed as the result of the express recommendations of a committee of the Legislative Council which studied the child welfare laws during the interim prior to that session. The committee expressly recommended the repeal of the law, and the bill which implemented its proposal contained such repeal in all published versions. The repeal was not an error or oversight, but done intentionally because the law was confusing, conflicting and considered unenforceable.

Some concern was registered when people discovered that the law had been repealed. Efforts were made in 1957 to reinstate the law which the prior study committee described as confusing, conflicting and not enforced. No apparent effort was made to look at the problem critically or to recognize the changing times. Long before the threat of lung cancer put a momentary lull in the sale of cigarettes, efforts were made to prevent smoking by minors. In fact, from 1905 to 1915 the manufacture and sale of cigarettes was prohibited in Wisconsin. Yet during that decade a futile but concerted effort was made to reduce cigarette smoking among minors because it allegedly affected their health, mentality and moral standards. Then came the era of advertising in which the famous athlete, man about town, glamorous lady and famous band leader endorsed cigarettes on billboards, magazine pages, radio and television while a few still, small voices opposed smoking. Added to this came the vending machine which has never been wired to detect age. The result was that cigarette smoking increased each year, and it was not confined to adults.

It is the purpose of this report to show the evolution of the laws relating to cigarette smoking by minors in order that those who are concerned about that practice may take a realistic approach to the problem of restraint.

1891 The First Restriction

The original restriction on the sale of cigarettes to minors in Wisconsin appears to have been imposed by Chapter 434, Laws of 1891, which said:

"No person shall sell or give to any minor, any cigar, cigarette or tobacco, when such person has been forbidden by the parent or guardian of such minor to sell or give the same to such minor."

The penalty was set at a fine of from \$10 to \$25. This provision became section 4608(e) of the statutes under the whole number designations in effect prior to the 1920's.

The 1898 statutes which were the results of a periodic revision stated the provision as follows:

"Any person who shall sell or give to any minor a cigar, cigarette or other tobacco in any form after having been

forbidden to so do by the parent or guardian of such minor shall be punished by a fine of not more than \$25 nor less than \$10."

1897

In 1897 by Chapter 329 the following was enacted:

"Any person or persons who shall sell, vend or in any way deal or traffic in or otherwise dispose of or give away, any cigarette or cigarette paper in any quantity whatsoever to, or with a minor under the age of 21, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished therefor by a fine of not less than \$5 or more than \$25 for each offense, besides the costs of suit, or by imprisonment in the county jail of the proper county not less than 5 days or more than 30 days; and in case of a second or any subsequent conviction by the same person, the punishment shall be a fine of not less than \$25 or more than \$100 besides the costs of suit or by imprisonment in the county jail of the proper county not less than 30 days or more than 3 months; and in case of punishment by fines, such person shall, unless the fines and costs be paid forthwith, be committed to the county jail of the proper county until such fine and costs are paid or until discharged by due course of law."

It became 4608f, 1898 Statutes. Although this provision appears to nullify the effect of 4608e, the latter was not repealed.

1905 Sale of Cigarettes Prohibited

In 1905 by Chapter 82, section 4608f of the statutes was in effect repealed and recreated to prohibit the manufacture and sale of cigarettes, cigarette paper or wrappers or substitutes therefor effective July 1, 1905 except that the prohibition was not to interfere with intrastate commerce.

1907 Failure of Prohibition on Sale of Cigarettes Tacitly Admitted

In 1907 while the manufacture and sale of cigarettes was illegal, two new restraints on the use of tobacco by minors were created by Chapter 463. The first became section 4608v and prohibited the use or smoking of tobacco, cigarettes or cigars by a person under 16 years in any public road, street, alley, park or other land used for public purposes or in any public place of business or amusement except when such minor was in the company of a parent or guardian. Section 4608w, created by the same law, provided a penalty for any person who permitted the use of tobacco in any form by a minor under 16 years of age in or upon premises occupied by him.

1911-1913

During the period from 1911 to 1913 it was evident that the prohibition against the sale of cigarettes was not effective. A study of 164 schools revealed that smoking was a problem in most of them. Schools refused to promote or graduate students who smoked, prohibited them from representing the school in contests and stripped them of scholastic honors. Some of the press, the Wisconsin Education Association and many educators including President Van Hise of the University made substantial efforts to reduce the evil of cigarette smoking among minors.

A B.A. thesis submitted at the University of Wisconsin in 1912 by G. H. A. Jenner, entitled "Unenforced Legislation in Wisconsin" said: (pages 43-47)

"The one law in Wisconsin which is violated most openly and generally throughout the whole state is the cigarette law. This law, Section 4608f, provides that any person who shall manufacture, sell, offer for sale or give away any cigarette or cigarette paper shall be guilty of a misdemeanor and shall be punished by a fine of not less than five nor more than fifty dollars, or imprisonment for not less than thirty days or more than six months. At the time this law was passed there was a great deal of agitation in the state against cigarettes and the object of the law was to decrease as much as possible the smoking of them. That the law is flagrantly and openly violated is a fact which is known to every person in the state. Immediately after the law was passed, many places which sold cigarettes stopped it, but when they saw that no attempt was made to enforce the law, they all gradually took it up again and now there are as many places selling them as there were before the law was passed. Most places where they are sold, for some reason, do not display them in show cases, but in many places this is done and so far as I am able to learn, not a single prosecution has taken place under the law.

"There are several reasons for this failure to enforce the law. One of them is that the strong anti-cigarette agitation has died down to a very great extent and it is quite improbable that another legislature would ever pass such a law. Again, there is a great demand for cigarettes and cigarette papers and local officials hesitate to interfere with their sale on that account. Another reason is the fact that by importing these things from outside the state in original packages, one cannot be interfered with on account of its being interstate commerce, and this would make it comparatively easy to evade the law if it were enforced, so there is a feeling that this would be done and that enforcement of the law would be useless in preventing cigarette smoking. The most important of these reasons is however, the fact that there is a great demand for cigarettes and that local officials will not enforce a law in the face of a popular demand. The law could be enforced if the attempt was made to do it, but the object of it would not be accomplished very noticeably, and it would not amount to much. This is a useless law and should not be left on the statutes.

"The sale of tobacco is further regulated by Section 4608e of the statutes, providing that any person who shall sell or give away any cigar, cigarette or other tobacco to a minor shall be punished by a fine of not less than fifty dollars. The object of this law is to prevent boys getting into the habit of smoking when it is likely to injure their health. In spite of the law, however, it is safe to say that a majority of minors at the age of nineteen or twenty have acquired the habit of using tobacco. No tobacco man stops to question a young man who asks for a package of tobacco whether he is old enough to smoke and in fact few dealers refuse it even to small boys whom the dealer cannot help knowing are too young to smoke. This law is one which is not enforced because of the sentiment against it being strong. The majority of men started to smoke before they were twenty-one years old and they do not care to see the law which was

not enforced against them, enforced against their sons. The usual result of indifference or opposition on the part of the community is seen clearly in this law - the police let it go and pay no attention to it. It would be possible, though very difficult, to enforce the part of the law concerning the sale of tobacco to minors, - difficult because of the fact that most minors who buy it look as though they were about twenty-one years old, and it leaves the enforcement of the law to the dealers and the minors themselves, both of whom are anxious to violate it. As to the provision regarding giving tobacco to minors, that is impossible of enforcement. Neither the giver nor the receiver would ever complain of it and nobody else would know about it. This law is more in the nature of a bluff than anything else because it must have been foreseen that it would not be enforced, and the idea probably was to discourage the sale or gift of tobacco to minors. As a law, however, it is valueless and might as well not be on the statutes."

1913

In 1913 Section 4608v was amended by Chapter 78 to make it illegal for any person to sell or give any cigar or tobacco to a minor under 16 years without the written consent of the parent or guardian. This further confused the problem.

1915 Prohibition of Manufacturing and Sale of Cigarettes Repealed

The 1905 prohibition of the manufacture and sale of cigarettes remained as law until 1915 when by Chapter 139 the law was drastically amended. Section 4608f was changed to prohibit the sale, giving away or otherwise disposing of cigarettes, cigarette papers or any substitute therefor to any minor under 16. The punishment was set at \$25 to \$100 for the first offense and \$25 to \$200 or imprisonment for not more than 60 days for subsequent offenses.

The law of 1915, for the first time, contained a provision that if a minor in possession of cigarettes refused to inform a sheriff, deputy sheriff, police officer, village marshal, truant officer, probation officer or teacher of the source from whom such items were obtained he was guilty of a misdemeanor for which the penalty was a fine of not more than \$5.

The law also required a municipal license to manufacture or sell cigarettes.

1919

By Chapter 386, Laws of 1919, the provision relating to information regarding the source of cigarettes possessed by a minor was amended to provide that if a minor misrepresented his age, he could be fined up to \$25 or imprisoned for not more than 30 days. It also provided that if such minor was a boy under 17 or a girl under 18 such a minor was to be considered "a delinquent child under section 573-1" and subject to the provisions of the statutes relating to juvenile courts.

1925

In 1925 by Chapter 4 sections 4608e and 4608f were renumbered 352.49 and 352.50 in accordance with the present decimal system.

1943 Some Conflicts Resolved

In 1943 by the Revisor's correction bill, Chapter 177, Sections 352.49, 352.50 and 352.63 were reconciled. Previously 352.49 made it illegal to sell without permission, and 352.50 made it illegal to sell at all. Chapter 177 made 352.49 apply to all tobacco except cigarettes and it also made the provision of 352.63 relating to the sale of tobacco to minors under 16 refer only to types of tobacco other than cigarettes. This resulted from an opinion of the Attorney General (30 Atty. Gen. 425, 1941) holding that 352.50 was the only provision that applied to cigarettes.

1945

In 1945, by Chapter 26, Section 352.50 (1) and (6) were amended to raise the age limit from 16 to 18 for the sale of cigarettes to minors.

1947

We end up then in 1947 after the long series of changes with 4 sections dealing with the use of tobacco by minors.

352.49 prohibited the sale of tobacco in any form except cigarettes to any minor after having been forbidden to do so by the parent or guardian.

352.50 (1) prohibited sale or giving of cigarettes, paper or substitutes under any circumstances to any minor under 18.

352.50 (2) to (4) deal with licensing of manufacturer and distributor of cigarettes.

352.50 (5) was a penalty section.

352.50 (6) provided penalties for a minor who refuses to disclose to proper authorities where he got cigarettes and provided penalties to minor for misrepresenting his age in order to secure cigarettes.

352.63 prohibited sale of tobacco in any form to a minor under 16 without written consent of parent or guardian and prohibited use of any tobacco in public places by minors under 16.

352.64 prohibited a penalty for any person who permitted a minor under 16 not accompanied by his parent or guardian to use tobacco in any form on premises occupied by him.

It will be noted that:

1. Some of the provisions applied to cigarettes, others to all tobacco, and others to tobacco other than cigarettes.

2. In some cases the prohibition ended at 16, in others at 18, and in others it apparently ended at 21.

3. In one case there was a categorical prohibition, in another case a prohibition if the parents had forbidden the purchase either orally or in writing and in still another case purchase was permitted for certain types with written consent.

These complications plus the rise of the vending machine which cannot determine age, plus the strong merchandising campaigns of the producers which result in an ever-increasing sale caused some doubts as to the effectiveness of the whole program.

It should be noted that it was not until the late 1940's that the problem of vending machines received any attention. In 1947, Bill 10, S. would have prohibited the sale of cigarettes by vending machines. A proposal was made and defeated in 1953 by Bill 348, A. to permit the installation of a cigarette vending machine only in places where minors under 18 were prohibited by law. Such a prohibition is possible. Section 93-1-18 of the Utah Statutes (1954) provides:

"Any person who maintains after June 30, 1941 in his place of business a tobacco vending machine accessible to minors or provides any method of self-help for the disposition to minors by gift, sale or otherwise of any cigarettes or cigarette paper or wrapper, or any paper made or prepared for the purpose of making cigarettes, or tobacco in any form whatsoever, is guilty of a misdemeanor."

1953 Cigarettes and the New Criminal Code

In 1953 when the Criminal Code was first revised the 4 sections relating to cigarettes and minors were changed as follows:

352.49 was renumbered 48.60 (1).

352.50 (1) was renumbered 48.60 (2) and amended to read:

"Whoever by himself, his servant or agent, or as the servant or agent of any other person, directly or indirectly, or upon any pretense, or by any device, sells, gives away or otherwise disposes of to any person under the age of 18 years any cigarettes, cigarette paper or cigarette wrappers, or any substitute therefor, or any paper made or prepared for the purpose of making cigarettes or any substitute therefor, or for the purpose of being filled with tobacco for smoking shall be fined not less than \$25 nor more than \$100."

352.50 (6) was renumbered 48.60 (3).

352.63 was renumbered 48.60 (4).

352.64 was renumbered 48.60 (5).

Section 281 of this act known as the Criminal Code, Chapter 623, Laws of 1953, provided that it take effect July 1, 1955, but a committee was appointed to review the proposal and to bring in amendments to the 1955 legislature.

In 1955 when the committee reported out the bill they recommended only that section 352.50 (6) be repealed. This was the section providing a penalty for a minor who failed to disclose to proper authorities where he obtained cigarettes found in his possession. It passed.

Recommendations of the Child Welfare Committee

Meanwhile, however, the Child Welfare Committee of the Legislative Council had prepared a comprehensive revision of the Children's Code and it was introduced in 1955 as Bill No. 444, S. This bill proposed the repeal of sections 352.49, 352.50 (1), 352.63 and 352.64. In a note to sections 352.49 and 352.50 (1) the committee said on page 107:

"These sections...relate to giving cigars, cigarettes and other forms of tobacco to persons of varying ages 16, 18, or 21 and to the use of cigars, cigarettes and other forms of tobacco by such persons. These provisions are confusing because of the gaps and inconsistencies between them. More important, they are, for the most part, completely ignored."

This proposal, as Chapter 575, Laws of 1955, was enacted. Section 31 of the act repealed 352.49 and 352.50 (1) and Section 33 repealed 352.63 and 352.64.

It should be pointed out that there was nothing inadvertent about this. The Children's Code had a note explaining what was intended and why.

1957

In 1957, 4 attempts to reinstate a prohibition against the sale of tobacco and cigarettes to minors were made. The first was 64, S. by Senator Busby which was indefinitely postponed 18-10. It made sale or gift to any one under 18 a misdemeanor with a greater penalty for cigarettes than other forms of tobacco.

In the assembly 20, A. prohibiting the sale of cigarettes to persons under 16 was introduced by Mr. Fricker. It passed the assembly 82-15 but was nonconcurrent in by the senate on the last day of the session. This prohibited sale or gift to persons under 18 of cigarettes and also penalized a person who negligently permitted a minor to secure cigarettes from a vending machine.

75, A. regulating the sale of cigarettes to minors, introduced by Mr. Wackett, was returned to the author. This proposal, in effect, restored the prior provisions.

461, A., relating to the sale and use of tobacco by minors was introduced by Mr. Sussman. It was indefinitely postponed without a vote. It prohibited sale or gift of cigarettes to a person under 16, but made it lawful for minors under 16 to buy tobacco other than cigarettes, with written consent of parents or guardians. It also prohibited a person from permitting a minor under 16 from smoking on the owner's premises unless accompanied by a parent or guardian. It likewise restored much of the prior language.

In part the gap in the general law made by the repeals of 1955 has been filled by city ordinances. On April 1, 1957 the Common Council of the City of Milwaukee published Ordinance No. 539 which prohibits the sale of tobacco in any form to minors under 16 and imposes a penalty upon owners of premises who permit minors under 16 to smoke on such premises unless accompanied by parents or guardians. Other municipalities have adopted similar ordinances. Among them are Nekoosa and Cassville.

Appendix 1. Proposals Which Were Defeated.

- 1897 10, A. - Prohibiting manufacture and sale.
537, A. - Relating to sale of.
- 1899 482, A. - Prohibiting manufacturing and sale of cigarettes.
- 1901 1, A. - Prohibiting sale of cigarettes.
- 1903 75, S. - Prohibiting sale or manufacture of cigarettes.
254, S. - Requiring licenses to sell cigarettes.
204, A. - Prohibiting manufacturing and sale of cigarettes.
- 1905 31, S. - Prohibiting manufacturing and sale.
76, A. - Prohibiting sale and manufacture.
- 1907 915, A. - Prohibiting smoking in public places by anyone.
- 1909 739, A. - Prohibiting use of cigarettes under 18 years or tobacco under 15.
- 1915 144, A. - Prohibited hiring teachers who smoke cigarettes or granting diploma to any person who smokes cigarettes.
181, A. - Relating to sale to minors when forbidden to do so.
381, A. - Relating to sale to minors.
431, A. - Relating to sale to minors and increasing penalties.
230, S. - Relating to sale to minors and increasing penalties.
- 1917 186, A. - Prohibiting manufacture or sale of cigarettes.
- 1927 155, A. - Repealed 352.50 (1) and (6).
- 1947 10, S. - Sale by vending machine prohibited.
- 1949 597, S. - Enforcement of cigarette laws given to crime laboratory.
- 1953 348, A. - Installation of vending machines only where minors under 18 are prohibited.