

LRB61760

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: 09/23/1999

Received By: yacketa

Wanted: As time permits

Identical to LRB:

For: Steven Foti (608) 266-2401

By/Representing: Mike Heifetz

This file may be shown to any legislator: NO

Drafter: yacketa

May Contact:

Alt. Drafters:

Subject: Health - miscellaneous

Extra Copies: MGG, DAK

Pre Topic:

No specific pre topic given

Topic:

Tobacco compliance checks/surveys

File Moved to
99 b 1864

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	yacketa 09/23/1999	gilfokm 09/23/1999		_____			
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FE Sent For:

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/?	yacketa	1-9-23-99 Kmg		==			

FE Sent For:

<END>



REPRESENTATIVE
S T E V E
FOTI
ASSEMBLY
MAJORITY LEADER

Tina -
Here's the
CEB thing.
Thanks.

Mike H.

Please forward the
notes all
over the
thing!

PER YOUR REQUEST
 FOR YOUR INFORMATION

ROOM 215 WEST • STATE CAPITOL • (608) 266-2401
TOLL-FREE: (888) 534-0038

✓ leave in 24 hrs (don't change to 48 hrs) for notice
✓ change 7 days to 10
✓ leave other reporting reqs alone (don't go 1/4ly to dept.)

✓ Birth date → age of minor
○ photo change — DON'T CHANGE
✓ Keep out of bars & strip joints

✓ p. 6 del. lines 19+20

✓ p. 5 - req. dept. to consult w/ local gov't
reg. authority



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

September 3, 1999

TO: Senator Charles Chvala
Room 211 South, State Capitol

FROM: Rachel Carabell, Fiscal Analyst

SUBJECT: Assembly Budget Provisions Regarding Investigations of the Sale of Tobacco Products to Minors

At your request, staff from this office and the Legislative Reference Bureau met with representatives from the City of Madison and the Alliance of Cities to discuss the Assembly budget provisions regarding investigations of the sale of tobacco products to minors. This memorandum provides a summary of the Assembly provisions and identifies changes requested by the City of Madison to address concerns expressed by City of Madison officials.

Current Law

Current law prohibits retailers, manufacturers, distributors, jobbers or subjobber (or their agents, employees or independent contractors) from selling or giving cigarettes or tobacco products to minors. Further, a county, town, village or city may adopt an ordinance regulating such conduct only if it strictly conforms to the section prohibiting the sale or gift of cigarettes or tobacco products to minors. Current law does not specify the procedures the state or local governments must use to investigate the sale or gift of cigarettes or tobacco products to minors.

The Department of Health and Family Services (DHFS) conducts investigations into the sale of tobacco products to minors in order to determine a rate of statewide compliance with the prohibition on the sale of tobacco products to minors. DHFS is required to conduct these investigations, under a provision in federal law known as the Synar Amendment, as a condition of receipt of the federal substance abuse block grant. Some local units of government independently conduct investigations into the sale of tobacco products to minors as part of local efforts to reduce minors' access to tobacco products.

In April, 1999, DHFS applied to the U.S. Food and Drug Administration (FDA) for a grant totalling \$424,800 to organize a series of investigations to determine retailers' willingness to sell tobacco products to a minor. The results from each investigation will be sent to the FDA for follow-up federal enforcement activities. DHFS will subcontract with other state, county or local agencies that have regulatory authority to conduct these activities.

Assembly Provisions

The 1999-01 biennial budget bill, as passed by the Assembly, creates a new subchapter under Chapter 254 of the statutes relating to investigations of the sale or gift of cigarettes or tobacco products to minors. This new subchapter establishes procedures that the state and local governments must use to conduct investigations into the sale of tobacco products and requires that any investigations be performed in strict conformity with the new subchapter. The Assembly bill includes a number of provisions regarding DHFS authority, sample selection, investigation procedures and enforcement.

DHFS Authority. Under the new subchapter, DHFS is authorized to contract with local health departments, as agents of DHFS, with a state agency or with local law enforcement agencies to cause unannounced investigations that would be conducted annually at retail outlets, including sites of tobacco vending machines, to survey overall levels of compliance with the prohibition to sell tobacco products to minors. A person with whom DHFS contracts under this provision may contract with another person to conduct the investigations.

Sample Selection. With the exception of a survey conducted under a grant from the FDA, the compliance survey must cover a range of retail outlets that are not preselected on the basis of prior violations and must be conducted annually, in order to measure overall levels of compliance, as well as to identify violations. The sample of retail outlets selected must reflect the distribution of minors throughout the state and the distribution of the retail outlets throughout the state where minors are likely to attempt to purchase cigarettes. DHFS is required to use statistically sound sampling techniques in designing the annual surveys to measure overall levels of compliance. DHFS must stratify the sample to measure compliance by type of retail outlet, including a private place of business other than a retail establishment and a barroom.

Conducting Investigations. DHFS must, in consultation with retailers, establish standards for procedures and training for conducting unannounced investigations for the survey. The Assembly provisions specify the following.

(1) With the permission of his or her parent or guardian, a person under 18 years of age, but not under 15 years of age, may buy, attempt to buy or possess any cigarette or tobacco product if: (a) the person commits the act for the purpose of conducting an investigation under this provision; (b) the person is directly supervised during the investigation by an adult employe of an agency; and (c) the person has prior written authorization to commit the act from a governmental

regulatory authority or a district attorney or from an authorized agent of a governmental regulatory authority or a district attorney.

(2) If questioned about his or her age during the course of an investigation, a minor participating in the investigation must state his or her true age.

(3) A minor may not be used for the purposes of an investigation at a retail outlet at which the minor is a regular customer.

(4) The appearance of the minor participating in the investigation may not be materially altered so as to indicate greater age.

(5) A photograph or videotape of the minor participating in the investigation must be made before and after the investigation or series of investigations, and must be retained for two years.

Results of the Investigation. The provision establishes certain timeframes in which agencies must provide certain information to retailers when a retailer is the subject of an unannounced investigation.

(1) Except for investigations conducted as required by the federal Synar Amendment, within 24 hours of completion of a sale or distribution of cigarettes or tobacco products to a minor, the employe of the agency supervising the minor must inform the person who sold or distributed the cigarettes or tobacco products to the minor of the investigation. Further, notice must be provided to the retailer or the retailer's employe or agent within 24 hours of a violation.

(2) Except as required by the Synar Amendment or under a grant awarded by the FDA, within seven days after an investigation, the agency must report to DHFS and the retailer the following: (a) the name and position of the agency's employe who directly supervised the investigation; (b) the date of birth of the minor participating in the investigation; (c) the date and time of the investigation; (d) a reasonably detailed description of the circumstances giving rise to the violation, if any, or, if there is no violation, written notice to that effect; and (e) any other relevant information requested by DHFS.

In addition, an investigation that is not conducted in strict conformity with this provision may not be included in the compliance survey. DHFS is required to provide education and training to governmental agencies to ensure uniformity of enforcement under this provision.

In addition, the Assembly bill contains several other modifications to current law regarding the regulation of tobacco products to minors, including provisions that specify DHFS' responsibility to report the results of the compliance survey.

Requested Modifications

Due to concerns about the effect that the Assembly provision would have on its ability to conduct investigations, the City of Madison has requested the following modifications to the Assembly provision.

Survey versus Enforcement. The City of Madison expressed concern that the Assembly provision does not sufficiently distinguish between investigations conducted for purposes of a compliance survey, which is intended to determine a rate of compliance, and investigations conducted for purposes of enforcing the prohibition against the sale of tobacco products to minors.

is it this
definition?
needed?

Requested Modification 1: Specify that the investigation of the sale or gift of cigarettes or tobacco products to minors may include, but is not limited to: (a) a survey of tobacco vendors to assess community and statewide tobacco vendor compliance; or (b) a "regular inspection" of tobacco vendors for compliance with the prohibition to sell or provide tobacco products to minors. Further, define a "regular inspection" as the evaluation of a tobacco retailer for compliance with the prohibition of selling or providing tobacco products to minors by causing unannounced investigations to be conducted or by other means available to local health or law enforcement agencies.

DHFS Authority. The Assembly provision authorizes DHFS to contract with governmental agencies to cause unannounced investigations to be conducted annually at retail outlets. However, the City of Madison expressed concern that this provision would prohibit the City from investigating a retail outlet more than once a year, which would limit the program's effectiveness. Currently, certain retail outlets that violate the prohibition against the sale or provision of tobacco products to minors may be the subject of more frequent investigations in order to enforce the prohibition.

Requested Modification 2: Specify that unannounced investigations be conducted at least annually. This change would be most important for regular inspections conducted as part of local enforcement efforts and would not be required for investigations performed as part of an annual compliance survey.

Sample Selection. The Assembly provision includes a number of items regarding the selection of the sample of retail outlets that would be targeted for investigations. The City of Madison's concern that a number of these provisions, would interfere with their ability to focus their enforcement efforts on those retailers that are repeat violators of the prohibition. In addition, the officials indicate that certain provisions would require local officials to send minors into retail outlets that sell cigarettes, but are not suitable for minors and minors' access to the premises is already prohibited under current law, such as adult entertainment stores and barrooms.

Requested Modification 3: Delete references to investigations conducted to identify violations of the prohibition to sell or provide tobacco products to minors in terms of using

statistically sound sampling techniques, and the sample of retail outlets based on the distribution of minors and retail outlets, and the prohibition on preselecting outlets on the basis of prior violations for regular inspections.

Requested Modification 4: Delete provisions that would require agencies conducting regular inspections to include establishments where a minor's access is restricted under current law, such as barrooms and adult entertainment establishments, in its sample of establishments targeted for investigation.

Conducting Investigations. DHFS would be required, under the Assembly provision, in consultation with retailers, to establish standards for procedures and training for conducting investigations.

Requested Modification 5: Require DHFS to also consult with local regulatory agencies in the development of standards for procedures and training for conducting compliance checks.

The Assembly provision provides an exemption to the prohibition against minors, 15 years of age or older, from purchasing or attempting to purchase or possessing tobacco products if a number of criteria are met. One of those criteria require that the minor commits the act as part of an investigation conducted under this new provision and the minor is directly supervised during the investigation by an adult employe of the agency. This provision would prohibit the use of adult volunteers to supervise minors during the investigations. The City of Madison is concerned that costs to conduct investigations would increase if its agencies were required to use its employes to supervise the investigations, rather than using adult volunteers. These employes would likely have to be paid for overtime, since most investigations would be conducted during after-school and weekend hours.

Requested Modification 6: Delete provisions that specify that during an investigation, the minor be directly supervised by an employe of an agency. Instead specify that the minor be directly supervised by an agency employe or an adult volunteer during investigations.

The Assembly provision would require a photograph or videotape of the minor to be made before and after the investigation, or series of investigations, and that the photograph or videotape be retained for two years. City of Madison officials are concerned that such photographs would inhibit its program's ability to recruit minors, since many minors are concerned about their anonymity when participating in such investigations. However, other local enforcement efforts photograph the minor participating in the investigation.

Requested Modification 7: Delete references to the requirement that a photograph or videotape of the minor be made before and after the investigation, or series of investigations, and be retained for two years.

What is the purpose of the 2-yr?

Records is expensive keeping

But the volunteers do the work - 95% of the time

Results of the Investigations. The Assembly provision requires, with the exception of investigations conducted as required under the Synar Amendment, when a minor is provided or sold cigarettes or tobacco products as part of investigation conducted under this provision, the person directly supervising the investigation to notify the person who sold the cigarettes or tobacco product to the minor, the retailer or the retailer's employe or agent, of the investigation and the violation, within 24 hours of its occurrence. The City of Madison has expressed concern over this provision for two reasons.

First, City of Madison officials indicate that it would be almost impossible to provide such notification unless such notification is provided immediately after the violation. Such immediate notification would eliminate any anonymity of the minor. The City of Madison indicates that the loss of such anonymity would inhibit the program's ability to recruit minors, and would make the minors less effective, since that minor could not be used as part of an investigation at that location in the future.

Second, City of Madison officials believe that such a requirement would increase the costs to conduct investigations. Such immediate notification would require a local health inspector or law enforcement officer to be available immediately after a violation in order to issue a citation. Other employes or adult volunteers would not have the authority to issue the citation. As stated previously, such investigations usually occur during after-school hours and on weekends. Such a requirement would require overtime pay for the local health inspector and would not be an efficient use of the local health inspector's time.

Volunteers have no authority to issue citations - this causes delays

Requested Modification 8: Delete the reference that the person who sold the cigarettes or tobacco products be notified within 24 hours of a violation. Further, specify that the retailer or retailer's employe or agent must be notified with 48 hours of a violation, rather than 24 hours. Specify that an attempt to reach an employer by telephone or the issuance of a citation within 48 hours would meet the notification requirement.

The Assembly provision requires that DHFS and the retailer be notified of an investigation within seven days of an investigation. The City of Madison officials have raised concerns about the onerous nature of data that must be reported to DHFS after each investigation, especially for regular inspections that are not conducted under contract with DHFS.

Requested Modification 9: Specify that, for regular inspections, agencies must notify the retailer within ten days, rather than seven days, of the investigation and specify that the age of the minor be provided to the retailer, rather than the minor's date of birth, the name and position of the person directly supervising the minor, the date and time of the investigation and a reasonably detailed description of the circumstances giving rise to the violation, if any, or if there is no violation, written notice to that effect. Delete references that agencies must provide any other relevant information requested by DHFS and references that agencies report to DHFS after each investigation.

*within 10 days
if no violation
48 hours if
violation occurs*

The Assembly provision specifies that an investigation conducted under this provision by an agency must be conducted in strict conformity with this section.

Requested Modification 10: Specify that this provision applies to investigations conducted as a survey to determine community and statewide compliance rates with the prohibition against minors' access to tobacco products.

Because the Assembly provision could be viewed as an infringement on local efforts to reduce minors' access to tobacco products, City of Madison officials indicated a need to ensure local authority to enforce the prohibition against selling or providing tobacco products to minors.

Requested Modification 11: Specify that regular inspections of tobacco vendors may be performed by local health or law enforcement agencies in an effort to determine and assure compliance with the prohibition to sell or provide tobacco products to minors. Further, specify that performance of regular inspections of local tobacco vendors must conform to the Assembly provision, as modified.

Let me know if I can be of further assistance.

RC/lah

Semi-annual report
to DHS?

MSN conducts 3 per yr. per licensee
350 permits target is
4 annually

Not checking
adult establishments

1st violation: citation
of training } chain of
licensee

2nd : \$344.50

within 12 months 200 + court fees

Page 7

3rd : \$500
license suspension

4th : \$500
3-10 day
suspension

ERI AM

1999 - 2000 LEGISLATURE

6176011
LRB 07/13/1
TAY:kmg:mrc

R NOT
Run

ARC:.....Anderson - #3, Synar compliance checks

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

Assembly
CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

- 1 At the locations indicated, amend the substitute amendment as follows:
- 2 **1.** Page 1092, line 20: after that line insert:
- 3 “SECTION 2033p. 111.35 (2) (d) of the statutes is amended to read:
- 4 111.35 (2) (d) Constitutes a violation of s. ~~938.983~~ 254.92 (2).”.
- 5 **2.** Page 1139, line 11: after that line insert:
- 6 “SECTION 2165m. 134.66 (2) (a) of the statutes is amended to read:
- 7 134.66 (2) (a) No retailer, manufacturer, distributor, jobber or subjobber, no
- 8 agent, employe or independent contractor of a retailer, manufacturer, distributor,
- 9 jobber or subjobber and no agent or employe of an independent contractor may sell
- 10 or provide for nominal or no consideration cigarettes or tobacco products to any

1 person under the age of 18, except as provided in s. ~~938.983 (3)~~ 254.92 (2) (a). A
2 vending machine operator is not liable under this paragraph for the purchase of
3 cigarettes or tobacco products from his or her vending machine by a person under the
4 age of 18 if the vending machine operator was unaware of the purchase.

5 **SECTION 2165n.** 134.66 (2) (b) 1. of the statutes is amended to read:

6 134.66 (2) (b) 1. A retailer shall post a sign in areas within his or her premises
7 where cigarettes or tobacco products are sold to consumers stating that the sale of
8 any cigarette or tobacco product to a person under the age of 18 is unlawful under
9 this section and s. ~~938.983~~ 254.92.

10 **SECTION 2165p.** 134.66 (2) (b) 2. of the statutes is amended to read:

11 134.66 (2) (b) 2. A vending machine operator shall attach a notice in a
12 conspicuous place on the front of his or her vending machines stating that the
13 purchase of any cigarette or tobacco product by a person under the age of 18 is
14 unlawful under s. ~~938.983~~ 254.92 and that the purchaser is subject to a forfeiture of
15 not to exceed \$25.”.

16 **3.** Page 1194, line 9: after that line insert:

17 “**SECTION 2353sm.** 227.01 (13) (zu) of the statutes is created to read:
18 227.01 (13) (zu) Establishes standards under subch. IX of ch. 254.”.

19 **4.** Page 1233, line 19: after that line insert:

20 “**SECTION 2485g.** Subchapter IX (title) of chapter 254 [precedes 254.911] of the
21 statutes is created to read:

22 **CHAPTER 254**

23 **SUBCHAPTER IX**

24 **INVESTIGATIONS OF THE SALE OR**

1 GIFT OF CIGARETTES OR
2 TOBACCO PRODUCTS TO MINORS

3 **SECTION 2485h.** 254.911 of the statutes is created to read:

4 **254.911 Definitions.** In this subchapter:

5 (1) “Cigarette” has the meaning given in s. 139.30 (1).

6 (2) “Governmental regulatory authority” means the department; the local
7 health department, state agency or law enforcement agency with which the
8 department contracts under s. 254.916 (1) (a); or the person with whom the local
9 health department, state agency or law enforcement agency contracts under s.
10 254.916 (1) (a).

11 (3) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

12 (4) “Retailer” has the meaning given in s. 134.66 (1) (g).

13 (5) “Retail outlet” means a place of business from which cigarettes or tobacco
14 products are sold at retail to consumers.

15 (6) “State agency” has the meaning given in s. 1.12 (1) (b).

16 (7) “Tobacco products” has the meaning given in s. 139.75 (12).

17 (8) “Tobacco vending machine” is any mechanical device that automatically
18 dispenses cigarettes or tobacco products when money or tokens are deposited in the
19 device in payment for the cigarettes or tobacco products.

20 (9) “Tobacco vending machine operator” means a person who acquires tobacco
21 products or stamped cigarettes from manufacturers, as defined in s. 134.66 (1) (e),
22 or permittees, stores them and sells them through the medium of tobacco vending
23 machines that he or she owns, operates or services and that are located on premises
24 that are owned or under the control of other persons.

1 (10) "Tobacco vending machine premises" means any area in which a tobacco
2 vending machine is located.

3 SECTION 2485j. 254.916 of the statutes is created to read:

4 254.916 Department; authority. (1) (a) In the administration of this
5 subchapter, the department may contract with local health departments, as agents
6 of the department, with a state agency or with law enforcement agencies of the state,
7 or of a county, city, village or town, to cause unannounced investigations to be
8 conducted annually at retail outlets, including sites of tobacco vending machines, to
9 survey overall levels of compliance with s. 134.66 (2) (a). A person with whom the
10 department contracts under this paragraph may contract with another person to
11 conduct the investigations. Except any survey conducted under 21 CFR part 897, the
12 survey under this subsection shall cover a range of retail outlets that are not
13 preselected on the basis of prior violations, in order to measure overall levels of
14 compliance as well as to identify violations. The survey shall be conducted so as to
15 provide a sample of retail outlets that reflects the distribution of minors throughout
16 the state and the distribution of the retail outlets throughout the state where minors
17 are likely to attempt to purchase cigarettes. The survey shall include all types of
18 retail outlets that are required to comply with s. 134.66 (2) (a). The department shall
19 use statistically sound sampling techniques in designing the annual surveys so as
20 to measure overall levels of compliance and shall stratify the sample so as to measure
21 compliance by type of retail outlet, including ~~all of the following:~~

22 *no of* ~~the~~ ^a private place of business other than a retail establishment, *but not including*
23 *no of* ~~the~~ ^a barroom, as defined in s. 125.51 (3m) (a), that is located on premises
24 described in a license issued under s. 125.26 or 125.51 (3).

*and governmental regulatory
authorities*

1 (b) The department, in consultation with retailers, shall establish standards
2 for procedures and training for conducting investigations under this section.

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

6 (a) The person commits the act for the purpose of conducting an investigation
7 under this section.

8 (b) The person is directly supervised during the conducting of the investigation
9 by an adult employe of a governmental regulatory authority.

10 (c) The person has prior written authorization to commit the act from a
11 governmental regulatory authority or a district attorney or from an authorized agent
12 of a governmental regulatory authority or a district attorney.

13 (3) ~~(a)~~ All of the following, unless otherwise specified, apply in conducting
14 investigations under this section:

15 (a) ~~(a)~~ If questioned about his or her age during the course of an investigation, the
16 minor shall state his or her true age.

17 (b) ~~(a)~~ A minor may not be used for the purposes of an investigation at a retail outlet
18 at which the minor is a regular customer.

19 (c) ~~(a)~~ The appearance of a minor may not be materially altered so as to indicate
20 greater age.

21 (d) ~~(a)~~ A photograph or videotape of the minor shall be made before and after the
22 investigation, or series of investigations, and shall be retained for 2 years.

23 (e) ~~(a)~~ Except investigations conducted under a grant received under 42 USC
24 300x-21, within 24 hours after the completion of a sale or other distribution of
25 cigarettes or tobacco products, the employe of the governmental regulatory authority

1 supervising the minor under sub. (2) shall inform the person who sold or distributed
2 the cigarettes or tobacco products to the minor of the investigation.

3 (P) ~~1~~ The results of an investigation, including the issuance of any citation by a
4 governmental regulatory authority for a violation that occurs during the conduct of
5 the investigation, shall be made known to the retailer or the retailer's employe or
6 agent within 24 hours after the occurrence of the violation. This ~~subdivision~~ ^{paragraph} does not
7 apply to investigations conducted under a grant received under 42 USC 300x-021.

8 (g) ~~1~~ Except with respect to investigations conducted under 42 USC 300x-021 or
9 21 CFR part 897, all of the following information shall be reported to the department,
10 and to the retailer, within ~~7~~ ¹⁰ days after the conduct of an investigation under this
11 section:

12 1. ~~1~~ The name and position of the governmental regulatory authority employe
13 who directly supervised the investigation.

14 2. ~~1~~ The ~~date of birth~~ ^{age} of the minor.

15 3. ~~1~~ The date and time of the investigation.

16 4. ~~1~~ A reasonably detailed description of the circumstances giving rise to a
17 violation, if any, or, if there is no violation, written notice to that effect.

18 5. ~~1~~ Any other relevant information requested by the department.

19 (b) An investigation under this section conducted by a governmental regulatory
20 authority shall be conducted in strict conformity with this section.

21 (4) No results of an investigation conducted under this section may be included
22 in the survey specified under sub. (1) if it is proved that the requirements under sub.
23 (3) were not met in conducting the investigation.

1 (5) No evidence obtained during or otherwise arising from the course of an
2 investigation under this section that is used to prosecute a person for a violation of
3 s. 134.66 (2) (a) may be used in the prosecution of an alleged violation of s. 125.07 (3).

4 (6) The department shall compile the results of investigations performed under
5 this section and shall prepare an annual report that reflects the results for
6 submission with the state's application for federal funds under 42 USC 300x-21. The
7 report shall be published for public comment at least 60 days before the beginning
8 of negotiations under sub. (7).

9 (7) The department shall strive annually to negotiate with the federal
10 department of health and human services realistic and attainable interim
11 performance targets for compliance with 42 USC 300x-26.

12 (8) A governmental regulatory agency under this section shall meet standards
13 established by the department of health and family services. The department shall
14 annually evaluate the investigation program of each governmental regulatory
15 authority. If, at any time, a governmental regulatory authority fails to meet the
16 standards, the department of health and family services may terminate the contract
17 under sub. (1).

18 (9) The department shall provide education and training to governmental
19 regulatory authorities to ensure uniformity in the enforcement of this subchapter.

20 (10) This section does not limit the authority of the department to investigate
21 establishments in jurisdictional areas of governmental regulatory authorities if the
22 department investigates in response to an emergency, for the purpose of monitoring
23 and evaluating the governmental regulatory authority's investigation and
24 enforcement program or at the request of the governmental regulatory authority.

1 (11) The department shall hold a hearing under ch. 227 if any interested
2 person, in lieu of proceeding under ch. 68, appeals to the department alleging that
3 the person making an investigation of the appellant has a financial interest in a
4 regulated cigarette and tobacco product retailer, tobacco vending machine operator,
5 tobacco vending machine premises or tobacco vending machine which may interfere
6 with his or her ability to properly take that action.

7 **SECTION 2485L.** 254.92 (2) (b) of the statutes is created to read:

8 254.92 (2) (b) A person under 18 years of age, but not under 15 years of age,
9 may purchase, attempt to purchase or possess cigarettes or tobacco products in the
10 course of his or her participation in an investigation under s. 254.916 that is
11 conducted in accordance with s. 254.916 (3) ~~(4)~~.”

12 **5.** Page 1419, line 18: after that line insert:

13 “**SECTION 3072g.** 778.25 (1) (a) 4. of the statutes is repealed.”

14 **6.** Page 1436, line 16: after that line insert:

15 “**SECTION 3176m.** 938.983 (title) of the statutes is renumbered 254.92 (title)
16 and amended to read:

17 **254.92 (title) Purchase or possession of cigarettes or tobacco products**
18 **by person under 18 prohibited.**

19 **SECTION 3176n.** 938.983 (1) of the statutes is repealed.

20 **SECTION 3176p.** 938.983 (2) (intro.), (a) and (c) of the statutes are consolidated,
21 renumbered 254.92 (2) (intro.) and amended to read:

22 254.92 (2) (intro.) ~~Except as provided in sub. (3), no~~ No person under 18 years
23 of age may do any of the following: (a) ~~Buy or purchase,~~ attempt to buy any cigarette

1 or tobacco product. (c) Possess purchase or possess any cigarette or tobacco product.
2 except as follows:

3 **SECTION 3176q.** 938.983 (2) (b) of the statutes is renumbered 254.92 (1) and
4 amended to read:

5 254.92 (1) Falsely No person under 18 years of age may falsely represent his
6 or her age for the purpose of receiving any cigarette or tobacco product.

7 **SECTION 3176r.** 938.983 (3) of the statutes is renumbered 254.92 (2) (a) and
8 amended to read:

9 254.92 (2) (a) A person under 18 years of age may purchase or possess
10 cigarettes or tobacco products for the sole purpose of resale in the course of
11 employment during his or her working hours if employed by a retailer licensed under
12 ~~s. 134.65 (1).~~

13 **SECTION 3176s.** 938.983 (4) of the statutes is renumbered 254.92 (3) and
14 amended to read:

15 254.92 (3) A law enforcement officer shall seize any cigarette or tobacco product
16 ~~involved in any violation of sub. (2) committed in his or her presence~~ that has been
17 sold to and is in the possession of a person under 18 years of age.

18 **SECTION 3176t.** 938.983 (5) of the statutes is repealed.”

19 (END)



**ASSEMBLY AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 133**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1092, line 20: after that line insert:

3 **"SECTION 2033p.** 111.35 (2) (d) of the statutes is amended to read:

4 111.35 (2) (d) Constitutes a violation of s. ~~938.983~~ 254.92 (2)."

5 **2.** Page 1139, line 11: after that line insert:

6 **"SECTION 2165m.** 134.66 (2) (a) of the statutes is amended to read:

7 134.66 (2) (a) No retailer, manufacturer, distributor, jobber or subjobber, no
8 agent, employe or independent contractor of a retailer, manufacturer, distributor,
9 jobber or subjobber and no agent or employe of an independent contractor may sell
10 or provide for nominal or no consideration cigarettes or tobacco products to any
11 person under the age of 18, except as provided in s. ~~938.983 (3)~~ 254.92 (2) (a). A
12 vending machine operator is not liable under this paragraph for the purchase of

1 cigarettes or tobacco products from his or her vending machine by a person under the
2 age of 18 if the vending machine operator was unaware of the purchase.

3 **SECTION 2165n.** 134.66 (2) (b) 1. of the statutes is amended to read:

4 134.66 (2) (b) 1. A retailer shall post a sign in areas within his or her premises
5 where cigarettes or tobacco products are sold to consumers stating that the sale of
6 any cigarette or tobacco product to a person under the age of 18 is unlawful under
7 this section and s. ~~938.983~~ 254.92.

8 **SECTION 2165p.** 134.66 (2) (b) 2. of the statutes 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. ~~938.983~~ 254.92 and that the purchaser is subject to a forfeiture of
13 not to exceed \$25.”.

14 **3.** Page 1194, line 9: after that line insert:

15 “**SECTION 2353sm.** 227.01 (13) (zu) of the statutes is created to read:

16 227.01 (13) (zu) Establishes standards under subch. IX of ch. 254.”.

17 **4.** Page 1233, line 19: after that line insert:

18 “**SECTION 2485g.** Subchapter IX (title) of chapter 254 [precedes 254.911] of the
19 statutes is created to read:

20 **CHAPTER 254**

21 **SUBCHAPTER IX**

22 **INVESTIGATIONS OF THE SALE OR**

23 **GIFT OF CIGARETTES OR**

24 **TOBACCO PRODUCTS TO MINORS**

1 **SECTION 2485h.** 254.911 of the statutes is created to read:

2 **254.911 Definitions.** In this subchapter:

3 (1) “Cigarette” has the meaning given in s. 139.30 (1).

4 (2) “Governmental regulatory authority” means the department; the local
5 health department, state agency or law enforcement agency with which the
6 department contracts under s. 254.916 (1) (a); or the person with whom the local
7 health department, state agency or law enforcement agency contracts under s.
8 254.916 (1) (a).

9 (3) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

10 (4) “Retailer” has the meaning given in s. 134.66 (1) (g).

11 (5) “Retail outlet” means a place of business from which cigarettes or tobacco
12 products are sold at retail to consumers.

13 (6) “State agency” has the meaning given in s. 1.12 (1) (b).

14 (7) “Tobacco products” has the meaning given in s. 139.75 (12).

15 (8) “Tobacco vending machine” is any mechanical device that automatically
16 dispenses cigarettes or tobacco products when money or tokens are deposited in the
17 device in payment for the cigarettes or tobacco products.

18 (9) “Tobacco vending machine operator” means a person who acquires tobacco
19 products or stamped cigarettes from manufacturers, as defined in s. 134.66 (1) (e),
20 or permittees, stores them and sells them through the medium of tobacco vending
21 machines that he or she owns, operates or services and that are located on premises
22 that are owned or under the control of other persons.

23 (10) “Tobacco vending machine premises” means any area in which a tobacco
24 vending machine is located.

25 **SECTION 2485j.** 254.916 of the statutes is created to read:

1 **254.916 Department; authority.** (1) (a) In the administration of this
2 subchapter, the department may contract with local health departments, as agents
3 of the department, with a state agency or with law enforcement agencies of the state,
4 or of a county, city, village or town, to cause unannounced investigations to be
5 conducted annually at retail outlets, including sites of tobacco vending machines, to
6 survey overall levels of compliance with s. 134.66 (2) (a). A person with whom the
7 department contracts under this paragraph may contract with another person to
8 conduct the investigations. Except any survey conducted under 21 CFR part 897, the
9 survey under this subsection shall cover a range of retail outlets that are not
10 preselected on the basis of prior violations, in order to measure overall levels of
11 compliance as well as to identify violations. The survey shall be conducted so as to
12 provide a sample of retail outlets that reflects the distribution of minors throughout
13 the state and the distribution of the retail outlets throughout the state where minors
14 are likely to attempt to purchase cigarettes. The survey shall include all types of
15 retail outlets that are required to comply with s. 134.66 (2) (a). The department shall
16 use statistically sound sampling techniques in designing the annual surveys so as
17 to measure overall levels of compliance and shall stratify the sample so as to measure
18 compliance by type of retail outlet, including a private place of business other than
19 a retail establishment, but not including a barroom, as defined in s. 125.51 (3m) (a),
20 that is located on premises described in a license issued under s. 125.26 or 125.51 (3).

21 (b) The department, in consultation with retailers and governmental
22 regulatory authorities, shall establish standards for procedures and training for
23 conducting investigations under this section.

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

4 (a) The person commits the act for the purpose of conducting an investigation
5 under this section.

6 (b) The person is directly supervised during the conducting of the investigation
7 by an adult employe of a governmental regulatory authority.

8 (c) The person has prior written authorization to commit the act from a
9 governmental regulatory authority or a district attorney or from an authorized agent
10 of a governmental regulatory authority or a district attorney.

11 (3) (a) All of the following, unless otherwise specified, apply in conducting
12 investigations under this section:

13 (a) If questioned about his or her age during the course of an investigation, the
14 minor shall state his or her true age.

15 (b) A minor may not be used for the purposes of an investigation at a retail
16 outlet at which the minor is a regular customer.

17 (c) The appearance of a minor may not be materially altered so as to indicate
18 greater age.

19 (d) A photograph or videotape of the minor shall be made before and after the
20 investigation, or series of investigations, and shall be retained for 2 years.

21 (e) Except investigations conducted under a grant received under 42 USC
22 300x-21, within 24 hours after the completion of a sale or other distribution of
23 cigarettes or tobacco products, the employe of the governmental regulatory authority
24 supervising the minor under sub. (2) shall inform the person who sold or distributed
25 the cigarettes or tobacco products to the minor of the investigation.

1 (f) The results of an investigation, including the issuance of any citation by a
2 governmental regulatory authority for a violation that occurs during the conduct of
3 the investigation, shall be made known to the retailer or the retailer's employe or
4 agent within 24 hours after the occurrence of the violation. This paragraph does not
5 apply to investigations conducted under a grant received under 42 USC 300x-021.

6 (g) Except with respect to investigations conducted under 42 USC 300x-021 or
7 21 CFR part 897, all of the following information shall be reported to the department,
8 and to the retailer, within 10 days after the conduct of an investigation under this
9 section:

10 1. The name and position of the governmental regulatory authority employe
11 who directly supervised the investigation.

12 2. The age of the minor.

13 3. The date and time of the investigation.

14 4. A reasonably detailed description of the circumstances giving rise to a
15 violation, if any, or, if there is no violation, written notice to that effect.

16 5. Any other relevant information requested by the department.

17 (4) No results of an investigation conducted under this section may be included
18 in the survey specified under sub. (1) if it is proved that the requirements under sub.
19 (3) were not met in conducting the investigation.

20 (5) No evidence obtained during or otherwise arising from the course of an
21 investigation under this section that is used to prosecute a person for a violation of
22 s. 134.66 (2) (a) may be used in the prosecution of an alleged violation of s. 125.07 (3).

23 (6) The department shall compile the results of investigations performed under
24 this section and shall prepare an annual report that reflects the results for
25 submission with the state's application for federal funds under 42 USC 300x-21. The

1 report shall be published for public comment at least 60 days before the beginning
2 of negotiations under sub. (7).

3 (7) The department shall strive annually to negotiate with the federal
4 department of health and human services realistic and attainable interim
5 performance targets for compliance with 42 USC 300x-26.

6 (8) A governmental regulatory agency under this section shall meet standards
7 established by the department of health and family services. The department shall
8 annually evaluate the investigation program of each governmental regulatory
9 authority. If, at any time, a governmental regulatory authority fails to meet the
10 standards, the department of health and family services may terminate the contract
11 under sub. (1).

12 (9) The department shall provide education and training to governmental
13 regulatory authorities to ensure uniformity in the enforcement of this subchapter.

14 (10) This section does not limit the authority of the department to investigate
15 establishments in jurisdictional areas of governmental regulatory authorities if the
16 department investigates in response to an emergency, for the purpose of monitoring
17 and evaluating the governmental regulatory authority's investigation and
18 enforcement program or at the request of the governmental regulatory authority.

19 (11) The department shall hold a hearing under ch. 227 if any interested
20 person, in lieu of proceeding under ch. 68, appeals to the department alleging that
21 the person making an investigation of the appellant has a financial interest in a
22 regulated cigarette and tobacco product retailer, tobacco vending machine operator,
23 tobacco vending machine premises or tobacco vending machine which may interfere
24 with his or her ability to properly take that action.

25 **SECTION 2485L.** 254.92 (2) (b) of the statutes is created to read:

1 254.92 (2) (b) A person under 18 years of age, but not under 15 years of age,
2 may purchase, attempt to purchase or possess cigarettes or tobacco products in the
3 course of his or her participation in an investigation under s. 254.916 that is
4 conducted in accordance with s. 254.916 (3).”.

5 **5.** Page 1419, line 18: after that line insert:

6 “SECTION 3072g. 778.25 (1) (a) 4. of the statutes is repealed.”.

7 **6.** Page 1436, line 16: after that line insert:

8 “SECTION 3176m. 938.983 (title) of the statutes is renumbered 254.92 (title)
9 and amended to read:

10 **254.92 (title) Purchase or possession of cigarettes or tobacco products**
11 **by person under 18 prohibited.**

12 SECTION 3176n. 938.983 (1) of the statutes is repealed.

13 SECTION 3176p. 938.983 (2) (intro.), (a) and (c) of the statutes are consolidated,
14 renumbered 254.92 (2) (intro.) and amended to read:

15 254.92 (2) (intro.) ~~Except as provided in sub. (3), no~~ No person under 18 years
16 of age may do any of the following: (a) Buy or purchase, attempt to buy any cigarette
17 or tobacco product. (c) Possess purchase or possess any cigarette or tobacco product.
18 except as follows:

19 SECTION 3176q. 938.983 (2) (b) of the statutes is renumbered 254.92 (1) and
20 amended to read:

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

23 SECTION 3176r. 938.983 (3) of the statutes is renumbered 254.92 (2) (a) and
24 amended to read:

