

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: **09/29/1999**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-7307**

By/Representing: **Carabell**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact:

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

**Pre Topic:**

LFB:.....Carabell -

**Topic:**

Tobacco compliance investigations/survey

**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 09/29/1999	gilfokm 09/30/1999		_____			
/1			martykr 09/30/1999	_____	lrb_docadmin 09/30/1999		
/2	yacketa 10/01/1999	gilfokm 10/02/1999	mclark 10/03/1999	_____	lrb_docadmin 10/03/1999		

FE Sent For:

<END>

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/?	yacketa 09/29/1999	gilfokm 09/30/1999		_____			
/1		<i>12-10-2-99</i> <i>Kmq</i>	martykr 09/30/1999	_____	lrb_docadmin 09/30/1999		
FE Sent For:			<i>MRC</i>	<i>MRC/KJF</i>			
			<i>10/3</i>	<i>10/3</i>			
				<i>&lt;END&gt;</i>			

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1?	yacketa	11-9-30-99 Kmg	Jm 9/30	Kt 9/30 Kmg 9/30			

FE Sent For:

<END>



**Legislative Fiscal Bureau**

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

Date: 9/28/99

DELIVER TO: Tina Yacker

Addressee Fax #: 60-5648 Addressee Phone #: \_\_\_\_\_

# of Pages, Including Cover: 3 Sender's Initials: \_\_\_\_\_

From: Rachel Carabell

Message: Synar Memo

**Legislative Fiscal Bureau**

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

September 27, 1999

TO: Representative Foti and Senator Chvala

FROM: Rachel Carabell, Fiscal Analyst

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

At your request, I am providing this memorandum to identify changes to the Assembly budget provision regarding investigations of the sale of tobacco products to minors to reflect an agreement between Senate and Assembly Conference Committee members.

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 the Department of Health and Family Services (DHFS) authority, sample selection, investigation procedures and enforcement. The modifications to the Assembly provision are summarized below.

✓ **Modification 1 - Number of Investigations for Enforcement:** *Specify that no retailer may be subject to unannounced investigations more than twice annually for the purposes of enforcing the prohibition against the sale of tobacco products to minor unless that retailer is found in violation of the prohibition during both investigations. In this case, there would be no limit on the number of unannounced investigations of that retailer.*

Under the Assembly provision, a retailer would be subject to an unannounced investigation once annually.

✓ **Modification 2 - Photograph/Videotape of Minor:** *Specify that a photograph or videotape of a minor participating in an unannounced investigation must be taken on the day the minor*

*Photos to be kept  
until end of any prosecution  
action*

*participates in the investigation or series of investigations and must be kept on file for two years. This photograph may be taken either before or after the investigation or series of investigations are conducted.*

The Assembly provision would require a photograph or videotape of the minor made before and after the investigation or series of investigations and would require that the photograph or videotape be retained for two years.

✓ **Modification 3 - Sample Selection:** *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.*

The Assembly provision would require that the survey of retail establishments include all establishments required to comply with the prohibition against the sale of tobacco products to minors, including a barroom and a private place of business other than a retail establishment.

✓ **Modification 4 - Notice of a Violation:** *Specify that the owner or employer of the agency licensed to sell tobacco products be notified within 72 hours of a violation, rather than 24 hours as required by the Assembly provision. Delete the provision that would require that the person who sold or distributed the tobacco products to the minor be notified within 24 hours of a violation. Further, specify that the agency conducting the investigation would meet this requirement if it makes a good-faith effort to notify the owner or employer of the violation.*

The Assembly provision requires, with the exception of investigations conducted as required under the Synar Amendment, when a minor is provided or sold tobacco products as part of investigations conducted under this provision, notification of the violation within 24 hours to the retailer or the retailer's employe or agent and the person who sold or distributed the tobacco products to the minor.

✓ **Modification 5 - Notice of Investigation:** *Specify that agencies must notify DHFS and the retailer within ten days, rather than seven days, of an unannounced investigation and the results of that investigation, including if no violation was found, written notice to that effect.*

The Assembly provision requires that such notification would occur within seven days of the investigation.

✓ **Modification 6 - Notice of Minor's Age.** *Specify that in reporting the results of an investigation to DHFS and the retailer, the agency would be required to include the minor's age, rather than the minor's date of birth, as required under the Assembly provision.*

The Assembly provision would require the agency to provide DHFS and the retailer with the name and position of the agency's employe who supervised the investigation, the minor's date of

birth, the date and time of the investigation and a reasonably detailed description of the circumstances giving rise to a violation, if any, or, if no violation, written notice to that effect.

*✓ Modification 7 - Use of Volunteers: Specify that the City of Madison would be authorized to use adult volunteers to directly supervise minors during unannounced investigations.*

The Assembly provision specifies that minors participating in investigations be directly supervised by an employee of the agency conducting the investigation.

*✓ Modification 8 - Local Compliance Surveys. Specify that the requirements regarding the selection of retail outlets, conducting of investigations and notification of the results of investigations would not apply to local efforts to survey compliance with the prohibition against selling tobacco products to minors. Specify that information obtained from unannounced investigations conducted as part of local efforts to survey compliance with the prohibition cannot be used for enforcement proceedings against a retailer, including the issuance of warnings or citations or be included in the limit on the number of investigations to be conducted as identified in Modification 1.*

The Assembly provision only provides certain exceptions for investigations conducted as required under the federal Synar amendment or by the Food and Drug Administration.

Let me know if the information contained in this memorandum does not accurately reflect the agreement reached by the conferees.

RC/sas

*Nothing applies to Madison*

~~*[Signature]*~~

## **Yacker, Tina**

---

**From:** Burnett, Douglas  
**Sent:** Wednesday, September 29, 1999 8:01 PM  
**To:** Carabell, Rachel; Yacker, Tina; Heifetz, Michael  
**Cc:** Healy, Brett  
**Subject:** Final Synar deal

I want to confirm what Rep. Foti and Sen. Chvala agreed on as modifications to the 9-27-99 memo from Rachel on Synar:

On modification 2, instead of that provision, photographs would have to be kept on file for investigations which result in prosecutions until the disposition of the case.

In addition to modification 8, Madison would be exempted from the provisions of the new subchapter.



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Run

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

Today

- 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:

*(a) or (am)*  
No retailer may be subject to unannounced investigations more than twice annually unless the retailer is found to have violated s. 134.66(2) during each investigation.

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 *at least* annually at retail outlets, including sites of tobacco vending machines, to  
6 survey overall levels of compliance with s. 134.66 (2) (a). *and (am)* 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). *and (am)* 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 <sup>and</sup> after the  
20 investigation <sup>or series of investigations,</sup> ~~and shall be retained until the final disposition of the case.~~  
*on the day of the investigation or series of investigations.* *col* *if a prosecution results from the*

21           (e) Except investigations conducted under a grant received under 42 USC  
22 300x-21, within <sup>24</sup> ~~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.

*If a prosecution results from an investigation, the photograph or videotape shall be retained until the final disposition of the case.*

*A governmental regulatory authority shall make a good faith effort to make known to the retailer or retailer's employee or agent the*

1 (e) ~~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 employee or  
 4 agent within <sup>72</sup> 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.

INS.  
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6 ~~(a)~~ 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) <sup>or (am)</sup> 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:

(12) This section does not apply to surveys conducted by local  
units of government or other persons to determine overall compliance with  
S. 134.66 (2) (a) and (b). No results obtained under such surveys may be used  
for the purpose of issuing warnings or citations or any other enforcement mechanism.

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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:





1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBb1864/lins  
TAY.....

insert 7-24 ✓

(13) The requirements of subs. (1) to (12) do not apply to investigations of retail establishments conducted by the city of Madison, or the local health department or law enforcement agency of the city of Madison, in its jurisdictional area to determine compliance with and to enforce s. 134.66 (2) ✓

insert 6-5 ✓

(e) A governmental regulatory authority shall make a good faith effort to make known to the retailer or the retailer's employe or agent, within 72 hours after the occurrence of the violation, the results of an investigation, including the issuance of any citation by a governmental regulatory authority for a violation that occurs during the conduct of the investigation. ^



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb1864/ 2  
TAY:kmg:km

*RMF*

LFB:.....Carabell - Tobacco compliance investigations/survey

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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

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**

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GIFT OF CIGARETTES OR  
TOBACCO PRODUCTS TO MINORS

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

**254.911 Definitions.** In this subchapter:

(1) "Cigarette" has the meaning given in s. 139.30 (1).

(2) "Governmental regulatory authority" means the department; the local health department, state agency or law enforcement agency with which the department contracts under s. 254.916 (1) (a); or the person with whom the local health department, state agency or law enforcement agency contracts under s. 254.916 (1) (a).

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

(4) "Retailer" has the meaning given in s. 134.66 (1) (g).

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

(6) "State agency" has the meaning given in s. 1.12 (1) (b).

(7) "Tobacco products" has the meaning given in s. 139.75 (12).

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

(9) "Tobacco vending machine operator" means a person who acquires tobacco products or stamped cigarettes from manufacturers, as defined in s. 134.66 (1) (e), or permittees, stores them and sells them through the medium of tobacco vending machines that he or she owns, operates or services and that are located on premises 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 at least annually at retail outlets, including sites of tobacco vending  
9 machines, to survey overall levels of compliance with s. 134.66 (2) (a) and (am). No

10 retailer may be subject to unannounced investigations more than twice annually  
11 unless the retailer is found to have violated s. 134.66 (2) (a) or (am) during each  
12 investigation. A person with whom the department contracts under this paragraph

13 may contract with another person to conduct the investigations. Except any survey  
14 conducted under 21 CFR part 897, the survey under this subsection shall cover a  
15 range of retail outlets that are not preselected on the basis of prior violations, in order  
16 to measure overall levels of compliance as well as to identify violations. The survey  
17 shall be conducted so as to provide a sample of retail outlets that reflects the  
18 distribution of minors throughout the state and the distribution of the retail outlets  
19 throughout the state where minors are likely to attempt to purchase cigarettes. The  
20 survey shall include all types of retail outlets that are required to comply with s.  
21 134.66 (2) (a) and (am). The department shall use statistically sound sampling  
22 techniques in designing the annual surveys so as to measure overall levels of  
23 compliance and shall stratify the sample so as to measure compliance by type of retail  
24 outlet, including a private place of business other than a retail establishment, but

Sub. (12) may not be considered unannounced investigations for purposes of this paragraph.

1 not including a barroom, as defined in s. 125.51 (3m) (a), that is located on premises  
2 described in a license issued under s. 125.26 or 125.51 (3).

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

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

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

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

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

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

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

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

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

24 (d) A photograph or videotape of the minor shall be made before or after the  
25 investigation or series of investigations on the day of the investigation or series of

# (c) No retailer may be subject to unannounced investigations more than twice annually unless the retailer is found to have violated s. 134.66(2)(a) or (am) during each investigation. Investigations conducted under

1 investigations. If a prosecution results from an investigation, the photograph or  
2 videotape shall be retained until the final disposition of the case.

3 (e) A governmental regulatory authority shall make a good faith effort to make  
4 known to the retailer or the retailer's employe or agent, within 72 hours after the  
5 occurrence of the violation, the results of an investigation, including the issuance of  
6 any citation by a governmental regulatory authority for a violation that occurs  
7 during the conduct of the investigation. This paragraph does not apply to  
8 investigations conducted under a grant received under 42 USC 300x-021.

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

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

15 2. The age of the minor.

16 3. The date and time of the investigation.

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

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

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

23 (5) No evidence obtained during or otherwise arising from the course of an  
24 investigation under this section that is used to prosecute a person for a violation of



1 s. 134.66 (2) (a) or (am) may be used in the prosecution of an alleged violation of s.  
2 125.07 (3).

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

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

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

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

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

24 (11) The department shall hold a hearing under ch. 227 if any interested  
25 person, in lieu of proceeding under ch. 68, appeals to the department alleging that

*that have not entered into a contract under sub. (1),*

1 the person making an investigation of the appellant has a financial interest in a  
2 regulated cigarette and tobacco product retailer, tobacco vending machine operator,  
3 tobacco vending machine premises or tobacco vending machine which may interfere  
4 with his or her ability to properly take that action.

5 (12) This section does not apply to surveys conducted by local units of  
6 government ~~or other persons~~ to determine overall levels of compliance with s. 134.66  
7 (2) (a) and (am). No results obtained under such surveys may be used for the purpose  
8 of issuing warnings or citations or any other enforcement mechanism.

9 (13) The requirements of subs. (1) to (12) do not apply to investigations of retail  
10 establishments conducted by the city of Madison, or the local health department or  
11 law enforcement agency of the city of Madison, in its jurisdictional area to determine  
12 compliance with and to enforce s. 134.66 (2).

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

14 254.92 (2) (b) A person under 18 years of age, but not under 15 years of age,  
15 may purchase, attempt to purchase or possess cigarettes or tobacco products in the  
16 course of his or her participation in an investigation under s. 254.916 that is  
17 conducted in accordance with s. 254.916 (3).”.

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

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

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

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

23 **254.92 (title) Purchase or possession of cigarettes or tobacco products**  
24 **by person under 18 prohibited.**

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

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

4           254.92 (2) (intro.) ~~Except as provided in sub. (3), no~~ No person under 18 years  
5           of age may ~~do any of the following: (a) Buy or purchase, attempt to buy any cigarette~~  
6           ~~or tobacco product. (c) Possess purchase or possess any cigarette or tobacco product.~~  
7           except as follows:

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

10          254.92 (1) ~~Falsely~~ No person under 18 years of age may falsely represent his  
11          or her age for the purpose of receiving any cigarette or tobacco product.

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

14          254.92 (2) (a) A person under 18 years of age may purchase or possess  
15          cigarettes or tobacco products for the sole purpose of resale in the course of  
16          employment during his or her working hours if employed by a retailer ~~licensed under~~  
17          ~~s. 134.65 (1).~~

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

20          254.92 (3) A law enforcement officer shall seize any cigarette or tobacco product  
21          ~~involved in any violation of sub. (2) committed in his or her presence~~ that has been  
22          sold to and is in the possession of a person under 18 years of age.

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

24

(END)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb1864/2  
TAY:kmg:mrc

LFB:.....Carabell – Tobacco compliance investigations/survey

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

**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

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**

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GIFT OF CIGARETTES OR  
TOBACCO PRODUCTS TO MINORS

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

**254.911 Definitions.** In this subchapter:

(1) "Cigarette" has the meaning given in s. 139.30 (1).

(2) "Governmental regulatory authority" means the department; the local health department, state agency or law enforcement agency with which the department contracts under s. 254.916 (1) (a); or the person with whom the local health department, state agency or law enforcement agency contracts under s. 254.916 (1) (a).

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

(4) "Retailer" has the meaning given in s. 134.66 (1) (g).

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

(6) "State agency" has the meaning given in s. 1.12 (1) (b).

(7) "Tobacco products" has the meaning given in s. 139.75 (12).

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

(9) "Tobacco vending machine operator" means a person who acquires tobacco products or stamped cigarettes from manufacturers, as defined in s. 134.66 (1) (e), or permittees, stores them and sells them through the medium of tobacco vending machines that he or she owns, operates or services and that are located on premises 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 at least annually at retail outlets, including sites of tobacco vending  
9 machines, to survey overall levels of compliance with s. 134.66 (2) (a) and (am). A  
10 person with whom the department contracts under this paragraph may contract  
11 with another person to conduct the investigations. Except any survey conducted  
12 under 21 CFR part 897, the survey under this subsection shall cover a range of retail  
13 outlets that are not preselected on the basis of prior violations, in order to measure  
14 overall levels of compliance as well as to identify violations. The survey shall be  
15 conducted so as to provide a sample of retail outlets that reflects the distribution of  
16 minors throughout the state and the distribution of the retail outlets throughout the  
17 state where minors are likely to attempt to purchase cigarettes. The survey shall  
18 include all types of retail outlets that are required to comply with s. 134.66 (2) (a) and  
19 (am). The department shall use statistically sound sampling techniques in designing  
20 the annual surveys so as to measure overall levels of compliance and shall stratify  
21 the sample so as to measure compliance by type of retail outlet, including a private  
22 place of business other than a retail establishment, but not including a barroom, as  
23 defined in s. 125.51 (3m) (a), that is located on premises described in a license issued  
24 under s. 125.26 or 125.51 (3).

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

4           (c) No retailer may be subject to unannounced investigations more than twice  
5 annually unless the retailer is found to have violated s. 134.66 (2) (a) or (am) during  
6 each investigation. Investigations conducted under sub. (12) may not be considered  
7 unannounced investigations for purposes of this paragraph.

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

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

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

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

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

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

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

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



1 (d) A photograph or videotape of the minor shall be made before or after the  
2 investigation or series of investigations on the day of the investigation or series of  
3 investigations. If a prosecution results from an investigation, the photograph or  
4 videotape shall be retained until the final disposition of the case.

5 (e) A governmental regulatory authority shall make a good faith effort to make  
6 known to the retailer or the retailer's employe or agent, within 72 hours after the  
7 occurrence of the violation, the results of an investigation, including the issuance of  
8 any citation by a governmental regulatory authority for a violation that occurs  
9 during the conduct of the investigation. This paragraph does not apply to  
10 investigations conducted under a grant received under 42 USC 300x-021.

11 (f) Except with respect to investigations conducted under 42 USC 300x-021 or  
12 21 CFR part 897, all of the following information shall be reported to the department,  
13 and to the retailer, within 10 days after the conduct of an investigation under this  
14 section:

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

17 2. The age of the minor.

18 3. The date and time of the investigation.

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

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

22 (4) No results of an investigation conducted under this section may be included  
23 in the survey specified under sub. (1) if it is proved that the requirements under sub.  
24 (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) or (am) may be used in the prosecution of an alleged violation of s.  
4 125.07 (3).

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

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

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

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

21          (10) This section does not limit the authority of the department to investigate  
22 establishments in jurisdictional areas of governmental regulatory authorities if the  
23 department investigates in response to an emergency, for the purpose of monitoring  
24 and evaluating the governmental regulatory authority's investigation and  
25 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           (12) This section does not apply to surveys conducted by local units of  
8 government that have not entered into a contract under sub. (1), to determine overall  
9 levels of compliance with s. 134.66 (2) (a) and (am). No results obtained under such  
10 surveys may be used for the purpose of issuing warnings or citations or any other  
11 enforcement mechanism.

12           (13) The requirements of subs. (1) to (12) do not apply to investigations of retail  
13 establishments conducted by the city of Madison, or the local health department or  
14 law enforcement agency of the city of Madison, in its jurisdictional area to determine  
15 compliance with and to enforce s. 134.66 (2).

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

17           254.92 (2) (b) A person under 18 years of age, but not under 15 years of age,  
18 may purchase, attempt to purchase or possess cigarettes or tobacco products in the  
19 course of his or her participation in an investigation under s. 254.916 that is  
20 conducted in accordance with s. 254.916 (3).”.

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

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

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

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

3           **254.92 (title) Purchase or possession of cigarettes or tobacco products**  
4 **by person under 18 prohibited.**

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

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

8           254.92 (2) (intro.) ~~Except as provided in sub. (3), no~~ No person under 18 years  
9 of age may ~~do any of the following: (a) Buy or purchase, attempt to buy any cigarette~~  
10 ~~or tobacco product. (c) Possess purchase or possess any cigarette or tobacco product.~~  
11 except as follows:

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

14           254.92 (1) ~~Falsely~~ No person under 18 years of age may falsely represent his  
15 or her age for the purpose of receiving any cigarette or tobacco product.

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

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

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

