



1995 SENATE BILL 546

February 14, 1996 - Introduced by Senators BUETTNER, COWLES, PANZER, DARLING, GROBSCHMIDT, BURKE, CLAUSING and ROSENZWEIG, cosponsored by Representatives KAUFERT, DOBYNS, BOCK, OTT, URBAN, GARD, RILEY, DUFF, GOETSCH, NOTESTEIN, WIRCH, KELSO, RYBA, BOYLE, KREIBICH, HANDRICK, GROTHMAN, PLOMBON, PLACHE, VRAKAS, HUBER, MEYER, OLSEN, LORGE and WASSERMAN. Referred to Committee on State Government Operations and Corrections.

1 **AN ACT to repeal** 48.983 (1), 48.983 (5), 134.65 (2) (b), 134.66 (1) (k) and (L),
2 134.66 (2) (c) 3. and 4., 134.66 (2) (cm) 2. and 3., 134.66 (2) (d) and 134.66 (3);
3 **to renumber** 134.65 (title), 134.66 (1) (a), (b), (c), (d) and (e), 134.66 (1) (h),
4 (hm), (i) and (j) and 134.66 (2) (title); **to renumber and amend** 48.983 (title),
5 48.983 (2), 48.983 (3), 48.983 (4), 134.65 (1) and (2) (a), 134.65 (3), (4) and (5),
6 134.66 (title), 134.66 (1) (intro.), 134.66 (1) (g), 134.66 (2) (a), 134.66 (2) (b) 1.,
7 134.66 (2) (b) 2., 134.66 (2) (c) 1. and 2., 134.66 (2) (cm) 1., 134.66 (2) (e), 134.66
8 (4) and 134.66 (5); **to amend** 20.435 (1) (gm), 47.03 (7), 77.54 (20) (c) 6., 111.35
9 (2) (d), 139.08 (3), 139.39 (1), 139.39 (5) (a), 251.04 (1) and 778.25 (1) (a) 4.; and
10 **to create** 139.34 (1) (c) 8., subchapter IX (title) of chapter 254 [precedes
11 254.911], 254.911 (5), (11) and (13) to (15), 254.914 (1m) and (2), 254.914 (5),
12 254.914 (8), 254.916, 254.92 (2) (c) and (d), 254.92 (3) and 254.922 of the
13 statutes; **relating to:** transferring to the department of health and family
14 services authority for licensing cigarette and tobacco products retailers and
15 authority to enforce certain prohibitions on the sale, gift, purchase or

- 1 possession of cigarettes or tobacco products, granting rule-making authority,
2 making an appropriation and providing penalties.
-

Analysis by the Legislative Reference Bureau

Under current law, yearly licenses for the retail sale of cigarettes and tobacco products are issued upon submittal of an application and payment of a \$5 fee to the city, village or town in which the retail sale is sought to be conducted. Yearly permits for the manufacture or sale of cigarettes by a distributor, jobber, vending machine operator or multiple retailer and yearly permits for the storage of cigarettes by a warehouse operator are issued by the department of revenue (DOR). Unlicensed sale or gifting of cigarettes and tobacco products to a person who has neither a license nor a permit is prohibited and violators are subject to fines; if the violator is found personally guilty of failure to exercise due care, a court may terminate the license or permit for 5 years. Current law generally prohibits the purchase or possession of cigarettes or tobacco products by minors and prohibits the sale or gifting of cigarettes or tobacco products to minors by retailers, vending machine operators, manufacturers, distributors, jobbers and subjobbers. (A vending machine operator is not liable under this prohibition for the purchase of cigarettes or tobacco products by a minor if the vending machine operator was unaware of the purchase.) Retailers are restricted as to the places where they may keep a vending machine and are prohibited from placing a vending machine within 500 feet of a school. Retailers are, in addition, prohibited from selling cigarettes in a form other than as a package or container which is stamped, for tax purposes, as required by DOR. Violation of these prohibitions subject the violator to forfeitures and, for repeated violations within certain time periods, to suspension of the license of the retailer or the permit of the manufacturer, distributor, jobber or subjobber. A retailer, manufacturer or distributor may assert a defense to prosecution for sale of cigarettes or tobacco products to a minor by proving that the purchaser falsely represented that he or she had attained age 18, that the purchaser's appearance indicated that he or she had attained the age of 18 and that the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and the belief that he or she had attained age 18. A county, city, town or village may adopt an ordinance that regulates the sale or gifting of cigarettes or tobacco products if the ordinance strictly conforms to current law.

This bill, on July 1, 1996, transfers from cities, villages and towns to the department of health and family services (DHFS) (formerly the department of health and social services) the authority to license cigarette and tobacco products retailers and to regulate the sale or gifting of cigarettes or tobacco products to minors and the purchase or possession of cigarettes or tobacco products by minors. Under the bill, fines and misdemeanors for the unlicensed sale of cigarettes and tobacco products to persons who have neither a license nor a permit are changed to administrative forfeitures that may be imposed by DHFS. The bill prohibits a licensed retailer or the retailer's employe or agent from selling, exposing for sale, exchanging, bartering,

disposing of or giving cigarettes or tobacco products to a person who is not licensed as a retailer or who does not hold a permit as a manufacturer, distributor, jobber, vending machine operator, multiple retailer or warehouse operator, unless both the retailer or his or her employe or agent and the receiver of the cigarettes or tobacco products are physically present on the retailer's licensed premises during the transaction. The bill specifies that forfeitures that may be imposed by DHFS for gifting or sale of cigarettes or tobacco products to minors that is done by a retailer, manufacturer, distributor, jobber, or subjobber or by their agents or employes apply to the retailer, manufacturer, distributor, jobber or subjobber. DHFS is authorized to designate local health departments as DHFS agents for issuance of licenses and inspections and investigations of licensed premises. Local health departments are authorized, in conducting investigations, to authorize the use of minors aged 14 to 17 to assist in the performance of research to monitor compliance with sale or gifting restrictions and to conduct undercover operations. Local health departments must annually conduct at least 2 random, unannounced inspections of licensees whose premises are not taverns and at least one such inspection of licensees whose premises are taverns. The amount of the fees for the annual licenses for retailers is changed to \$50, collectible by the local health departments; of this amount, DHFS must receive \$10 for its costs in setting standards, monitoring and evaluating activities of local health departments and providing education and training to local health departments. The affirmative defense of a retailer, manufacturer or distributor to prosecution for sale of cigarettes or tobacco products to a minor is changed to be proof of requesting from the minor and examining a government-issued identification card that established the minor's age as at least 18 before the sale was made. The bill permits a county, city or village to enact ordinances and a local board of health to adopt regulations for licensing and regulation of the sale or gifting of cigarettes and tobacco products that are at least as strict as the statutes or DHFS rules. Lastly, the bill prohibits DOR from granting a permit to a person as a cigarette or tobacco products manufacturer, distributor, jobber, vending machine operator, multiple retailer or warehouse operator who (or whose employe or agent) has been found at least 6 times to be in violation of the prohibitions against unlicensed sale or gifting of cigarettes or tobacco products to persons who are not licensed as retailers or permitted by DOR under certain laws.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (1) (gm) of the statutes, as affected by 1995 Wisconsin Acts
2 27, section 816m, and 98, is amended to read:

1 20.435 (1) (gm) *Licensing, review and certifying activities*. The amounts in the
2 schedule for the purposes specified in ss. 50.135, 50.49 (2) (b), 50.52 (2) (a), 146.50
3 (8), 250.05 (6), 254.176, 254.178, 254.20 (5) and (8), 254.31 to 254.39, 254.47, 254.61
4 to ~~254.89~~ 254.916 and 255.08 (2), subch. IV of ch. 50 and ch. 150. All moneys received
5 under ss. 50.135, 50.49 (2) (b), 50.52 (2) (a), 50.93 (1) (c), 146.50 (8) (d), 150.13, 250.05
6 (6), 254.176, 254.178, 254.20 (5) and (8), 254.31 to 254.39, 254.47, 254.61 to ~~254.89~~
7 254.916 and 255.08 (2) (b) shall be credited to this appropriation.

8 **SECTION 2.** 47.03 (7) of the statutes, as affected by 1995 Wisconsin Act 27, is
9 amended to read:

10 47.03 (7) If the department decides that a business under sub. (4) would not be
11 feasible and profitable in any state building, the department may contract with
12 vending machine operators, as defined in s. 254.61 (10), to install vending machines,
13 as defined in s. 254.61 (7), in the building, giving preference to blind operators of
14 vending machines. The department may, under the procedures established as
15 required under sub. (4) (b), charge the net proceeds of each business operating under
16 this subsection. The department shall deposit the moneys from the charges made
17 under this subsection in the appropriations under s. 20.445 (5) (h) and (hd) and shall
18 disburse the proceeds to provide services to blind persons under sub. (4) in
19 accordance with 20 USC 107 to 107f.

20 **SECTION 3.** 48.983 (title) of the statutes is renumbered 254.92 (2) (title) and
21 amended to read:

22 254.92 (2) (title) PURCHASE OR POSSESSION OF CIGARETTES OR TOBACCO PRODUCTS
23 BY A MINOR PROHIBITED.

24 **SECTION 4.** 48.983 (1) of the statutes is repealed.

1 **SECTION 5.** 48.983 (2) of the statutes is renumbered 254.92 (2) (a), and 254.92
2 (2) (a) (intro.), as renumbered, is amended to read:

3 254.92 (2) (a) (intro.) Except as provided in ~~sub. (3) pars. (b), (c) and (d)~~, no ~~child~~
4 minor may do any of the following:

5 **SECTION 6.** 48.983 (3) of the statutes is renumbered 254.92 (2) (b) and amended
6 to read:

7 254.92 (2) (b) A ~~child~~ minor may purchase or possess cigarettes or tobacco
8 products for the sole purpose of resale in the course of employment during his or her
9 working hours if employed by a retailer licensed under s. 134.65 (1).

10 **SECTION 7.** 48.983 (4) of the statutes is renumbered 254.92 (2) (e) and amended
11 to read:

12 254.92 (2) (e) A law enforcement officer or local health officer shall seize any
13 cigarette or tobacco product involved in any violation of ~~sub. (2) par. (a)~~ committed
14 in his or her presence.

15 **SECTION 8.** 48.983 (5) of the statutes is repealed.

16 **SECTION 9.** 77.54 (20) (c) 6. of the statutes is amended to read:

17 77.54 (20) (c) 6. For purposes of subd. 1., “premises” shall be construed broadly,
18 and, by way of illustration but not limitation, shall include the lobby, aisles and
19 auditorium of a theater or the seating, aisles and parking area of an arena, rink or
20 stadium or the parking area of a drive-in or outdoor theater. The premises of a
21 caterer with respect to catered meals or beverages shall be the place where served.
22 ~~Vending machine premises~~ The premises of a vending machine, as defined in s.
23 254.61 (7), shall include the room or area in which located.

24 **SECTION 10.** 111.35 (2) (d) of the statutes is amended to read:

25 111.35 (2) (d) Constitutes a violation of s. ~~48.983~~ 254.92 (2) (a).

1 **SECTION 11.** 134.65 (title) of the statutes is renumbered 254.914 (title).

2 **SECTION 12.** 134.65 (1) and (2) (a) of the statutes are renumbered 254.914 (1)
3 and (3) and amended to read:

4 254.914 (1) ~~No person shall in any manner, or upon any pretense, or by any~~
5 ~~device, directly or indirectly~~ Unless a person holds a license issued under this
6 section, the person or the person's employe or agent may not sell, expose for sale,
7 possess with intent to sell, exchange, barter, dispose of or give away any cigarettes
8 or tobacco products to ~~any person not holding a license as herein provided or anyone~~
9 who is not licensed under this section or who does not hold a permit under ss. 139.30
10 to 139.41 or 139.79 ~~without first obtaining a license from the clerk of the city, village~~
11 ~~or town wherein such privilege is sought to be exercised.~~

12 (3) ~~Except as provided in par. (b), upon filing~~ Upon receipt of a proper written
13 application, the department shall issue a license ~~shall be issued~~ on July 1 of each year
14 or when applied for ~~and.~~ The license shall continue in force until the following June
15 30 unless the license is sooner revoked. The fee for the license is \$5 ~~\$50~~, which shall
16 be paid to the ~~city, village or town treasurer~~ department before the license is issued.

17 **SECTION 13.** 134.65 (2) (b) of the statutes is repealed.

18 **SECTION 14.** 134.65 (3), (4) and (5) of the statutes are renumbered 254.914 (4),
19 (6) and (7) and amended to read:

20 254.914 (4) ~~Each such~~ A license issued under this section shall name the
21 licensee and specifically describe the premises ~~where such~~ on which the business is
22 ~~to~~ may be conducted. ~~Such licenses shall not be~~ The license is not transferable from
23 one person to another ~~nor~~ and is not transferable from one premises to another.

24 (6) Every licensed retailer shall keep complete and accurate records of all
25 purchases and receipts of cigarettes and tobacco products. ~~Such~~ The records shall

1 be preserved on the licensed premises for 2 years in such a manner as to insure
2 ensure permanency and accessibility for inspection and shall be are subject to
3 inspection at all reasonable hours by authorized state officials and local law
4 enforcement and local health officials.

5 (7) Any person violating this section shall be ~~fined~~ forfeit not more than \$100
6 nor less than \$25 for the first offense and not more than \$200 nor less than \$25 for
7 the 2nd or subsequent offense. If upon such ~~the~~ 2nd or subsequent violation, the
8 person ~~so~~ violating this section was is found to be personally guilty of a failure to
9 exercise due care to prevent the violation thereof, the person shall be ~~fined~~ forfeit not
10 more than \$300 nor less than \$25 ~~or imprisoned not exceeding 60 days or both.~~
11 ~~Conviction shall immediately terminate the license of the person convicted of being~~
12 ~~personally guilty of such failure to exercise due care and the person, his or her license~~
13 is immediately revoked, he or she is not entitled to another license ~~hereunder~~ under
14 this section for a period of 5 years thereafter, ~~nor shall the person and he or she may~~
15 not in that period act as the servant employe or agent of a person licensed hereunder
16 under this section for the performance of the acts authorized by such a license. The
17 5-year period shall be measured from the date of the violation that resulted in the
18 revocation of the license.

19 **SECTION 15.** 134.66 (title) of the statutes is renumbered 254.92 (title) and
20 amended to read:

21 **254.92** (title) **Restrictions on sale or gift or certain purchase or**
22 **possession of cigarettes or tobacco products.**

23 **SECTION 16.** 134.66 (1) (intro.) of the statutes is renumbered 254.911 (intro.)
24 and amended to read:

25 **254.911 Definitions.** (intro.) In this section subchapter:

1 **SECTION 17.** 134.66 (1) (a), (b), (c), (d) and (e) of the statutes are renumbered
2 254.911 (1), (2), (3), (4) and (6).

3 **SECTION 18.** 134.66 (1) (g) of the statutes is renumbered 254.911 (7) and
4 amended to read:

5 254.911 (7) “Retailer” means ~~any person licensed~~ the holder of a license issued
6 under s. ~~134.65 (1)~~ 254.914.

7 **SECTION 19.** 134.66 (1) (h), (hm), (i) and (j) of the statutes are renumbered
8 254.911 (8), (9), (10) and (12).

9 **SECTION 20.** 134.66 (1) (k) and (L) of the statutes are repealed.

10 **SECTION 21.** 134.66 (2) (title) of the statutes is renumbered 254.92 (1) (title).

11 **SECTION 22.** 134.66 (2) (a) of the statutes is renumbered 254.92 (1) (a) and
12 amended to read:

13 254.92 (1) (a) No retailer, manufacturer ~~or~~, distributor, jobber or subjobber or
14 the agent or employe of a retailer, manufacturer, distributor, jobber or subjobber may
15 sell or ~~give~~ provide for nominal or no consideration cigarettes or tobacco products to
16 ~~any person under the age of 18~~ a minor, except as provided in s. ~~48.983 (3)~~ sub. (2)
17 (b). A tobacco vending machine operator is not liable under this paragraph for the
18 purchase of cigarettes or tobacco products from his or her tobacco vending machine
19 by a ~~person under the age of 18~~ minor if the tobacco vending machine operator was
20 unaware of the purchase.

21 **SECTION 23.** 134.66 (2) (b) 1. of the statutes is renumbered 254.92 (1) (b) 1. and
22 amended to read:

23 254.92 (1) (b) 1. A retailer shall post a sign in areas within his or her premises
24 where cigarettes or tobacco products are sold to consumers stating that the sale to

1 ~~a minor or purchase by a minor~~ of any cigarette or tobacco product ~~to a person under~~
2 ~~the age of 18 is unlawful under this section and s. 48.983 par. (a) and sub. (2).~~

3 **SECTION 24.** 134.66 (2) (b) 2. of the statutes is renumbered 254.92 (1) (b) 2. and
4 amended to read:

5 254.92 (1) (b) 2. A tobacco vending machine operator shall attach a notice in
6 a conspicuous place on the front of his or her tobacco vending machines stating that
7 the purchase of any cigarette or tobacco product by a ~~person under the age of 18~~ minor
8 is unlawful under ~~s. 48.983 sub. (2)~~ and that the purchaser is subject to a forfeiture
9 of not to exceed \$25 \$50.

10 **SECTION 25.** 134.66 (2) (c) 1. and 2. of the statutes are renumbered 254.92 (1)
11 (c) 1. and 2. and amended to read:

12 254.92 (1) (c) 1. Except as provided in par. (cm), no retailer may keep a tobacco
13 vending machine in any public place that is open to ~~persons under the age of 18~~
14 minors unless all of the following apply:

15 a. The tobacco vending machine is in a place where it is ordinarily in the
16 immediate vicinity, plain view and control of an employe.

17 b. The tobacco vending machine is in a place where it is inaccessible to the
18 public when the premises are closed.

19 2. The person who ultimately controls, governs or directs the activities within
20 the premises where the tobacco vending machine is located shall ensure that an
21 employe of the retailer remains in the immediate vicinity, plain view and control of
22 the tobacco vending machine whenever the premises are open.

23 **SECTION 26.** 134.66 (2) (c) 3. and 4. of the statutes are repealed.

24 **SECTION 27.** 134.66 (2) (cm) 1. of the statutes is renumbered 254.92 (1) (cm) and
25 amended to read:

1 254.92 (1) (cm) ~~Notwithstanding par. (e), no~~ No retailer may place a tobacco
2 vending machine within 500 feet of a school.

3 **SECTION 28.** 134.66 (2) (cm) 2. and 3. of the statutes are repealed.

4 **SECTION 29.** 134.66 (2) (d) of the statutes is repealed.

5 **SECTION 30.** 134.66 (2) (e) of the statutes is renumbered 254.92 (1) (e) and
6 amended to read:

7 254.92 (1) (e) No retailer or retailer's employe or agent may sell cigarettes in
8 a form other than as a package or container on which a stamp is affixed under s.
9 139.32 (1).

10 **SECTION 31.** 134.66 (3) of the statutes is repealed.

11 **SECTION 32.** 134.66 (4) of the statutes is renumbered 254.92 (4) and amended
12 to read:

13 254.92 (4) PENALTIES. (a) 1. In this paragraph, "violation" means a violation
14 of sub. ~~(2)~~ (1) (a), (c), (cm), ~~(d)~~ or (e) or a local ordinance ~~which strictly conforms to~~
15 under which the requirements are at least as strict as the requirements under sub.
16 ~~(2)~~ (1) (a), (c), (cm), ~~(d)~~ or (e).

17 2. ~~A person who commits~~ The following forfeitures apply to a retailer for a
18 ~~violation is subject to a forfeiture of sub. (1) (a), (c), (cm) or (e) by the retailer or the~~
19 ~~agent or employe of the retailer, apply to a manufacturer for a violation of sub. (1)~~
20 ~~(a) by the manufacturer or the agent or employe of the manufacturer, apply to a~~
21 ~~distributor for a violation of sub. (1) (a) by the distributor or the agent or employe of~~
22 ~~the distributor, apply to a jobber for a violation of sub. (1) (a) by the jobber or the agent~~
23 ~~or employe of the jobber and apply to a subjobber for a violation of sub. (1) (a) by the~~
24 ~~subjobber or the agent or employe of the subjobber:~~

1 a. Not more than \$500 if the ~~person~~ retailer, manufacturer, distributor, jobber
2 or subjobber has not committed a previous violation within ~~12~~ 24 months of the
3 violation; or

4 b. Not less than \$200 nor more than \$500 if the ~~person~~ retailer, manufacturer,
5 distributor, jobber or subjobber has committed a previous violation within ~~12~~ 24
6 months of the violation.

7 3. ~~A court~~ The department or a local health department that is designated as
8 the department's agent under s. 254.916, that issued a license under s. 254.914 shall
9 suspend any license or permit issued under ~~s. 134.65, 139.34 or 139.79~~ to a ~~person~~
10 retailer for:

11 a. Not more than 3 days, if the ~~court~~ department or local health department
12 finds that the ~~person~~ retailer committed a violation within ~~12~~ 24 months after
13 committing one previous violation;

14 b. Not less than 3 days nor more than 10 days, if the ~~court~~ department or local
15 health department finds that the ~~person~~ retailer committed a violation within ~~12~~ 24
16 months after committing 2 other violations; or

17 c. Not less than 15 days nor more than 30 days, if the ~~court~~ department or local
18 health department finds that the ~~person~~ retailer committed a violation within ~~12~~ 24
19 months after committing 3 or more other violations.

20 4. ~~The court~~ If the department suspends a license under subd. 3., the
21 department shall promptly mail notice of a suspension under subd. 3. to the local
22 health department of revenue and to the clerk of each municipality which has issued
23 a license or permit to the ~~person~~ that is designated as the department's agent under
24 s. 254.916 whose jurisdiction, if so designated, includes the retailer. If the local

1 health department suspends a license under subd. 3., the local health department
2 shall promptly mail notice of the suspension to the department.

3 (b) Whoever violates sub. ~~(2)~~ (1) (b) shall forfeit not more than \$25.

4 **SECTION 33.** 134.66 (5) of the statutes is renumbered 254.92 (5) and amended
5 to read:

6 254.92 (5) LOCAL ORDINANCE. A county, town, village or city may ~~adopt~~ enact
7 an ordinance regulating the conduct regulated by this section only if it ~~strictly~~
8 ~~conforms to the requirements under the ordinance are at least as strict as the~~
9 requirements under this section. Such an ordinance shall provide for civil forfeitures
10 instead of the forfeitures that may be imposed by the department under sub. (4) and
11 shall require a court to act in place of the department under sub. (4) or, if applicable,
12 a local health department under sub. (4) (a) 3. and to notify the department or local
13 health department of the court action. Under such an ordinance, only one charge
14 may result from each violation of this section. A county ordinance ~~adopted~~ enacted
15 under this subsection does not apply within any town, village or city that has ~~adopted~~
16 or ~~adopts~~ enacted or enacts an ordinance under this subsection.

17 **SECTION 34.** 139.08 (3) of the statutes is amended to read:

18 139.08 (3) POLICE POWERS. The department of revenue shall enforce and the
19 duly authorized employes of the department shall have all necessary police powers
20 to prevent violations of ~~s. 134.65~~, this subchapter and ch. 125.

21 **SECTION 35.** 139.34 (1) (c) 8. of the statutes is created to read:

22 139.34 (1) (c) 8. The holder of a permit under ss. 139.30 to 139.41 or 139.79 or
23 the person has been found at least 6 times under s. 254.914 (7) to have violated s.
24 254.914.

25 **SECTION 36.** 139.39 (1) of the statutes is amended to read:

1 **(5)** “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

2 **(11)** “Tavern” has the meaning given in s. 941.237 (1) (fm).

3 **(13)** “Tobacco vending machine” is any mechanical device that automatically
4 dispenses cigarettes or tobacco products when specified coins are deposited in the
5 device in payment for the cigarettes or tobacco products.

6 **(14)** “Tobacco vending machine operator” means a person who acquires tobacco
7 products or stamped cigarettes from manufacturers or permittees, stores them and
8 sells them through the medium of tobacco vending machines that he or she owns,
9 operates or services and that are located on premises that are owned or under the
10 control of other persons.

11 **(15)** “Tobacco vending machine premises” includes the room or area in which
12 a tobacco vending machine is located.

13 **SECTION 41.** 254.914 (1m) and (2) of the statutes are created to read:

14 254.914 **(1m)** A retailer or the retailer’s employe or agent may not sell, expose
15 for sale, exchange, barter, dispose of or give away any cigarettes or tobacco products
16 to anyone who is not licensed under this section or who does not hold a permit under
17 ss. 139.30 to 139.41 or 139.79 unless the sale, exposure, exchange, bartering,
18 disposing or gift occurs on the premises described in the license and unless both the
19 retailer or the retailer’s employe or agent and the buyer, exchanger, barterer, donee
20 or other receiver of the cigarettes or tobacco products are physically present on the
21 premises during the sale, exposure, exchange, bartering, disposing or gifting.

22 **(2)** An applicant for a license under this section shall complete the application
23 prepared by the department and provide, in writing, any additional information that
24 the department requires, including the applicant’s signature to a statement,
25 provided by the department, that indicates that the applicant has knowledge of the

1 laws governing sales and gifting of cigarettes or tobacco products. The department
2 shall also provide the applicant with information on ways to prevent cigarette or
3 tobacco products sales to minors.

4 **SECTION 42.** 254.914 (5) of the statutes is created to read:

5 254.914 (5) Upon request, the department shall provide a current list of
6 persons or establishments that are licensed under this section.

7 **SECTION 43.** 254.914 (8) of the statutes is created to read:

8 254.914 (8) If the department imposes a forfeiture on or revokes the license of
9 a person under sub. (7), the department shall promptly mail notice of the forfeiture
10 imposition or license revocation to the department of revenue and to the local health
11 department that is designated as the department's agent under s. 254.916 whose
12 jurisdiction, if so designated, includes the retailer.

13 **SECTION 44.** 254.916 of the statutes is created to read:

14 **254.916 Agent status for local health departments.** (1) In the
15 administration of this subchapter, the department may enter into a written
16 agreement with a local health department with a jurisdictional area that has a
17 population of more than 5,000, which designates the local health department as the
18 department's agent in issuing or, if applicable, suspending licenses under s. 254.914
19 and making investigations or inspections of retailers, tobacco vending machine
20 operators, tobacco vending machine premises and tobacco vending machines. In a
21 jurisdictional area of a local health department that is not so designated, the
22 department of health and family services may issue licenses, collect licenses fees and
23 make investigations or inspections of retailers, tobacco vending machine operators,
24 tobacco vending machine premises and tobacco vending machines. If the department
25 designates a local health department as its agent, the department or local health

1 department may require no license for the same operations other than the license
2 issued by the local health department.

3 (2) A local health department that is designated as the department's agent
4 under this section, in conducting inspections authorized under sub. (1), may
5 authorize the use of minors aged 14 to 17, who are supervised by an adult, to assist
6 in performance of governmental or nongovernmental research to monitor
7 compliance with s. 254.92. The local health department or a law enforcement officer
8 may solicit minors aged 14 to 17 to conduct undercover operations to purchase or
9 attempt to purchase cigarettes or tobacco products. The local health department or
10 a law enforcement officer shall inspect signs or notices required under s. 254.92 (1)
11 (b) and the placement of tobacco vending machines as required under s. 254.92 (1)
12 (c). The local health department shall annually conduct all of the following random,
13 unannounced inspections:

14 (a) On licensees whose premises are not taverns, at least 2 inspections.

15 (b) On licensees whose premises are taverns, at least one inspection.

16 (3) A local health department that is designated as the department's agent
17 under this section shall meet standards promulgated, by rule, by the department of
18 health and family services. The department shall annually evaluate the licensing,
19 investigation and inspection program of each local health department that is
20 designated as the department's agent. If, at any time, a local health department that
21 is designated as the department's agent fails to meet the standards, the department
22 of health and family services may revoke the designation as agent.

23 (4) The department shall provide education and training to agents designated
24 under this section to ensure uniformity in the enforcement of this subchapter and
25 rules promulgated under this subchapter.

1 **(5)** Except as provided in sub. (6), a local health department that is designated
2 as the department's agent under this section shall establish and collect the license
3 fee for each applicant under s. 254.914 (3). The local health department may
4 establish separate fees for preinspections of new applicants and for preinspections
5 of existing licensees for which a person intends to be the new operator. Separate fees
6 may not exceed the local health department's reasonable costs of making inspections
7 and preinspections and providing education, training and technical assistance to the
8 applicants or licensees.

9 **(6)** A local health department that is designated as the department's agent
10 under this section may contract with the department of health and family services
11 for the department of health and family services to collect fees and issue licenses.
12 The department shall collect from the local health department the actual and
13 reasonable cost of providing the services.

14 **(7)** Unless sub. (6) or (8) applies, the department shall receive \$10 of each
15 license fee paid under s. 254.914 (3) for its costs related to setting standards under
16 this subchapter and monitoring and evaluating the activities of, and providing
17 education and training to, agent local health departments. Agent local health
18 departments shall collect the fees and reimburse the department for the amount
19 required under this subsection.

20 **(8)** If, under this section, a local health department becomes an agent or its
21 agent designation is revoked during a licensee's license year, the department of
22 health and family services and the local health department shall divide any license
23 fee paid by the licensee for that license year according to the proportions of the license
24 year occurring before and after the local health department is designated as agent

1 or the designation is revoked. No additional fee may be required during the license
2 year due to the change in agent designation.

3 (9) Except as provided in s. 254.92 (5), a county, town, village or city may enact
4 ordinances and a local board of health may adopt regulations regarding the licensees
5 and premises over which the department or the local health department that is the
6 department's designated agent under this section has jurisdiction, for which the
7 requirements are at least as strict as this subchapter or rules promulgated by the
8 department of health and family services under this subchapter. Such an ordinance
9 shall provide for civil forfeitures instead of the forfeitures that may be imposed by
10 the department under s. 254.914 (7) and shall require a court to act in place of the
11 department under s. 254.914 (7) and to notify the department and, if applicable, the
12 local health department of the court action. Under such an ordinance, only one
13 charge may result from each violation. A county ordinance enacted under this
14 subsection does not apply within any town, village or city that has enacted or enacts
15 an ordinance under this subsection.

16 (10) This section does not limit the authority of the department to inspect
17 establishments in jurisdictional areas of local health departments that are
18 designated as the department's agents if the department inspects in response to an
19 emergency, for the purpose of monitoring and evaluating the local health
20 department's licensing, inspection and enforcement program or at the request of the
21 local health department.

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

1 (a) A license fee established by a local health department that is designated as
2 the department's agent under this section exceeds the reasonable costs described
3 under sub. (5).

4 (b) The person issuing, refusing to issue, suspending or revoking a license or
5 making an investigation or inspection of the appellant has a financial interest in a
6 regulated cigarette and tobacco product retailer, tobacco vending machine operator,
7 tobacco vending machine premises or tobacco vending machine which may interfere
8 with his or her ability to properly take that action.

9 **SECTION 45.** 254.92 (2) (c) and (d) of the statutes are created to read:

10 254.92 (2) (c) A minor aged 14 to 17 may purchase or possess cigarettes or
11 tobacco products for the sole purpose of assisting in the conduct of undercover
12 operations for which the minor is solicited by a local health department as authorized
13 under s. 254.916 (2).

14 (d) A minor aged 14 to 17 who is under the supervision of an adult may purchase
15 or possess cigarettes or tobacco products for the sole purpose of assisting in the
16 performance of governmental or nongovernmental research, as approved by the local
17 health department, to monitor compliance with this section.

18 **SECTION 46.** 254.92 (3) of the statutes is created to read:

19 254.92 (3) DEFENSE OF RETAILER, MANUFACTURER, DISTRIBUTOR, JOBBER OR
20 SUBJOBBER. It is an affirmative defense to any prosecution for the sale of cigarettes
21 or tobacco products to a minor in violation of sub. (1) (a) that a retailer, manufacturer,
22 distributor, jobber or subjobber or the employe or agent of a retailer, manufacturer,
23 distributor, jobber or subjobber who sold cigarettes or tobacco products to a minor
24 had requested from the minor and had examined an identification card that
25 established the minor's age as at least 18 before selling the cigarettes or tobacco

1 products to the minor. Failure by the retailer or the employe or agent of the retailer
2 to request from a minor and examine such an identification card before selling
3 cigarettes or tobacco products to the minor is conclusive evidence that the retailer
4 has violated sub. (1) (a). Failure by the manufacturer or the employe or agent of the
5 manufacturer to request from a minor and examine such an identification card
6 before selling cigarettes or tobacco products to the minor is conclusive evidence that
7 the manufacturer has violated sub. (1) (a). Failure by the distributor or the employe
8 or agent of the distributor to request from a minor and examine such an identification
9 card before selling cigarettes or tobacco products to the minor is conclusive evidence
10 that the distributor has violated sub. (1) (a). Failure by the jobber of the agent or
11 employe of the jobber to request from a minor and examine such an identification
12 card before selling cigarettes or tobacco products to the minor is conclusive evidence
13 that the jobber has violated sub. (1) (a). Failure by the subjobber or the agent or
14 employe of the subjobber to request from a minor and examine such an identification
15 card before selling cigarettes or tobacco products to the minor is conclusive evidence
16 that the subjobber has violated sub. (1) (a).

17 **SECTION 47.** 254.922 of the statutes is created to read:

18 **254.922 Assessment of forfeitures; appeal; judicial review.** (1) The
19 department may directly assess forfeitures provided for under s. 254.914 (7) or
20 254.92 (4). If the department determines that a forfeiture should be assessed for a
21 particular violation or for failure to correct it, the department shall send a notice of
22 assessment to the alleged violator. The notice shall specify the amount of the
23 forfeiture assessed, the violation and the statute or rule alleged to have been violated
24 and shall inform the alleged violator of the right to hearing under sub. (3).

1 **(2)** A forfeiture may be assessed for each day of the period during which the
2 violation occurred.

3 **(3)** All forfeitures shall be paid to the department within 10 days after receipt
4 of notice of assessment or, if the forfeiture is contested under sub. (4), within 10 days
5 after receipt of the final decision after exhaustion of administrative review, unless
6 the final decision is appealed. The department shall remit all forfeitures paid to the
7 state treasurer for deposit in the school fund.

8 **(4)** A person who is assessed a forfeiture under sub. (1) may contest the
9 assessment of the forfeiture by sending, within 10 days after receipt of notice of a
10 contested action, a written request for hearing under s. 227.44 to the division of
11 hearings and appeals in the department of administration. The administrator of the
12 division may designate a hearing examiner to preside over the case and recommend
13 a decision to the administrator under s. 227.46. The decision of the administrator
14 of the division shall be the final administrative decision. The division shall
15 commence the hearing within 30 days after receipt of the request for hearing and
16 shall issue a final decision within 15 days after the close of the hearing. Proceedings
17 before the division are governed by ch. 227. In any petition for judicial review of a
18 decision by the division, the party, other than the petitioner, who was in the
19 proceeding before the division shall be the named respondent.

20 **(5) (a)** All administrative remedies shall be exhausted before an agency
21 determination under this subchapter shall be subject to judicial review. Final
22 decisions after hearing shall be subject to judicial review exclusively as provided in
23 s. 227.52, except that any petition for review of department action under this
24 subchapter shall be filed within 15 days after receipt of notice of the final agency
25 determination.

1 (b) The court may stay enforcement under s. 227.54 of the department's final
2 decision if a showing is made that there is a substantial probability that the party
3 seeking review will prevail on the merits and will suffer irreparable harm if a stay
4 is not granted, and that the party will meet the requirements of this subchapter and
5 the rules promulgated under this subchapter during such stay.

6 (c) The attorney general may delegate to the department the authority to
7 represent the state in any action brought to challenge department decisions prior to
8 exhaustion of administrative remedies and final disposition by the department.

9 (6) The attorney general may bring an action in the name of the state to collect
10 any forfeiture imposed under this subchapter if the forfeiture has not been paid
11 following the exhaustion of all administrative and judicial reviews. The only issue
12 to be contested in any such action shall be whether the forfeiture has been paid.

13 **SECTION 48.** 778.25 (1) (a) 4. of the statutes, as affected by 1995 Wisconsin Act
14 77, is amended to read:

15 778.25 (1) (a) 4. Under s. ~~48.983~~ 254.92 (2) brought against a minor in the court
16 assigned to exercise jurisdiction under chs. 48 and 938.

17 **SECTION 49. Initial applicability; health and social services.**

18 (1) CIGARETTE AND TOBACCO PRODUCTS RETAILER LICENSE. The treatment of
19 section 134.65 of the statutes first applies to new or renewed licenses issued under
20 section 254.914 of the statutes, as affected by this act, on July 1, 1996.

21 (2) PENALTIES FOR CERTAIN VIOLATIONS. The treatment of sections 48.983 (2),
22 134.65 (5), 134.66 (4) and (5) and 254.922 of the statutes first applies to violations
23 committed on the effective date of this subsection.

24 **SECTION 50. Effective date.**

