

1999 ASSEMBLY BILL 868

March 9, 2000 – Introduced by Representative URBAN, cosponsored by Senator ROBSON. Referred to Committee on Public Health.

1 **AN ACT to repeal** 254.916 (4); **to amend** 134.66 (5), subchapter IX (title) of
2 chapter 254 [precedes 254.911], 254.911 (2), 254.916 (1) (c), 254.916 (5) and
3 254.916 (8); **to repeal and recreate** 254.916 (title) and 254.916 (1) (a); and **to**
4 **create** 134.65 (1m) of the statutes; **relating to:** investigations of compliance
5 with certain prohibitions against selling or giving cigarettes and tobacco
6 products to minors and requiring certain information to be included on an
7 application for a license to sell, expose for sale, possess with intent to sell,
8 exchange, barter, dispose of or give cigarettes or tobacco products to a person.

Analysis by the Legislative Reference Bureau

Under current law, a person is prohibited from directly or indirectly selling, exposing for sale, possessing with intent to sell, exchanging, bartering, disposing of or giving cigarettes or tobacco products to any person unless the person is licensed by the town, city or village clerk.

Current law also prohibits a retailer, manufacturer, distributor, jobber or subjobber or an agent or employe of an independent contractor or an agent, employe or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber or an independent contractor from selling or giving cigarettes or tobacco products to a minor unless the minor purchased or possessed the cigarettes or

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tobacco products in the course of the minor's employment. In addition, a retailer, manufacturer, distributor, jobber or subjobber or an agent, employe or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber or an agent or employe of an independent contractor is prohibited from giving cigarettes or tobacco products to any person unless the cigarettes or tobacco products are provided in a place where minors are not permitted to enter. A county, town, city or village may adopt an ordinance regulating the sale or gift of cigarettes or tobacco products to a minor as long as the ordinance strictly conforms to the statutory prohibitions.

Current law also prohibits a minor from possessing or purchasing cigarettes or tobacco products unless the minor possessed or purchased the cigarettes or tobacco products in the course the minor's employment. Prior to enactment of 1999 Wisconsin Act 9 (the biennial budget act), a county, town, city or village was authorized to adopt an ordinance regulating a minor's possession or purchase of cigarettes or tobacco products as long as the ordinance strictly conformed to the statutory provisions. The biennial budget act eliminated this authority.

Under current federal law, as a condition of receiving certain amounts of the substance abuse block grant, this state must prohibit manufacturers, retailers or distributors of tobacco products from selling or distributing tobacco products to minors, must conduct random unannounced investigations of retail outlets where cigarettes or tobacco products are sold and must report annually to the federal department of health and human services on these enforcement activities and the success of these activities.

The biennial budget act authorized the department of health and family services (DHFS) to contract with local health departments, as agents of DHFS, a state agency or a state or local law enforcement agency (governmental regulatory authority) to conduct unannounced investigations of retail outlets where cigarettes or tobacco products are sold, including premises on which tobacco vending machines are located, to survey overall levels of compliance with the prohibitions against selling cigarettes or tobacco products to minors. The biennial budget act authorizes a minor who is at least 15 years of age to buy, attempt to buy or possess cigarettes or tobacco products as part of a governmental regulatory authority's unannounced investigation if the minor has the permission of his or her parent or guardian, is directly supervised by an adult employe of the governmental regulatory authority, and has prior written authorization to participate in the investigation from the governmental regulatory authority, authorized agent of the governmental regulatory authority or district attorney. Under the biennial budget act, a minor who purchases or possesses cigarettes or tobacco products during the course of an unannounced investigation does not violate the prohibition against a minor purchasing or possessing cigarettes or tobacco products.

The biennial budget act also requires that, to be included in the results of DHFS's survey, an investigation must comply with standards established by DHFS and must meet all of the following requirements:

1. A minor, if asked his or her age during the course of an investigation, must give his or her age.

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2. A governmental regulatory authority may not use a minor in an investigation if the minor is a regular customer at the retail outlet that is the subject of the investigation.

3. The appearance of a minor who is used in an investigation may not be materially altered to indicate greater age.

4. A photograph or videotape of the minor must be made on the day of the investigation and, if a prosecution results from the investigation, the governmental regulatory authority must retain the photograph or videotape until the final disposition of the case.

5. If a violation of the prohibition against selling or providing cigarettes or tobacco products to minors occurs during the investigation, the government entity conducting the investigation is required to make a good faith effort to notify a retailer of the violation and to issue a citation, if any, within 72 hours of the investigation.

6. Within 10 days of an investigation, the governmental regulatory authority conducting the investigation must report to the retailer the name and position of the governmental regulatory authority employee who supervised the investigation, the age of a minor used in the investigation, the date and time of the investigation and the results of the investigation.

Finally, under the biennial budget act, a governmental regulatory authority may not subject a retailer to more than two investigations annually unless both of the investigations reveal that the retailer violated the prohibition against selling or giving cigarettes or tobacco products to minors.

Under this bill, DHFS, a local health department or a state or local law enforcement agency; or a local health department, state agency or a state or local law enforcement agency with which the department contracts; or a person who contracts with a local health department, state agency or a state or local law enforcement agency may conduct unannounced investigations at retail outlets to enforce compliance with the statutory prohibitions against selling or giving cigarettes or tobacco products to minors or a local ordinance that is enacted in strict conformity with the state law provisions. Under this bill, if a governmental regulatory authority conducts unannounced investigations, the investigations must comply with the current statutory requirements and any standards established by DHFS.

In addition, under this bill a governmental regulatory authority may not conduct more than two investigations annually at a retail outlet unless one of the investigations reveal that the retailer violated the prohibition against selling or giving cigarettes or tobacco products to minors.

Finally, under this bill, a city, village or town clerk may not issue a license to sell, exchange, barter, dispose of or give away cigarettes or tobacco products unless the applicant specifies in the license application whether the applicant will sell, exchange, barter, dispose of or give away the cigarette or tobacco products over the counter or in a vending machine, or both.

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~~INVESTIGATIONS OF THE SALE OR~~
~~GIFT OF CIGARETTES OR~~
~~TOBACCO PRODUCTS TO MINORS~~

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4 **SECTION 4.** 254.911 (2) of the statutes, as created by 1999 Wisconsin Act 9, is
5 amended to read:

6 254.911 (2) “Governmental regulatory authority” means the department; ~~the~~
7 a local health department, a state agency or a state or local law enforcement agency;
8 a local health department, state agency or a state or local law enforcement agency
9 with which the department contracts under s. 254.916 (1) (a); or ~~the~~ a person with
10 whom the local health department, state agency or state or local law enforcement
11 agency contracts to conduct investigations authorized under s. 254.916 (1) (a).

12 **SECTION 5.** 254.916 (title) of the statutes, as created by 1999 Wisconsin Act 9,
13 is repealed and recreated to read:

14 **254.916 (title) Investigations.**

15 **SECTION 6.** 254.916 (1) (a) of the statutes, as created by 1999 Wisconsin Act 9,
16 is repealed and recreated to read:

17 254.916 (1) (a) A governmental regulatory authority may conduct
18 unannounced investigations at retail outlets, including tobacco vending machine
19 premises, to enforce compliance with s. 134.66 (2) (a) and (am) or a local ordinance
20 adopted under s. 134.66 (5). The department may contract with a governmental
21 regulatory agency to conduct investigations authorized under this section.

22 **SECTION 7.** 254.916 (1) (c) of the statutes, as created by 1999 Wisconsin Act 9,
23 is amended to read:

