

1999 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB334)

Received: 03/06/2000

Received By: isagerro

Wanted: As time permits

Identical to LRB:

For: Health and Family Services

By/Representing: Kevin Lewis

This file may be shown to any legislator: NO

Drafter: isagerro

May Contact:

Alt. Drafters:

Subject: Health - public health

Extra Copies: DAK

Pre Topic:

No specific pre topic given

Topic:

Tobacco compliance investigations

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>
/?	isagerro 03/07/2000	jgeller 03/07/2000		_____			
/1			martykr 03/07/2000	_____	lrb_docadmin 03/07/2000	lrb_docadmin 03/07/2000	
/2	isagerro 03/07/2000	jgeller 03/08/2000	martykr 03/08/2000	_____	lrb_docadmin 03/08/2000	lrb_docadmin 03/08/2000	

FE Sent For:

<END>

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DAK MGG

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/?	isagerro 03/07/2000	jgeller 03/07/2000		_____			
/1		<i>1/2 3/8 jcg</i>	martykr 03/07/2000	_____	lrb_docadmin 03/07/2000	lrb_docadmin 03/07/2000	

FE Sent For:

DM 3/4 *DM 3/8*

<END>

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See Attached

Please email copy to

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1?	isagerro	1 3/7 jlg km 7	km 7	HH 3 km 7			

FE Sent For:

<END>

Kennedy, Debora

From: Lewis, Kevin
Sent: Monday, February 28, 2000 9:45 AM
To: Austin, David; Kennedy, Debora; Urban, Frank; Robson, Judy; Kahler, Pam; Buschman, Sara
Cc: Nelson, Gary
Subject: REPLACEMENT compromise language (re: SB 334) on protocols



tobacco protocol.doc

[Sorry, this replaces the document previously sent because I had attached the wrong draft. This is the latest proposal. Thank you.]

SB 334 repeals the chapter 254 provisions relating to tobacco compliance check protocols.

DHFS is keenly aware of the legal problems that Chapter 254, as presently worded, presents to municipal authorities and would like to amend the language.

In the interest of fixing the problems of Chapter 254 relating to issues of municipal authority and the utilization of teenagers in compliance checks, DHFS is proposing legislation that holds the promise of bipartisan support. Due to the lack of time, I have attached a draft of the proposal in terms of statutory language, subject to your review.

Debora and/or Pam: can you please draft this at DHFS' request?

In short, this proposal:

- * eliminates confusing language regarding surveys. DHFS doesn't need this authority to conduct federally sanctioned surveys under Synar.
- * affirms that municipal authorities can conduct compliance checks without sanctioning by DHFS
- * eliminates the maximum of two checks per year
- * authorizes municipalities to use 15-18 year olds in compliance checks in accordance with the protocol established under s. 254.916(3).

In addition, this proposal will aid DHFS and municipalities by adding the location of vending machines to a license for the sale of tobacco. There shouldn't be any objection to this since vending machines can only be situated on premises restricted to adults-only. Furthermore, this will improve our sampling procedures under Synar. (The State is supposed to weight the sampling in advance according to the percentage of over-the-counter operations v. vending machines.) For our FDA grant which is focused only on over the counter sales, it will allow us to deploy our resources efficiently.

This proposal is offered as a compromise that will stay true to the protocol agreement made last summer by the retailers while giving municipalities the authority they need.

sub to SB 334
S. 3/1/00
per Kevin Lewis
6-3262

1999 SENATE/ASSEMBLY BILL

SECTION 1. 134.65 (2) (c) of the statutes is created to read:

134.65 (2) (c) A city, village or town shall require an applicant for a license under par. (a) or (b) who will sell cigarettes or tobacco products to specifically describe on the written application whether the method of tobacco sale is to be over the counter, vending machine, or both.

SECTION 2. 254.916 (title) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

254.916 ~~Department~~ Enforcement; authority.

SECTION 3. 254.916 (1)(a) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

In the administration of this subchapter, the department, local health departments, and law enforcement agencies of the state, or of a county, city, village or town may cause unannounced investigations to be conducted at retail outlets, including sites of tobacco vending machines, to enforce compliance with s. 134.66 (2) (a) (am) department may

~~contract with local health departments, as agents of the department, with a state agency or with law enforcement agencies of the state, or of a county, city, village or town, to cause unannounced investigations to be conducted at least annually at retail outlets, including sites of tobacco vending machines, to survey overall levels of compliance with s. 134.66 (2) (a) (am). A person with whom the department contracts under this paragraph may contract with another person to conduct the investigations. Except any survey conducted under 21 CFR part 897, the survey under this subsection shall cover a range of retail outlets that are not pre-selected on the basis of prior violations, in order to measure overall levels of compliance as well as to identify violations. The survey shall be conducted so as to provide a sample of retail outlets that reflects the distribution of minors throughout the state and the distribution of the retail outlets throughout the state where minors are likely to attempt to purchase cigarettes. The survey shall include all types of retail outlets that are required to comply with s. 134.66 (2) (a) and (am). The department shall use statistically sound sampling techniques in designing the annual surveys so as to measure overall levels of compliance and shall stratify the sample so as to measure compliance by type of retail outlet, including a private place of business other than a retail establishment.~~

SECTION 4. 254.916 (1) (c) of the statutes, as affected by 1999 Wisconsin Act 9, is repealed.

SECTION 5. 254.916 (12) is created to read:

254.916 (12) Nothing in this section precludes a county or municipal government from conducting investigations under sub. 134.66 (5) that are independent of department authority and are in accordance with 254.916 (3).

SECTION 6. 254.92 (2)(b), of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

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

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

503771
LRB: [unclear]
ISR: [unclear]

SSA to SB334
1999 BILL

RM not
run

Today AM
Tues
(3/17/00)
NOTE

Reger

1 AN ACT *to repeal* 254.916 (1) (c) and 254.916 (4); *to amend* 134.66 (5),
2 subchapter IX (title) of chapter 254 [precedes 254.911], 254.911 (2), 254.916 (5)
3 and 254.916 (8); *to repeal and recreate* 254.916 (title) and 254.916 (1) (a); and
4 *to 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~~

BILL

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.

BILL

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 entity 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.

This bill eliminates DHFS's authority to contract with a governmental regulatory authority to conduct an unannounced investigation of a retail outlets. Under this bill, DHFS, a local health department 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, this bill eliminates the limit on the number of unannounced investigations a governmental regulatory authority may conduct at a retail outlet.

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.

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:

BILL

1 254.911 (2) "Governmental regulatory authority" means the department; the,
2 a local health department, a state agency or a law enforcement agency with which
3 the department contracts under s. 254.916 (1) (a); or the person with whom the local
4 health department, state agency or law enforcement agency contracts under s.
5 254.916 (1) (a).

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

8 **254.916 (title) Investigations.**

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

11 254.916 (1) (a) A governmental regulatory authority may conduct
12 unannounced investigations at retail outlets, including tobacco vending machine
13 premises, to enforce compliance with s. 134.66 (2) (a) and (am) or a local ordinance
14 adopted under s. 134.66 (5).

15 ~~SECTION 7. 254.916 (1) (c) of the statutes, as created by 1999 Wisconsin Act 9,~~
16 ~~is repealed.~~

17 **SECTION 8.** 254.916 (4) of the statutes, as created by 1999 Wisconsin Act 9, is
18 repealed.

19 **SECTION 9.** 254.916 (5) of the statutes, as created by 1999 Wisconsin Act 9, is
20 amended to read:

21 254.916 (5) No evidence obtained during or otherwise arising from the course
22 of an investigation under this section that is used to prosecute a person for a violation
23 of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5) may be used
24 in the prosecution of an alleged violation of s. 125.07 (3).

Insert
5-14 ✓
→

BILL

1 **SECTION 10.** 254.916 (8) of the statutes, as created by 1999 Wisconsin Act 9, is
2 amended to read:

3 254.916 (8) A governmental regulatory agency that conducts an investigation
4 under this section shall meet the requirements of sub. (3) and the standards
5 established by the department of health and family services. The department shall
6 annually evaluate the investigation program of ~~each~~ a governmental regulatory
7 authority. ~~If, at any time, a governmental regulatory authority fails to meet the~~
8 ~~standards, the department of health and family services may terminate the contract~~
9 ~~under sub. (1) conducting investigations under this section.~~

10

(END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0377/lins
ISR.....

1 Insert 5-14

2 **SECTION 1.** 254.916 (1) (c) ^X of the statutes, as created by 1999 Wisconsin Act 9,
3 is amended to read:

4 254.916 (1) (c) No retailer may be subject to unannounced investigations more
5 than twice annually unless the retailer is found to have violated s. 134.66 (2) (a) or
6 (am) during each an [✓] investigation.

History: 1999 a. 9; s. 13.93 (1) (b).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

S0377/1dn
LRB
ISR glj/f

March 6, 2000 } new date

Kevin Lewis:

substitute amendment ✓

Please review this ~~bill~~ carefully to make sure it achieves your intent. In particular, please note the following:

1. This bill amends the definition of "governmental regulatory authority" in section 254.911 (2) to remove any reference to a DHFS contract. Also, please review the treatment of section 254.916 (8). Is this what you intend?
2. I added a reference to a local ordinance in section 254.915 (1) (a) and (5) to clarify that the investigations may be used to enforce compliance with a local ordinance. Also, instead of including the proposed 254.916 (12), I amended sections 134.66 (5) and 254.915 (8) to indicate that any investigation to enforce a local ordinance must comply with current statutory requirements. OK?
3. I am unsure of your intent regarding the extent of DHFS's role in overseeing local investigation programs. Do you want to change section 254.916 (9) or (10)?

If you have any questions or would like to request a redraft, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

This substitute amendment is the same as LRB-4654/1 ✓ except for the change to ~~section~~ 254.916 (1)(c). ^{that} we discussed ~~which~~ (NO)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0377/1dn
ISR:jlg:km

March 7, 2000

Kevin Lewis:

This substitute amendment is the same as LRB-4654/1 except for the change to s. 254.916 (1) (c) that we discussed.

Please review this substitute amendment carefully to make sure it achieves your intent.

If you have any questions or would like to request a redraft, please do not hesitate to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

Per Kevin Lewis

- Keep governmental reg. authority def.

- in 254.916 (1)(a), add language to allow
dep't to contract w/ govt reg agency

- take out evaluation of investigations program
in ^{sub}(8)

(RMR)

**SENATE SUBSTITUTE AMENDMENT,
TO 1999 SENATE BILL 334**

Wed 3/8/00
AM

Regen

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.

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

9 **SECTION 1.** 134.65 (1m) of the statutes is created to read:
10 134.65 (1m) A city, village or town clerk may not issue a license under sub. (1)
11 unless the applicant specifies in the license application whether the applicant will

1 sell, exchange, barter, dispose of or give away the cigarette or tobacco products over
2 the counter or in a vending machine, or both.

3 SECTION 2. 134.66 (5) of the statutes is amended to read:

4 134.66 (5). A county, town, village or city may adopt an ordinance regulating
5 the conduct regulated by this section only if it strictly conforms to this section. A
6 county ordinance adopted under this subsection does not apply within any town,
7 village or city that has adopted or adopts an ordinance under this subsection. If a
8 county, town, village or city conducts unannounced investigations of retail outlets,
9 as defined in s. 254.911 (5), to determine compliance with an ordinance adopted
10 under this subsection, the investigations shall meet the requirements of s. 254.916
11 (3) and any standards established by the department of health and family services
12 under s. 254.916 (1) (b).

13 SECTION 3. Subchapter IX (title) of chapter 254 [precedes 254.911] of the
14 statutes, as created by 1999 Wisconsin Act 9, is amended to read:

15 CHAPTER 254

16 SUBCHAPTER IX

17 INVESTIGATIONS OF THE SALE OR

18 GIFT OF CIGARETTES OR

19 TOBACCO PRODUCTS TO MINORS

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

22 254.911 (2) "Governmental regulatory authority" means the department; the
23 a local health department, a state agency or a law enforcement agency with which
24 the department contracts under s. 254.916 (1) (a); or the person with whom the local
state or local
via a local health department
state agency
or a state
or local
law enforcement
agency
plan
plan

keep scored
State or local
plan

1 ~~health department, state agency or law enforcement agency contracts under s.~~

2 ~~254.916 (1) (a).~~

plan

keep scored
to conduct investigations authorized

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

5 254.916 (title) **Investigations.**

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

8 254.916 (1) (a) A governmental regulatory authority may conduct
9 unannounced investigations at retail outlets, including tobacco vending machine
10 premises, to enforce compliance with s. 134.66 (2) (a) and (am) or a local ordinance
11 adopted under s. 134.66 (5).

The department may contract with a governmental regulatory agency to conduct investigations authorized under this section.

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

14 254.916 (1) (c) No retailer may be subject to unannounced investigations more
15 than twice annually unless the retailer is found to have violated s. 134.66 (2) (a) or
16 (am) during each an investigation.

17 SECTION 8. 254.916 (4) of the statutes, as created by 1999 Wisconsin Act 9, is
18 repealed.

19 SECTION 9. 254.916 (5) of the statutes, as created by 1999 Wisconsin Act 9, is
20 amended to read:

21 254.916 (5) No evidence obtained during or otherwise arising from the course
22 of an investigation under this section that is used to prosecute a person for a violation
23 of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5) may be used
24 in the prosecution of an alleged violation of s. 125.07 (3).

1 **SECTION 10.** 254.916 (8) of the statutes, as created by 1999 Wisconsin Act 9, is
2 amended to read:

3 254.916 (8) A governmental regulatory agency that conducts an investigation
4 under this section shall meet the requirements of sub. (3) and the standards

5 established by the department of health and family services. ~~The department shall~~

6 ~~annually evaluate the investigation program of each governmental regulatory~~

7 ~~authority. If, at any time, a governmental regulatory authority fails to meet the~~

8 ~~standards, the department of health and family services may terminate the contract~~

9 under sub. (1) ~~conducting investigations under this section.~~

10

(END)