

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: 06/18/99

Received By: yacketa

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Nicole Anderson

This file may be shown to any legislator: NO

Drafter: yacketa

May Contact:

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK, MGG, GMM**

Pre Topic:

ARC:.....Anderson - #3,

Topic:

Synar compliance checks

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 06/22/99	gilfokm 06/22/99		_____			
/1			mclark 06/23/99	_____	lrb_docadmin 06/23/99		

FE Sent For:

<END>

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1/?	yacketa	1-6-22 Kmg	MRC 6/23	MRC/JF 6/23			

FE Sent For:

<END>

Budget Amendments 1999-2000

Statement of Intent

DHFS. Establish uniform Synar compliance check system to prevent tobacco sales to underage persons.

Legislator

Foti 6-2401

Amendment# 3

Staff contact

Mike

Status Pass

Agency

DHFS

Tax Cut

Summary

There are over 15,000 retailers in Wisconsin who sell tobacco products. Under federal Synar requirements, Wisconsin is required to conduct statewide unannounced compliance surveys to determine the prevalence of illegal retail sales of tobacco products to underage persons. Wisconsin conducted its first check in 1997. If the state does not reduce the percentage of vendors who sell to minors to less than 20% by the year 2001, the DHFS is authorized to withhold 40% of the state's substance abuse prevention (SAPT) block grant. The Bureau of Substance Abuse Services at DHFS has developed a compliance check protocol per federal guidelines provided by the Center for Substance Abuse Services. However, no legal procedural compliance check protocol currently exist in Wisconsin.

The purpose of the amendment is to prevent tobacco sales to underage persons by establishing a uniform Synar compliance check system. Specifically, require the following:

- a) DHFS shall enlist a minor over the age of 15, but under the age of 18, to conduct compliance checks. DHFS must obtain the written consent of the minor's parent or legal guardian before the minor may participate;
- b) the participating minor shall act solely under the direction and supervision of DHFS or the law enforcement agency conducting the compliance check;
- c) before and following each compliance check or shift of compliance checks, DHFS or the law enforcement agency conducting the compliance check shall take a photograph of all participating minors to verify the minor's appearance. DHFS shall retain each photograph under this provision for at least two years;
- d) if the minor participating in the inspection is questioned about his/her age while conducting a compliance check, the minor shall state his/her actual age and end the compliance check;
- e) prohibits altering the appearance of the minor participating in the compliance check;
- f) DHFS or the law enforcement agency conducting the compliance check must inform the retail location and individual who made the sale within one hour of a failed compliance check. DHFS or the law enforcement agency must show the individual who made the sale the photograph of the minor used in the compliance check at the same time the individual is being informed of the failed compliance check;
- g) if DHFS, the law enforcement agency or minor conducting the compliance check fails to meet all requirements for conducting compliance checks, no citation shall be issued or fine imposed for any compliance violations; and
- h) if DHFS or the law enforcement agency conducts a compliance check and finds no violations of compliance, DHFS or the law enforcement agency which conducted the compliance check must send written notice within five days to the retail location, informing the retailer that a compliance check had been conducted and that no violations occurred. *after the compliance survey is completed*

Phil McCall

Mike:

John Kiosow or

Gary Nelson from
DHFS will call

249.4794

Budget Amendments 1999- 2000

Fiscal Impact

None. DHFS has already developed a compliance check protocol per federal guidelines, therefore, no additional agency funding should be required.

ARC Analyst

Nicole Anderson

0



**BRANDON
SCHOLZ**
PRESIDENT

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DEPARTMENT OF HEALTH AND FAMILY SERVICES
HFS-32 (Rev. 8/97)

STATE OF WISCONSIN

FACSIMILE COVER MESSAGE

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TO:

Name <i>Deborah Kennedy</i>		Facsimile Telephone Number <i>264-8522</i>
Location	Room Number	Telephone Number

FROM (Sender):

Name <i>Phil McCullough</i>		Facsimile Telephone Number <i>266-1533</i>
Location	Number of Pages Including This Cover Sheet <i>2</i>	Telephone Number

OPERATOR

- Destroy Originals
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COMMENTS/INSTRUCTIONS

Per our conversation

THE FACSIMILE MACHINE COPIES ONLY ONE SIDE OF THE DOCUMENT.
Call sender (Telephone Number) if there is a problem with transmission.

To Deborah Kennedy
From Phil McCallister
per our conversation

In earlier meetings with representatives from merchant retail associations, DOA, and the Governor's Office, DHFS agreed to certain statutory language regarding implementation of the federal Synar Regulation and the impending contract with the FDA for implementation of the FDA Regulation. The current language conflicts with certain points of our previous agreement. They are itemized below:

- a) Our agreement allows for the use of minors ages 15-17. Because we have used 15 year olds in previous surveys, we must continue to use this age group to maintain consistency and statistical integrity.
- b) BSAS contracts with the Wisconsin Survey Research Lab (UW-Madison Extension) to organize and implement the field survey. While DHFS has contractual oversight, the actual "direction and supervision" is done by the Survey Lab.
- f) Notifying a retail outlet found in violation of the law within one hour of the compliance check is acceptable for FDA. However, the Synar survey must maintain confidentiality throughout the survey in order to maintain its objectivity and statistical integrity. Since there are NO citations issued under the Synar program, it shouldn't be necessary to notify retailers of a violation.

Also, we agreed in no circumstance should a picture of the minors used in the compliance checks be shown to a retailer.

- h) While BSAS has no objections to sending follow-up letters to vendors who have passed a compliance check, we would prefer to wait until the completion of the entire survey before doing so. Again, confidentiality is important in conducting a statistical survey of this type.

BSAS recommends referring to the original language that was sent to the Joint Finance Committee from DOA for acceptable guidelines regarding compliance check activities. Since the Synar and FDA programs have distinctly different purposes, it is necessary to allow for exceptions. Those exceptions are included in the previously agreed upon language.

- a) DHFS outs contractee; change 15 to 14
- b) DHFS or its contractee (survey lab) (entity with which the DHFS contracts) - delete law enforcement agency
- c) ok as is
- d) ok as is
- e) " " "
- f) Should be deleted - citations are not issued under SYWAR, although with FDA (K to come)
- g) ok as is
- h) delete "within five days"
add "annually, after the compliance survey is completed"

General: delete law enforcement agency

1999

Date (time) needed _____

(A)

LRB b 0713 11

AR

**CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]**

TAM : King : _____

Rm Not run

See form **AMENDMENTS — COMPONENTS & ITEMS.**

2

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

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

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

#. Page , line :

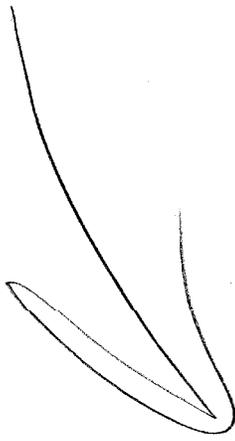
#. Page , line :

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**SENATE AMENDMENT ,
TO 1999 SENATE BILL 45**

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~~At the locations indicated, amend the bill as follows:~~

✓ **1.** Page ~~980~~¹⁰⁹², line ~~7~~²⁰: after that line insert:

SECTION 2033m. 111.35 (2) (d) of the statutes is amended to read:
111.35 (2) (d) Constitutes a violation of s. ~~938.983~~ 254.92 (2).".

✓ **2.** Page ~~1020~~¹¹³⁹, line ~~17~~¹¹: after that line insert:

SECTION 2165m. 134.66 (2) (a) of the statutes is amended to read:
134.66 (2) (a) No retailer, manufacturer, distributor, jobber or subjobber, no agent, employe or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber and no agent or employe of an independent contractor may sell or provide for nominal or no consideration cigarettes or tobacco products to any person under the age of 18, except as provided in s. ~~938.983 (3)~~ 254.92 (2) (a). A 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 ~~1102~~ ¹¹⁹⁴, line ~~22~~ ⁹: after that line insert:

15 “**SECTION 2355m.** 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 ~~1150~~ ¹²³³, line ~~11~~ ¹⁹: after that line insert:

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

20 **CHAPTER 254**

21 **SUBCHAPTER IX**

22 **INVESTIGATIONS OF THE SALE OR**

23 **GIFT OF CIGARETTES OR**

24 **TOBACCO PRODUCTS TO MINORS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 1. A private place of business other than a retail establishment.

20 2. A barroom, as defined in s. 125.51 (3m) (a), that is located on premises
21 described in a license issued under s. 125.26 or 125.51 (3).

22 (b) The department, in consultation with retailers, shall establish standards
23 for procedures and training for 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 1. If questioned about his or her age during the course of an investigation, the
14 minor shall state his or her true age.

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

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

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

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

with respect to

- 6 -

Except under investigations conducted under 42 USC 300x-021 or 21 CFR part 897, ~~===~~ ~~===~~

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

6 7. All of the following information shall be reported to the department, ^{and to the retailers,} within
7 7 days, ~~and to the retailer within 14 days,~~ after the conduct of an investigation under
8 this section:

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

11 b. The date of birth of the minor.

12 c. The date and time of the investigation.

13 d. A reasonably detailed description of the circumstances giving rise to a
14 violation, if any, ^{or, *} if there is no violation, written notice ^{to that effect.} ~~shall be~~
15 ~~provided to the retailer.~~

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

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

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

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

24 (6) The department shall compile the results of investigations performed under
25 this section and shall prepare an annual report that reflects the results for

1 submission with the state's application for federal funds under 42 USC 300x-21. The
2 report shall be published for public comment at least 60 days before the beginning
3 of negotiations under sub. (7).

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

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

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

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

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

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

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

6 ✓ 5. Page ¹⁴¹⁹1308, line ¹⁸11: after that line insert:

7 “SECTION ⁹3072m. 778.25 (1) (a) 4. of the statutes is repealed.”

8 ✓ 6. Page ¹⁴³⁶1352, line ¹⁶14: after that line insert:

9 “SECTION ^{3176m}3187L. 938.983 (title) of the statutes is renumbered 254.92 (title) and
10 amended to read:

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

13 SECTION ³¹⁷⁶ⁿ3187m. 938.983 (1) of the statutes is repealed.

14 SECTION ^{3176p}3187m. 938.983 (2) (intro.), (a) and (c) of the statutes are consolidated,
15 renumbered 254.92 (2) (intro.) and amended to read:

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

20 SECTION ^{3176g}3187m. 938.983 (2) (b) of the statutes is renumbered 254.92 (1) and
21 amended to read:

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

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^{3176r}
SECTION ~~3187r~~ 938.983 (3) of the statutes is renumbered 254.92 (2) (a) and amended to read:

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

^{3176s}
SECTION ~~3187r~~ 938.983 (4) of the statutes is renumbered 254.92 (3) and amended to read:

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

^{3176t}
SECTION ~~3187r~~ 938.983 (5) of the statutes is repealed." ✓

~~7. Page 1398, line 4: delete lines 4 to 12.~~

~~8. Page 1467, line 12: delete lines 12 and 13.~~

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0713/1
TAY:kmg:mrc

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

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

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

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

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

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

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

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

7 134.66 (2) (a) No retailer, manufacturer, distributor, jobber or subjobber, no
8 agent, employe or independent contractor of a retailer, manufacturer, distributor,
9 jobber or subjobber and no agent or employe of an independent contractor may sell
10 or provide for nominal or no consideration cigarettes or tobacco products to any

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

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

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

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

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

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

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

18 227.01 (13) (zu) Establishes standards under subch. IX of ch. 254.”.

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

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

22 **CHAPTER 254**

23 **SUBCHAPTER IX**

24 **INVESTIGATIONS OF THE SALE OR**

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

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

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

22 1. A private place of business other than a retail establishment.

23 2. A barroom, as defined in s. 125.51 (3m) (a), that is located on premises
24 described in a license issued under s. 125.26 or 125.51 (3).

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

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

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

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

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

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

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

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

19 3. The appearance of a minor may not be materially altered so as to indicate
20 greater age.

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

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

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

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

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

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

14 b. The date of birth of the minor.

15 c. The date and time of the investigation.

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

18 e. Any other relevant information requested by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (END)