

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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January 30, 2002

Representative Lippert:

As I worked on this draft Friday and over the weekend I discovered a couple of issues that were not discussed at Thursday's meeting, but which should be addressed one way or another. Specifically:

1. DHFS will need some lead time to develop or approve the training program and form for the retailers and their employees before the training requirement can go into effect. Accordingly, this draft requires DHFS to develop or approve the training program and to develop the form by the first day of the 3rd month beginning after publication and delays the effective date of the training requirement to that date. The draft also exempts DHFS from the requirement that the training program and form be promulgated as rules.

2. At the meeting the focus was on training new employees at the time of hire. No mention was made, however, of training current employees. Accordingly, the draft requires retailers to provide the training to their current employees by the first day of the 2nd month after the training program and form are available.

Of course, the language addressing these issues is not the last word on the subject. Rather, it is intended to get the stakeholders to think about these issues and to come to an agreement as to how these issues should be addressed. As such, a redraft may be necessary modifying the proposed language.

Also, as I worked on the draft I realized that portions of current s. 134.66 are unartfully drafted and that, therefore, certain technical corrections are in order. Specifically:

1. Section 134.66 (2) (b) 2. states that the fine for a minor who possesses cigarettes is \$25. The fine is actually \$50. See s 938.343 (2). Accordingly, the draft corrects s. 134.66 (2) (b) 2. to state that the fine is \$50.

2. Section 134.66 (2) (d) is redundant in that it prohibits what is already prohibited in s. 134.66 (2) (a), that is, providing cigarettes to a minor for nominal or no consideration. Accordingly, the draft repeals s. 134.66 (2) (d).

3. Section 134.66 (3) (intro.) states that certain defenses are available to a retailer, manufacturer, or distributor who sells cigarettes to a minor. Under s. 134.66 (2) (a), however, retailers, manufacturers, or distributors are not the only persons who are

prohibited from selling cigarettes to a minor. Section 134.66 (2) (a) also applies that prohibition to a jobber, subjobber, agent, employee, and independent contractor. Accordingly, this draft permits a jobber, subjobber, agent, employee, or independent contractor to assert the defenses that a retailer, manufacturer, or distributor is permitted to assert under current law.

4. Section 134.66 (4) (a) 1. omits a cross reference to sub. (2) (am) in the definition of "violation" so that in effect there is no penalty for providing cigarettes for nominal or no consideration. Accordingly, this draft supplies that cross reference.

If you have any questions about the draft or this drafter's note, please do not hesitate to contact me at the phone number or e-mail address listed below.

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